

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 747 of 2000.

Dated this Thursday, the 31st day of January 2002.

C. Parameshwaran, Applicant.

Shri A. S. Bhambhani, Advocate for the  
Applicant.

VERSUS

Union of India & 2 Others, Respondents.

Shri V. S. Masurkar, Advocate for the  
Respondents.

CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.  
Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?  
(ii) Whether it needs to be circulated to other  
Benches of the Tribunal ?  
(iii) Library.

No

*B. N. Bahadur*

(B. N. BAHADUR)  
MEMBER (A)

OS\*

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ORIGINAL APPLICATION NO.: 747 of 2000.

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CORAM : Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman.  
Hon'ble Shri B. N. Bahadur, Member (A).

C. Parameshwaran,  
G-2, Sai Kripa Apartment,  
Wing 'A', Chinchpada,  
Kalmalaval, Kalyan (East),  
Dist. Thane.

... Applicant.

(By Advocate Shri A. S. Bhambhani)

VERSUS

- ✓
1. General Manager,  
Central Railway,  
Chatrapati Shivaji Terminus,  
Mumbai.
  2. Divisional Railway Manager  
(Personal),  
Central Railway, C.S.T.,  
Mumbai.
  3. Divisional Electrical Engineer,  
(Traction Distribution),  
Central Railway, Kurla,  
Mumbai.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal  
seeking relief as follows :

- (a) To promote the applicant from  
Tool-Checker Grade Rs. 2750-4400 to clerk  
w.e.f. 4.10.99 grade Rs. 3050-4590 with  
all benefits of services as a clerk, with  
pension benefits and seniority.

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- (b) To pay the difference of pay from 4.9.99 in the grade of Rs. 3050-4590 with interest at 18% till date.
- (c) To pay Rs. 1000/- as legal charges of Advocate's legal notice.
- (d) Cost of this application.
- (e) Any other relief which this Honourable Tribunal feels deem and fit, in the nature of the circumstances of the case."

In fact, as he states in the beginning, he is challenging the reversion from Clerk to Tool Checker w.e.f. 04.10.1999 and is aggrieved that this is without reason, is arbitrary, malicious and unwarranted and against the principles of natural justice.

✓ The Applicant has set out the facts of his case, saying that he was appointed as Khalasi on 19.09.1972 at Lonavala and thereafter transferred to Kurla and put to officiate as Junior Clerk intermittently from 12.04.1982 to 23.05.1983, as described at page 2 of the O.A. Finally, he states that he was promoted from the post of Khalasi to the post of Junior Clerk (in the grade of Rs. 260-400) on 25.04.1984 against a vacancy and was granted annual increment w.e.f. 13.09.1984 after giving weightage to officiating period. His pay was fixed in the grade of Rs. 3050-4590 after Fifth Pay Commission Recommendations i.e. w.e.f. 01.01.1996. It is the grievance of the Applicant that he is still working as a Clerk, even though he has been passed for pay as Tool Checker in view of aforesaid reversion order dated 04.10.1999. It is with such grievances that the Applicant comes up to the Tribunal seeking the reliefs listed above. A M.P. No. 36/2001 filed for amendment was later withdrawn by Applicant (Roznama dated 16.02.2001).

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Learned Counsel has sought to depend on the ratio of the judgement made in the case of N.S.K. Nayar & Others V/s. Union of India & others [AIR 1992 SC 1574] where it is settled that officiating appointments continuing for long period of time cannot be said to be short term appointments.

4. The Learned Counsel for the Respondents, Shri V. S. Masurkar, sought to depend on the Written Statement filed by the Respondents and took us over the various orders which has been appended by the Respondents with their Written Statement (exhibit R-1 to R-5). In these orders it is clearly mentioned that Applicant was working on special work of provision of reception line (Exhibit R-1). Importantly, he argued that in Exhibit R-2 it is clearly stated that Shri C. Parmeshwaran was working on work-charged post from 16.5.1992 to 12.11.1992 and that the fact of this being a temporary arrangement has been mentioned. Shri Masurkar made the point that it is another matter that in view of the availability of work on work-charged post the Applicant may have continued for long period but posting/promotion on work-charged arrangement does not confer any right. Learned Counsel also provided the Service Book in respect of applicant, Shri C. Parmeshwaran (in original).

5. On an assessment of the facts of the case, and on consideration of the argument on behalf of both sides, it is seen that the issue to be decided here is whether we could conclude that the promotion of the Applicant to the post of Junior Clerk

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between the years 1984 and 1988 or indeed in other period, was a regular promotion. At the outset, we must state that the judgement of the Hon'ble Supreme Court sought to be depended upon by the Applicant pertains to short term arrangement of promotion but does not relate to work-charged post. Therefore, since the facts and circumstances here and the issue involved is regarding work-charged post, the benefit of the ratio in the aforesaid judgement of N.S.K. Nayar cannot be available automatically to the Applicant. This is so because it is a well known principle that promotion to work-charged post cannot be held to give any right. Unfortunately, it has been continued for very long periods. There is no doubt however, that the rule and law established is that promotion on work charged posts is not something that could be considered as regular promotion.

6. On a careful reading of the annexures between R-1 and R-5 it is seen that we do not have any reason to doubt that the Applicant was promoted on a temporary arrangement in genuine terms, since in some of the orders the nature of posting being of work-charged post has been mentioned. It is difficult to conclude that it was anything else. The periods are clear from the dates in the orders at R-1 to R-5 referred to. These orders are mainly for the period from 1992 and it is difficult for us to expect copies of particulars of orders for the periods as old as 1984. We have seen the Service Book of the Applicant where the pay fixed from time to time has been mentioned and the fact of promotion has been mentioned. Here there is no mention that promotion is on work-charged post. It is merely stated as promotion, verily. The Service Book, indeed, does not help us.

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In fact, the promotion refers to some order no. DB/8/58 dt. 25.4.1984. It is true that there was no mention of promotion being made on work-charged basis but since subsequent orders referred to above mentions to be promotion on work-charged basis, it is difficult to conclude that the promotion is a regular promotion and to provide the relief sought through judicial determination.

7. One thing that does not become clear is whether any junior of the Applicant had been given regular promotion. It is unfortunate that the Applicant has not made out this point. If indeed this was the case, then perhaps depending on the kind of evidence adduced, some conclusion in his favour might have been possible. However, in the absence of any evidence in this regard, it is difficult to derive assumptions. It is indeed very unfortunate that a person who has been promoted as early as in 1984 as Junior Clerk had to be reverted some fifteen years later even assuming breaks in between. In view of the nature of work being work-charged, it is difficult however to provide any benefit but it can only be hoped that this aspect will be considered in case in future possibility of his upgradation arise. This is only an observation that we can make. We cannot provide the relief sought. However, these orders will not come in the way of the Respondents themselves providing any relief to the Applicant.

8. Subject to the above observation, this O.A. is hereby dismissed with no order as to costs.

*B. N. Bahadur*

(B. N. BAHADUR)  
MEMBER (A).

*B. Dikshit*

(BIRENDRA DIKSHIT)  
VICE-CHAIRMAN.

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