

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA**

**O.A. NO. 596/2005**

Date of Order: 25<sup>th</sup> May, 2010.

**C O R A M**

**Hon'ble Mr. Justice Anwar Ahmad, Member (Judicial)**

**Hon'ble Mr. Sudhir Kumar, Member (Administrative)**

Hari Lal Yadav, son of Late Mathura Yadav, Office Supdt. Grade II, Under  
Chief Medical Director, E.C. Railway, Hazipur (Bihar).

..... Applicant.

- By Advocate - Shri M.P. Dixit

-Versus-

1. The Union of India through G.M., EC Railway, Hajipur.
2. Chief Medical Director, EC Railway, Hajipur.
3. General Manager(P), EC Railway, Hajipur.
4. Divisional Railway Manager, EC Railway, Mughalsarai.
5. Divisional Railway Manager, EC Railway, Danapur
6. Chief Medical Supdt., EC Railway, Mughalsarai.
7. Chief Medical Supdt, EC Railway, Danapur.
8. Satyendra Narayan Singh, Chief Office Supdt., through C.M.D., EC  
Railway, Hazipur.

..... Respondents.

By Advocate:- Shri N.L.K. Singh

**ORDER**


**Sudhir Kumar, Member [Administrative] :-** The applicant in this case has approached the Tribunal for the 4<sup>th</sup> time this time praying for the following reliefs:-

“8. [I] That your lordships may graciously be pleased to quash and set aside the impugned order dt. 29.07.2005 communicated vide letter dated 02.08.2005 as contained in Annexure A/11.

[II] That the respondents be further directed to grant the benefit of promotions in favour of the applicant to the post of O.S. Gr. II I and COS from the dates of his junior namely Shri S.N. Singh, (respondent No. 8) with all consequential benefits including seniority in view of the specific finding held by this Hon'ble Tribunal as contained in Annexure- A/10.

[III] That respondents be further directed to pay the arrears on account of promotion to the aforesaid grades along with interest etc. from due date.

2. The applicant was appointed as Senior Clerk in the Railways on 30.05.1982. His grievance being against Private Respondent No. 8 Shri R.N. Singh, it may be noted here that the said Shri S.N. Singh is said to have been appointed on 30.03.1987. The applicant had first approached this Tribunal in OA No. 393/1999. His case was decided on 15.03.2005 and facts of this case can be borrowed from that judgment as follows:-

“2. The applicant's case is that he is senior to Shri S.N. Singh, as per seniority list contained at page 31-1. The applicant has 

been shown in the list at Serial No. 1, whereas private respondent no. 13 has been shown at Serial No. 5. It has been submitted that in the selection process for promotion to O.S. Grade II, the applicant was not called even though he had applied for being included in the selection process. He has, therefore, alleged gross violation of his claim for promotion. The applicant has also served a legal notice to respondents for redressal of his grievance but the same was not replied to or redressed. Therefore, this OA.

3. Official respondents have controverted the claim of the applicant. They have taken the plea that the application is hit by limitation under Section 21 of the Administrative Tribunals Act and also suffers from other defects like res-judicata, estoppel, waiver and acquiescence. It has been alleged that the application is bad due to non-joinder of parties. According to respondents the cadre of ministerial staff starting from Junior Clerk to O.S. Grade I, Medical Department of the Eastern Railway, used to be maintained by different Divisional Railway Hospitals. Subsequently, by a policy decision, ministerial cadre up to Head Clerk is maintained by the Divisional Hospital, Mughalsarai for Danapur, Mughalsarai, Gaya and Jamalpur Divisional Railway Hospitals. From the post of O.S. Grade II, Danapur, Mughalsarai and Gaya Divisions are maintaining as one unit, whereas Malda and Jamalpur Divisions are maintained as different unit. There is separate distribution for the post of O.S. Grade II and O.S. Grade I due to restructuring. The promotional avenues for those posted in Malda and Jamalpur Divisions are different he.

from those available at other Divisions.

4. Respondents have admitted to the fact that applicant was senior to Shri S.N. Singh in the cadre of Senior Clerk as the cadre up to Head Clerk. Is uniform and maintained by Mughalsarai Division. Thereafter, when the applicant was promoted s Head Clerk in the year 1997, he was transferred to Mughalsarai from Jamalpur on promotion. Thereafter, the applicant filed a representation for being retained at Jamalpur due to his personal problem. Since there was no vacant post available at Jamalpur, he was retained at Jamalpur but was not given promotion as Head Clerk. Shri S.N. Singh, on the other hand, appeared in the same process of promotion and was promoted as Head Clerk. The applicant, who had been retained on temporary basis as Head Clerk at Jamalpur, was, however, treated as Senior Clerk as there was no vacancy of Head Clerk available at Jamalpur and he had refused to move Mughalsarai. Thereafter, some vacancies cropped up at Danapur in O.S. Ghrade II and as per Annexure-5 and 6, Head Clerks of Danapur were considered for promotion to O.S. Grade II and Shri S.N. Singh, being eligible, was promoted. Since the applicant was at Jamalpur, his case was not considered. It has been submitted that the applicant never went to Mughalsarai and the annexure which he has annexed at page 75, there was a request for transferring one post of Head Clerk at Jamalpur. This would show that the applicant was not interested in moving out of that place.

7. We have heard learned counsels appearing for the contesting parties and carefully gone through the record. Al.

Admittedly, the applicant was senior and due for promotion ahead of Shri S.N. Singh from earlier date. But the fact is that the applicant, on promotion, did not move to Mughalsarai and thereby did not get the benefit of promotion as Head Clerk. The request of the Medical Supdt. Railway Hospital, Jamalpur to transfer post of Head Clerk was apparently not accepted. Second important fact is that the promotion avenue for employees posted at Jamalpur and Mughalsarai Divisions were to be given effect separately. In his rejoinder, the applicant has taken the plea that no doubt he remained at Jamalpur but he has not been shown as staff of Eastern Railway Hospital, Jamalpur. It was purely an administrative arrangement for administrative convenience. He has also contested the submission of the respondents that his application is barred by limitation or any other defects. It has also been submitted that his lien is still being maintained at Mughalsarai and, therefore, he should not have been discriminated in his promotion. He has also contested the submission of the respondents that posts of O.S. Grade II and O.S. Grade I were separately distributed amongst various Divisions."

3. From a reading of the above judgment, it is clear that the reliefs prayed for in that OA also were more or less the same as in the present one. That OA was disposed of with direction to the General Manager, EC Railway, Hajipur to re-examine the entire case of the applicant vis-a-vis his claim of seniority against Respondent No. 8 Shri S.N. Singh, and that, if after closer scrutiny the Be


claim of the applicant is found to be genuine, he should be given appropriate promotion from the date Respondent No. 8 Shri S.N. Singh was promoted, by adjusting vacancies at appropriate levels. The applicant had been working at Jamalpur Railway Hospital in the clerical cadre and due to personal reasons he had refused to move away from there even on promotion.

4. After the order dated 15.03.2005 in OA No. 393/1999, the impugned orders dated 29.07.2005, forwarded to the applicant through letter dated 02.08.2005 (Annexure A/11 and its annexures), came to be passed. In this also the respondent authorities had taken the same stand which they had taken earlier before this Tribunal in OA No. 393/1999, that ~~while~~ the cadre of ministerial staff ru. starting from Junior Clerk to O.S. Grade I, Medical Department of the Eastern Railway, used to be maintained by different Divisional Railway Hospitals. Subsequently, by a policy decision, ministerial cadre up to Head Clerk is maintained as a single cadre unit by the Divisional Hospital, Mughalsarai for Danapur, Mughalsarai, Gaya and Jamalpur Divisional Railway Hospitals. From the post of O.S. Grade II, Danapur, Mughalsarai and Gaya Divisions are being maintained as one unit, whereas Malda and Jamalpur Divisions are maintained as different units. The applicant has assailed this order by contending that Jamalpur Hospital, where he was working, was very much under the control of Mughalsarai Division, and has nothing to do with Malda Division. He has produced a number of seniority lists of his postings and placements in the ministerial cadre at the ru.

clerical level which have all been issued from Mughalsarai. Even after his promotion as Head Clerk, the applicant had refused to move to Mughalsarai on his transfer through his promotion-cum-transfer order dated 18.02.1997, and through modified order dated 24.09.1997 (Annexure A/5 of this OA), he was promoted and posted on ad-hoc basis at Jamalpur Hospital itself as Head Clerk. Obviously, in the departmental seniority list dated 01.04.1997 issued from Mughalsarai (Annexure A/6), the name of the applicant also figured and till then he was shown to be senior to Respondent No. 8 Shri S.N. Singh. Through Annexure A/7 dated 14.09.1997, Medical Superintendent, Jamalpur had requested the Medical Superintendent, EC Railway, Mughalsarai to agree for pinpointing the applicant to work at Jamalpur even after his promotion, while keeping his name in Mughalsarai account. Therefore, through Annexure A/8 dated 16.10.1997, he was retained as Head Clerk under the Medical Superintendent, Jamalpur itself, in view of the concurrence given by the DRM, Mughalsarai, through letter dated 24.09.1997.

5. However, in the case of OS Gr. I and OS Gr. II, the position changed. From Annexure A/9 letter dated 17.04.1998, it is seen that through order dated 18.10.1993 received from EC Headquarters, Calcutta, one post of OS Gr. I and 2 posts of OS Gr. II at Mughalsarai had been pinpointed, and through decentralisation letter dated 27.03.1995, two posts of OS Gr. I and 3 posts of OS Gr. II were distributed among Danapur, Mughalsarai and Gaya Hospitals. As a result, it was ordered by DRM, Mughalsarai through letter dated 17.4.1998 that he.

Shri B.K. Singh, Head Clerk, Mughalsarai and the applicant Shri Hari Lal Yadav Head Clerk, Mughalsarai, had been transferred to Jamalpur on temporary basis along with their posts. Accordingly, the two posts of OS Gr. I and OS Gr. II vacated due to movement of Shri B.K. Singh and Shri H.L. Yadav from the unit along with their posts were sought to be filled up. This fact of the applicant having moved to Jamalpur along with his post of OS Gr. II was somehow not noted in the order of this Tribunal in OA No. 393/1999, even though the Bench had in paragraph-3 of the order noted that from the post of OS Gr. II, seniority in Danapur, Mughalsarai and Gaya Divisions is being maintained as one unit, whereas in Malda and Jamalpur Divisions, seniority is being maintained as different units, and that there is separate distribution of posts of OS Gr. II and OS Grade I due to restructuring, and that the promotional avenues for those posted in Malda and Jamalpur Divisions are different from those available in other Divisions.

6. In their reply written statement, the respondents maintained that on the basis of applicant's transfer order from Jamalpur to Mughalsarai, his name figured in the seniority list in Mughalsarai Division in anticipation of his joining there, but the applicant never opted to join in Mughalsarai Division, and requested for retention at Jamalpur due to his personal problems, to serve his old widowed mother and to look after his school going daughter. In para 4 of their written statement, the respondents pointed out that in order to accommodate the request of .



the applicant for his retention at Jamalpur, the DRM, Mughalsarai had agreed to the arrangement of granting promotion to the applicant, and had through Annexure A/9 dated 17.04.1998 agreed to transfer Shri Yadav to Jamalpur along with one post of Head Clerk . They contended that thus the applicant did not maintain his lien at Mughalsarai. As was correctly noted by this Tribunal in para-4 of its order dated 15.03.2005 in OA No. 393/1999, the promotional avenues at different places were different. The selection for OS Gr. II was held from among the staff of only Mughalsarai, Gaya and Danapur Divisions separately, where the seniority of the applicant had been shown in anticipation of his reporting, but where he had never reported for duty. Separately, the CPO, Eastern Railway, Kolkata instructed that the promotion of medical department Clerical staff of Danapur, Mughalsarai and Gaya for promotion to the post of OS Gr. I and OS Gr. II to be initiated by the Danapur Division, from which the applicant obviously got left out. In their written statement, the official respondents further explained that since the Private Respondent No. 8 Shri S.N. Singh was working in Danapur Division, he came under the zone of consideration for calling for the selection for the post of OS Gr. II in Medical Department, while the applicant, who had never bothered to report in Mughalsarai and had continued to work at Jamalpur in Malda Divisions on his temporary transfer along with his post, was not called for the selection process conducted by the Danapur Division.


7. The applicant later came and joined under the newly constituted EC EC.

Railway with Headquarters at Hajipur, and came into the zone of consideration for promotion to OS Gr. II w.e.f. 01.11.2003. At the same time, Shri S.N. Singh, Private Respondent No. 8, who had been earlier itself promoted to OS Gr. II in his parent cadre, also opted to join the newly constituted EC Railway, and as a result of the restructuring, he stood promoted to OS Grade II on 1.11.2003 and later as OS Gr. I ahead of the applicant. The respondents have justified this by stating that since the Private Respondent No. 8 and the applicant belonged to two different seniority units prior to their joining EC Railway on their option, any parity between persons joining on transfer from two different seniority units cannot be claimed.

8. Through his rejoinder, the applicant sought to make out a case from the order dated 04.10.2001 (Annexure A/12), in which DRM, Mughalsarai had written to the Chief Works Manager, Eastern Railway, Jamalpur, that one OS Gr. I had retired from Railway service in Jamalpur on 31.07.2001, and had suggested that one post of Head Clerk, which had been transferred from DRM, Eastern Railway, Mughalsarai to Chief Workshop Manager, Eastern Railway, Jamalpur to adjust the applicant Shri H.L. Yadav as Head Clerk there, was being withdrawn w.e.f. 01.08.2001, and that the pay of Shri H.L. Yadav may be charged against the available higher grade vacancy of OS Gr. I. The applicant has further prayed that thereafter the DRM, Mughalsarai issued another letter dated 08.05.2002 asking the Jamalpur authorities to transfer the applicant back to Mughalsarai, and in the

compliance whereof, through the office order dated 13.05.2002 (Annexure A/13), the applicant was transferred to Mughalsarai in the pay scale and capacity of Head Clerk, against the earlier pinpointed post of Head Clerk, on administrative grounds. The applicant stated in the rejoinder that he was accordingly spared from Jamalpur on 18.05.2002 and he joined at Mughalsarai on 27.05.2002.


9. The applicant further stated that while working at Mughalsarai, on 18.06.2002 he had been granted promotion to the post of OS Gr. II, and hence, he pleaded that he was working at Mughalsarai Division and not under Malda Division. The applicant produced Annexure A/14 dated 18.06.2002. This is a letter from DRM, Eastern Railway, Mughalsarai addressed to DRM, Eastern Railway, Danapur, who was In-charge for conducting the test for promotion to OS Gr. II. This letter mentions that since the applicant had reported at Mughalsarai on 29.05.2002, he may be called for the test for promotion to OS Gr. II. It appears that these Annexures A/12, A/13 and A/14 dated 04.01.2001, 13.05.2002, and 18.06.2002 respectively, were never produced by the applicant before this Tribunal earlier in OA No. 393/1999, before the orders in that OA came to be passed, as no mention of these annexures and the sequence of events is found in the order recorded in that OA.

10. The contentions of the applicant in the present OA as well as those raised by him in the earlier OA No. 393/1999, and the written statement of the respondents have been considered, and the case was argued at length by the 

learned counsels of both sides mainly on the point of as to whether and in which seniority list the applicant belongs.

11. Concurring with the findings of this Tribunal dated 15.03.2005, and without disturbing any of those conclusions, it appears to us that the applicant was transferred along with his post as Head Clerk on temporary/ad-hoc basis from under the control of DRM, Mughalsarai to Jamalpur on 17.04.1998 as per Annexure A/9. Thereafter, it appears that as per Annexure A/13 dated 13.05.2002, the services of the applicant were transferred back from Jamalpur to Mughalsarai in his capacity and pay scale of Head Clerk in accordance with office order dated 8.5.2002 of DRM, Mughalsarai where he reported for duty on 29.05.2002.

12. Therefore, for the period from 17.04.1998 to 29.05.2002, the seniority of the applicant was in Jamalpur Hospital coming under Malda Division, where he was working on his transfer in his own pay and post on his transfer along with the post there. It is only after 29.05.2002 that the applicant became eligible for counting of his seniority in Mughalsarai Division once again .

13. It is seen that Private Respondent No. 8 Shri S.N. Singh had in the meanwhile stood promoted as OS Gr. II on 23.02.1999 vide office order No. 118/99 issued by the Danapur Division, as mentioned by the applicant himself in para 4.09 of his OA. Therefore, while it is clear that as on 29.05.2002 and up to 18.06.2002, the date of issuance of Annexure A/14, the applicant was a Head Clerk only, by his own admission, the Respondent No. 8 had already been .

promoted to the post of OS Gr. II on 23.02.1999, when the applicant, at his own request, was continuing to serve at Jamalpur, and refusing to move from there. . Therefore, the applicant cannot make out any case for promotion as against Private Respondent No. 8 Shri S.N. Singh.

14. Life is a combination of fortuitous circumstances, and as has been commented upon by the Hon'ble Supreme Court in a number of cases, and by the Hyderabad Full Bench of this Tribunal in OA No. 1412/1993 in the Batch cases B.K. Somayajulu & Ors. Vs. Telecom Commission of India & ors.

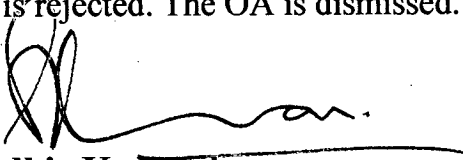

..... as under:-

“ If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of these reasons, that will not confer a corresponding right on a senior to get the same.”

15. In this case, the applicant has remained at Jamalpur of his own violation, and for his own convenience, while his juniors were getting promotions in the place where he had refused to shift to. In the light of this, concurring with the orders dated 15.03.2005 in OA No. 393/1999, we find that the applicant is not entitled for any relief, as there is nothing factually or legally wrong with the reasoned and speaking order dated 29.07.2005 Annexure A/11, and that the RM.

applicant is not entitled to the benefit of any promotion as against the said Private Respondent No. 8 Shri S.N. Singh also.

16. In view of the discussions above, both the prayers at para 8(i) and 8(ii) of the OA are rejected, and as a result the consequential prayer of para 8(iii) also is rejected. The OA is dismissed. No order as to costs.

  
[ Sudhir Kumar ]  
Member[A]  
[ Anwar Ahmad ]  
Member[J]

srk.