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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 20/12/2000

OA 417/93

Kumari Amrit Kaur Rai, Sr.Clerk in the O/s DRM, W/Rly,
Kota.

... Applicant

V/s

1. Union of India through General Manager, W/Rly,
Churchgate, Mumbai.
2. Divisional Railway Manager, W/Rly, Kota.
3. Bhagwat Sahai Saxena, Head Clerk c/o X PWI,
Indergarh Office.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.P.P.Mathur, proxy counsel
for Mr.R.N.Mathur

For the Respondents

... Mr.S.S.Hasan with Mr.Anubam
Agarwal, proxy counsel for
Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

In this application filed u/s 19 of the Administrative
Tribunals Act, 1985, the applicant has sought the following
reliefs :-

- "i) That the seniority list Ann.A/1 dated 22.7.91
may be quashed and set aside.
- ii) That the respondents may be directed to issue
fresh seniority list.
- iii) That the respondents may be directed to place
name of the applicant in the seniority list of
the senior clerk just below Smt.Pushplata

Dubey and above Shri Mangi Lal whose name find place at S.No.9 & 10 in the seniority list (Ann.A/2)."

2. Case of the applicant is that she was appointed as a Junior Clerk on 6.11.86 on compassionate grounds. She, being a Graduate, appeared in a competitive examination for the post of Senior Clerk held by the Railway Recruitment Board Ajmer in 1998 against serving graduates quota and was declared successful. She opted to be posted in Kota Division. By order dated 3.4.89 she was posted in the office of Loco Foreman, Kota. She submitted an application on 4.4.89 requesting that she may be retained in the office of DRM. It has been stated that there are broadly three groups in the clerical cadre of the Railways. The one group known as Mechanical, Operating, Commercial, General (MOCG), the another group consist of Works, Budget, Stores and Medical (WBSM) and the third group consist of Establishment Section only. Office of Loco Foreman is in MOCG Group. On her request, order were issued to post the applicant as Senior Clerk in the office of Deputy Chief Engineer. By this order of the Deputy Chief Engineer dated 20.4.89, at Ann.A/8, her posting as Senior Clerk

has been made effective w.e.f. 4.4.89. It has been stated that after certain posts were declared surplus in the office of Deputy Chief Engineer, she was directed to the office of DRM. A seniority list of Senior Clerks was issued by the respondents on 27.7.91, in which her name has been shown at S.No.64. It has been submitted that the respondents have treated her posting as on request from MOCG Group to WBSM Group invoking Rule 312 of IREM. It has been stated that this was not a case of transfer from one cadre to another and that she was working in WBSM Group and continued to be in that group. She was given promotion by the administration and she cannot be placed below those who were promoted as Senior Clerk on a later date. She had never joined MOCG Group and it was not a case of transfer on her request from MOCG Group to WBSM Group.

3. The respondents in their reply have admitted that the applicant was selected as Senior Clerk against serving graduate quota and was allotted to Kota Division. She was posted in the office of Loco Foreman at Kota

but she did not join there and presented an application on 4.4.89 with the request to change her Group from MOCG to WBSM. The respondents have accepted that the order was issued by the Deputy Chief Engineer (C), Kota, posting her as Senior Clerk in his office after receiving ~~xxxapplies~~ a communication from the Chief Engineer (S&C), Western Railway, Mumbai. This arrangement was made by upgrading the post ~~x~~from Junior Clerk to Senior Clerk as there was no vacancy of Senior Clerk in that office. It has been submitted that the Deputy Chief Engineer (C) has no authority to appoint, promote or change the group and that being so, the orders made effective on 4.4.89 were not the proper orders. She has been placed correctly in the seniority list only after she was posted in DRM Office and she cannot claim seniority over the staff from S.No.10 to 63 of the relevant seniority list. It has been stated that the applicant was allowed to change her group on 29.9.89 and she is not entitled to any seniority from an earlier date.

4. We have heard the learned counsel for the parties

and perused the whole record.

5. Contention of the learned counsel for the applicant is that the applicant has been promoted w.e.f. 4.4.89 by proper order and she never joined the MOCG Group. It is not a case of transfer from one seniority unit to another, it is a case of continuing in the same seniority Group. The learned counsel for the respondents stressed on this point made in the written submissions that the change was made effective by the orders of ^{the} ~~a~~ competent authority only from 29.9.89 and any order given by any other authority cannot create a right in the applicant.

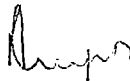
6. We have given anxious consideration to the rival contentions. It has been admitted by the learned counsel for either side that applicant in fact was given salary as a Senior Clerk w.e.f. 4.4.89. It is obvious that her position as Senior Clerk from that date has been accepted by the administration and it has no ground to dispute that fact now. If the applicant is given an order by the controlling officer, she cannot have any reason to doubt whether the order was issued by an

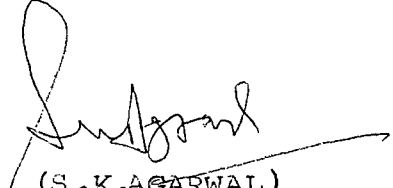
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authority not competent. The fact that she ~~has~~ continued
to ^{draw} ~~draw~~ her salary as Senior Clerk from 4.4.89 ^{in WBSM group} ~~has~~ been
accepted. In that view of the matter, we find the
applicant's claim to be treated as Senior Clerk w.e.f.
^{in WBSM group}
4.4.89 ~~is~~ liable to be accepted.

7. We, therefore, allow this OA and direct the
respondents to modify the seniority list, Ann.A/1, in
respect of the applicant by placing her as Senior Clerk
w.e.f. 4.4.89 on regular basis.

8. The OA stands disposed of accordingly. Parties
are left to bear their own costs.


(A.P. NAGRATH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)