

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
O.A. NO. 524/2005**

Date of Order: 2nd December, 2010

C O R A M

**Hon'ble Mr. Justice Anwar Ahmad Member [Judicial]
Hon'ble Mr. Akhil Kumar Jain, Member (Administrative)**

1. Lal Narayan Sharma, Son of Sri Naresh Sharma, resident of Village-Bishwambharopur, P.O./P.S.- Bikram, District- Patna, presently working as Head Clerk under Sr. DOM, EC Railway, Danapur.
2. Umeshwar Prasad sharma, Son of Late Ram Das Thakur, Village-Kotwan, P.O. Khagaul, Distt.- Patna, presently working as Station Master, EC Railway, Patna Junction.

Applicants.

By Advocate: - Shri M.P. Dixit

-Versus-

1. Union of India through the GM, EC Railway, Hazipur.
2. Chief Personnel Officer, EC Railway, Hazipur.
3. Divisional Railway Manager, EC Railway, Danapur.
4. Sr. Divisional Personnel Officer, EC Railway, Danapur.
5. Sr. DOM, EC Railway, Danapur.
6. Shri Krishna Kumar Singh, Head Clerk through Sr. DPO, EC Railway, Danapur.

Respondents.

By Advocate: - Shri N.K. Sinha

O R D E R

Akhil Kumar Jain, Member [Administrative] :- This OA has been jointly filed by two applicants claiming their seniority above the private respondent no. 6

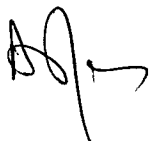


in the grade of Head Clerk.

2. The applicants' case is that they were appointed as Junior Clerks on 19.11.1981 and 02.07.1982 respectively in Danapur Division whereas the respondent no. 6 came to Danapur Division from Mughalsarai Division on his own request on 01.12.1982. Accordingly, the respondent no. 6 was placed below the applicants in the seniority list of Junior Clerks published on 30.11.1984. The applicants and the respondent no. 6 appeared in suitability test for promotion to the post of Head Clerk and were found suitable vide result published on 04.05.1992. However, in the seniority list published on 27.02.2004 they have been shown below the respondent no. 6.

3. The contention of the respondents is that the respondent no. 6 was promoted as senior Scale Clerk Grade I under selection from graduate quota through office order No. 233/85 dated 26.02.1985. The applicants were promoted as Senior Clerks much later through departmental quota. In the seniority list of Senior Clerks published on 01.09.1991, respondent no. 6 was accordingly shown above the applicants and so ^{was} the case with the seniority list of Head Clerks.

4. The applicants in their rejoinder have cited the order passed by the Hon'ble Supreme Court in Civil Appeal No. 4265/96 Smt. Anuradha Mukherjee and Others Vs. UOI & Ors. wherein the Court held that proforma promotion to serving graduates will only count for the purpose of commutation of pension and the concerned employee will neither get the seniority nor any monetary benefit on



that score. It has further been submitted by the applicants that in view of this, the order dated 05.06.1998 of the Railway Board was declared contrary to the order of the Hon'ble Supreme Court. The applicant has also filed copy of Railway Board's letter no. PC III/89/CTC-II/4 dated 19.03.1999 (Annexure A-8 to rejoinder) whereby in pursuance of the order of the Hon'ble Supreme Court, Board's letter dated 05.06.1998 was withdrawn. Some file notings have also been quoted. In the light of the order of the Hon'ble Supreme Court and the subsequent letter of the Railway Board, the applicants have submitted that placing them below the respondent no. 6 in the seniority list of Head Clerk is in contravention of the aforesaid order and the Railway Board's letter. It has further been submitted that the applicant no. 1 submitted a representation to Senior Divisional Personnel Officer on 01.07.2004 followed by reminders on 24.05.2004, 28.09.2004, 09.11.2004 and 12.01.2005. His case was forwarded by Sr. Division Operating Manager to Sr. Divisional Personnel Officer vide letter dated 23.03.2005. However, the same was ^{replied} ~~replied~~ to in a routine manner rejecting the prayer on his further representation. The matter has again been taken up by the Addl. Dy. General manager(PG) with DRM, ECR, Hazipur vide letter dated 24.06.2009 (Annexure A-9 in the rejoinder).

5. Heard the learned counsels for both the parties.

6. We note that the plea of the seniority fixation ~~is~~ in accordance with the order of the Hon'ble Supreme Court in Civil Appeal No. 4265/96 in the matter



Smt. Anuradha Mukherjee and Others Vs. UOI has been taken for the first time in the rejoinder filed by the applicants. This point does not seem to have been raised earlier either in the representation filed or in the OA.

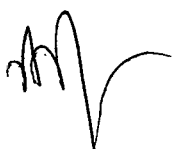
7. In this connection, it is noted that the Hon'ble Supreme Court in the case of Subramania Desika Gnanasambanda Pandarasannidi vs State of Madras vs another as reported in A.I.R. 1965 SC page 1578 held in paragraph 17 of the judgment as follows:-

"That takes to the consideration of the question as to whether the two reasons given by the High Court in support of this decision are valid. The first reason, as we have already indicated, is the High Court thought that the plea in question has not been raised by the appellant in his writ petition. This reason is no doubt, technically right in the sense that this plea is not mentioned in the first affidavit filed by the appellant in support of his petition; but in the affidavit-in-rejoinder filed by the appellant this plea has been expressly taken. This is not disputed by Mr. Chetty, and so, when the matter was argued before the High Court, the respondents had full notice of the fact that one of the grounds on which the appellant challenged the validity of the impugned order was that he has not been given chance to show cause why the said notification should not be issued. We are, therefore, satisfied that the High Court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court."



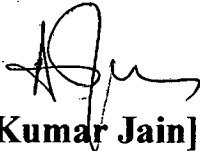
8. The principle laid down in this order quoted above is that in case of a new plea being added in support of the relief claimed, the respondents should be given a fair chance to reply to the same. In the instant case, the plea of proforma promotion to serving graduates will only count for the purpose of commutation of pension and the concerned employee will neither get the seniority nor any monetary benefit on that score in view of the order passed by the Hon'ble Supreme Court in Civil Appeal No. 4265/1996 in the matter of Smt. Anuradha Mukherjee and Others Vs. UOI have been taken in the rejoinder. We, therefore, consider it appropriate to refer the matter back to the respondents to re-consider the issue in the light of the order passed by the Hon'ble Supreme Court in the matter of Shri Anuradha Mukherjee and others (supra) as also taking into account the letter dated 24.06.2009 of the Addl. DGM (PG) (Annexure A/9).

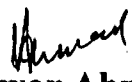
9. Accordingly, we direct the respondents no. 2 and 3 to consider the matter of seniority of the applicants in the cadre of Head Clerks on the basis of representations filed by the applicant, the last being dated 29.06.2005, and also treating this OA with its annexures as well as rejoinder as part of additional representation within a period of six months from the date of receipt/production of a copy of this order. While deciding the matter, the respondents should also keep in view the letter dated 24.06.2009 of the Addl. DGM (PG) as contained in Annexure A-9 as also the order of the Hon'ble Supreme Court in the case of Smt. Anuradha Mukherjee and Others Vs. UOI. The applicant is directed to serve a



copy of this order alongwith copies of OA and rejoinder with all the annexures filed by him, on respondent no. 6 within a period of a fortnight and thereafter he will submit copies of same documents alongwith proof of service on respondent no.6, to respondents no. 2 and 3 within next 15 days.

8. The OA is disposed of accordingly.


[Akhil Kumar Jain]
Member[A]


[Anwar Ahmad]
Member[J]

srk.