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# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No.T. A. No.

392/87

198

DATE OF DECISION

18/4/91S.V. Narsimhan

Petitioner

Mr. C. M. Jha

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr. P. R. Pai

Advocate for the Respondent(s)

### CORAM

**The Hon'ble Mr. M.Y. Priolkar, Member (A)**

**The Hon'ble Mr. T. Chandrasekhara Reddy, Member (J)**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(M.Y. PRIOLKAR)  
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

Tr.392/87

Sankarapuram Vijayaraghavachari  
 Narsimhan,  
 Room No.30, 2nd Floor,  
 Bhoj Mahal,  
 Dr. Ambedkar Road,  
 Bombay - 400 019.

.. Applicant  
 vs.

1. The Financial Adviser &  
 Chief Accounts Officer,  
 Central Railway,  
 Bombay V.T.  
 Bombay - 400 001.
2. Union of India
3. Presiding Officer of the  
 Central Government Labour  
 Court,  
 4th Floor, City Ice Bldg.,  
 298, Nariman Street, Fort,  
 Bombay - 400

.. Respondents

Coram: Hon'ble Member(A) Shri M.Y.Priolkar

Hon'ble Member(J) Shri T.Chandrasekhara Reddy

Appearances:

1. Mr.C.M.Jha  
 Advocate for the  
 Applicant.
2. Mr.P.R.Pai  
 Advocate for the  
 Respondents.

JUDGMENT:

(Per M.Y.Priolkar, Member(A))

Date: 18-4-1991

This is the original Writ Petition No.1139/87 which has been transferred to this Tribunal by the order dated 6-4-1987 of the Bombay High Court and renumbered as Transferred Application No.Tr.392/87.

2. The applicant, a Railway employee initially appointed in its Grain Shops Department which was

subsequently wound up, had earlier filed an application in 1974 before the Central Labour Court at Bombay under Section 33-C(2) of the Industrial Disputes Act claiming that he should be entitled for proforma fixation of his pay from the date his junior was promoted to higher grade and consequential benefits. The Labour Court, however, by its judgment dated 1-10-1983 declined to grant him any relief. This original Writ Petition was filed before the High Court by the applicant on 12-4-1984 praying for quashing the Labour Court's judgment dated 1-10-1983 and for a direction to the respondents to fix the applicant in the higher grade with effect from 1-4-1956 and pay him the entire arrears of pay.

3. The applicant alleges that the Railways decided to wind up the Grain Shops Department from 1951-52 and the surplus staff in that department were being absorbed in other departments from that time but he was retained in the Grain Shops Department till 24-7-1954 in the interest of administration. This is, however, denied by the respondents who have stated in their written reply that the Controller of Grain Shops who was the officer-in-charge of the department declared the applicant as surplus only in June, 1954 and he was, without any delay, absorbed as Clerk Grade II in July, 1954.

4. The condition for promotion of Clerk Grade II to Clerk Grade I is the passing of Appendix-2 examination and the eligibility for

appearing in the examination is the completion of six months minimum service after absorption. The first examination after the applicant became eligible was held in March, 1955 but the applicant did not apply for this examination. He appeared for the subsequent two examinations held in April, 1956 and November, 1956 and failed. He passed in the examination held in May, 1957 and was promoted as Clerk Grade I retrospectively from 1-4-1956. The applicant's allegation that he was not promoted from 1-4-1956, as required under the Railway Board's instructions, has thus no basis.

5. Another grievance of the applicant is that one S.K.Balasubramaniam who was appointed after him in Grain Shops Department was absorbed in Accounts Department much earlier than the applicant and could thus appear in and pass the examination for promotion earlier than the applicant. The respondents have, however, stated that Balasubramaniam's earlier absorption was because he had appeared and passed in the examination held by the Railway Service Commission for regular employment of clerks. The applicant, though also eligible to appear in this examination, did not do so. His grievance is, therefore, not justified.

6. The applicant was considered for promotion in his turn as Sub-head in October, 1963, January, 1966, January, 1971, 1972 and November, 1973 but he could not be promoted as he was not willing to move out on transfer on promotion. The applicant has thus himself avoided promotion to the grade of Sub-head and there was, therefore,

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no question of his being promoted in the year 1958 or thereafter. Applying the rules legislated by the Railway Board in their letter dated 16-10-1952, the validity of which was upheld by the Supreme Court in its decision dated 30-1-1974 in the case of General Manager, South Central Railway v. A.V.R. Siddhanti and others (AIR 1974 SC 1755), the applicant does not ipso facto become entitled for promotion as Clerk Grade I or as Sub-Head. There is, thus, no reason to interfere with the judgment of the Labour Court.

7. On the facts and circumstances of this case we do not, therefore, see any merit in any of the contentions raised on behalf of the applicant. This transferred application is, accordingly, dismissed with no order as to costs.

T.C.S. Reddy

(T.C.S.REDDY)  
Member(J)

key

(M.Y.PRIOLKAR)  
Member(A)