

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 13.9.2002

OA 545/94

Kishan Chand Jatav, Senior Clerk in the office of Chief Works Manager (Wagon Repair Shop), Western Railway, Kota.

... Applicant.

V/s.

1. Union of India through General Manager, Western Railway, Charchgate, Mumbai.
2. Chief Works Manager, Wagon Repair Shop, Western Railway, Kota.
3. Shri Hori Lal, Head Clerk in the Time Office, Office of the Chief Works Manager, Western Railway, Kota.

... Respondents

CORAM:

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN

HON'BLE MR. N.P. NAWANI, ADMINISTRATIVE MEMBER,

For the Applicant

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

For the Respondents

... Mr. S.S. Hasan

ORDER

PER HON'BLE MR. N.P. NAWANI, ADMINISTRATIVE MEMBER

The applicant is aggrieved by an office order dated 8.11.93 (Ann.A/1), by which respondent No.3 was regularised on the post of Junior Clerk w.e.f. 11.7.81 and was declared senior to the applicant, and also against the order dated 6.6.94 (Ann.A/2), by which respondent No.3 was promoted to the post of Clerk on ad hoc basis. The applicant also seeks a declaration that he may be considered senior as compared to respondent No.3 on the post of Senior Clerk as well as that of Junior Clerk.

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2. The case of the applicant is that he was appointed on the post of Junior Clerk against direct recruitment quota on the recommendations of the Railway Recruitment Board (for short, RRB) vide order dated 20.7.84 and such appointment of the applicant should be considered on substantive and regular basis. The applicant was promoted to the post of Senior Clerk vide order dated 28.10.85 (Ann.A/3) on substantive basis being qualified the suitability test. This was against an existing vacancy and even though the word 'provisional' was mentioned in the said order (Ann.A/3) but it was because there was a court case about the caste reservation. The applicant had passed the examination and only thereafter he was given promotion to the post of Senior Clerk. On the other hand, respondent No.3 was substantively working in the Shop Floor of the Workshop side. Since the post of Junior Clerk in the applicant's Organisation could not be filled in time and there was a need, respondent No.3 was asked to perform the duties of Junior Clerk vide order dated 11.7.81. It was clearly stipulated in the said order that respondent No.3 and certain other similarly situated persons will perform the duties of Clerk and they will have to go back to the Shop Floor ~~and~~ as and when the regularly selected candidates are made available. Thus, respondent No.3 was

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appointed temporarily as Junior Clerk on ad hoc basis, a stop-gap arrangement, without any suitability or selection test. The services of respondent No.3 were continued on the post of Junior Clerk by orders issued from time to time (Anns.A/4, A/5 & A/6) and in all the above mentioned orders it was clearly stated that respondent No.3 is substantively appointed in the Shop Floor and on the basis of his seniority in the Shop Floor, benefit of upgradation has been given to him and that he shall have to go back to the Shop Floor as and when regularly selected employees are available. It is contended by the applicant that even when regularly selected candidates were available for the post of Junior Clerk, services of respondent No.3 were not returned to the Shop Floor. On the contrary, vide order dated 19.4.88 (Ann.A/6) an option was given to respondent No.3 for regularisation on the post of Junior Clerk, if he so chose. It was also made clear that if he exercises option to remain in the clerical cadre, the benefit received under upgradation shall have to be returned. Despite this fact, vide order dated 13.7.88 (Ann.A/7) services of respondent No.3 were regularised on the post of Junior Clerk. By this time the applicant had already been promoted to the post of Senior Clerk vide order dated 28.10.85 on regular basis. A seniority list of Junior Clerks was issued by

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the respondents but the name of the applicant was shown wrongly therein. The name of applicant was also shown in the seniority list of Senior Clerks issued on 31.7.86. In the seniority list issued on 30.10.90 (Ann.A/8) name of the applicant figures at Sl.No.17 and that of respondent No.3 at Sl.No.44. It was mentioned that if any employee has any objection about the said seniority list, he should file a representation within one month, but to the best of the applicant's knowledge, respondent No.3 did not submit any representation within time and, therefore, the seniority list would be considered as final vis-a-vis the applicant and respondent No.3. When respondent No.3 made a representation in the year 1993, instead of deciding his representation the official respondents decided the question of seniority in a joint meeting, the minutes of which are at Ann.A/9. It is on the basis of the decision taken in the said joint meeting that the impugned order dated 8.11.93 (Ann.A/1) was issued followed by order dated 6.6.94 (Ann.A/2). It is contended by the applicant that such action on the part of the official respondents was illegal, unreasonable and unjustified and, therefore, the very foundation of the impugned order (Ann.A/1)

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was bad and erroneous. It has been mentioned in the body of the impugned order (Ann.A/1) that the services of respondent No.3 have been regularised on the post of Junior Clerk w.e.f. 11.7.81, as agreed in the joint meeting. In the minutes of the said joint meeting it is nowhere mentioned nor decided that the services shall be regularised w.e.f. 11.7.81. It is asserted on behalf of the applicant that seniority of a post is to be determined on the basis of appointment in the grade as per para-302 of the Indian Railway Establishment Manual (IREM, for short). Since the applicant was appointed on regular basis to the post of Junior Clerk earlier to respondent No.3, retrospective regularisation of the appointment of respondent No.3 on the basis of a meeting was illegal and respondent No.3 could have been given higher seniority than the applicant. It has also been contended that respondent No.3 never qualified the selection test for promotion to the post of Junior Clerk and on this count also his services could not have been regularised w.e.f. 10.11.81. The applicant has also sought support from Para 306 and 309 of the IREM, Vol.I. According to Para-306, candidates selected ~~xxxxx~~ for appointment at an earlier selection shall be senior to those x selected

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later irrespective of the dates of posting. In accordance with para-302 and 306, the applicant is therefore entitled to be placed above respondent No.3 in the seniority list and has been ~~not~~ correctly so placed in the seniority list dated 30.10.90. It has also been stated that para-314 of the IREM, which has been referred to by the respondents, is not applicable as it prefers to determine<sup>tion</sup> the seniority when the date of appointment to a grade is the same. The very transfer of respondent No.3 from Shop Floor to the cadre of Junior Clerk is an illegality and cannot be corrected by regularising the services of respondent No.3 with retrospective effect.

3. In their reply, the official respondents have controverted the averments made by the applicant. They have stated that Anns A/1 and A/2 have been rightly issued. They have denied that respondent No.3 was promoted to the post of Junior Clerk vide order dated 9.7.81 on ad hoc basis without suitability/selection test. Regarding his retention on the post of Junior Clerk, the respondent No.3 had given his option letter dated 30.3.88 and his repatriation to the Shop Floor was subject to administrative conditions and accordingly he was regularised as Junior Clerk. Respondent No.3 was regularised on the post

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of Junior Clerk vide order dated 13.7.88 (Ann.A/7) in view of Para/314 of the IREM and was kept in the panel of Junior Clerk from 4.6.91 as per order dated 12.11.81 (Ann.R/1). It is further stated on behalf of the official respondents that in terms of notes of the informal meeting and office order dated 11.7.81 (~~Ann.R/2~~), the respondent No.3 was shown senior to the applicant in the seniority list dated 11.8.88 (Ann.R/2). Thereafter, a seniority list of clerical cadre dated 16.8.95 (Ann.R/3) was issued, wherein respondent No.3 has correctly been shown at Sl.No.11 and the applicant ~~was~~ at Sl.No.53.

4. We have heard the learned counsel for the parties and have carefully perused the material on record.

5. It is not disputed that the applicant ~~was~~ was appointed to the post of Junior Clerk against direct recruitment quota vide order dated 21.7.84. As far as fixing his ~~x~~ seniority is concerned, para-302 of the IREM, Vol.I, is applicable. It provides that; "in categories of posts partially filled by direct recruitment and partially ~~filled~~ by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process

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in the case of direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves." Although the date of joining the working post in case of the applicant is not given but since there is no dispute that he was appointed as Junior Clerk against direct recruitment quota vide order dated 21.7.84, the seniority of the applicant would be from some date immediately following 21.7.84. Para-306 of the IREM provides that; "candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above." Para-305 is not applicable in this case. In view of para-302 and 306 of IREM, the applicant could be made junior only to a person who was regularly promoted after due process earlier to his joining the working post as a direct recruit or in case of a selection by direct recruitment which has been held earlier to the selection process by which the applicant was recruited and appointed. Respondent No.3, whose parent organisation was Shop Floor of the Workshop, and who belongs to a different seniority unit, was appointed to the post of Junior Clerk from 11.7.81.

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Although the respondents have denied the assertion of the applicant that respondent No.3 was so appointed purely on ad hoc basis with the stipulation that he will have to go back to the Shop Floor as and when regularly selected candidates were available, no documents have been filed by the respondents to support the contention that respondent No.3 was not appointed on ad hoc basis and that he was required to go back to his Shop Floor of the Workshop on availability of regularly selected candidates. It has been contended by the official respondents that respondent No.3 was found suitable in a selection process but the very fact that they have admitted to an option having ~~been~~ <sup>obtained</sup> from respondent No.3 indicates that respondent No.3 belonged to a different seniority unit and it has just been mentioned that repatriation of respondent No.3 to Shop Floor was subject to administrative condition and was not necessary and, therefore, he was regularised as Junior Clerk. The applicant has claimed that in a tentative seniority list of Senior Clerks, issued on 30.10.90 (Ann.A/8), his name figures at Sl.No.17, whereas that of respondent No.3 at Sl.No.44 and since respondent No.3 did not raise any objection within the stipulated period of one month, this seniority list had

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become final as far as at least the applicant and respondent No.3 were concerned. In reply to this assertion, the respondents have in their reply mentioned that in terms of notes of the informal meeting dated 30.3.88 (Ann.A/9) the office order dated 13.7.88 (Ann.A/7) was issued, in which respondent No.3's date of appointment on the post of Clerk on ad hoc basis has been shown as 11.7.81 and it has also been mentioned that those employees who were working in the post of Clerk on ad hoc basis in excess of 33.1/3% rankers quota but working against direct recruitment quota will have to be reverted to their original trade on arrival of any candidate from the RRB. There is another office order dated 19.4.88 (Ann.A/6), which informs the ad hoc basis Clerks, mentioned therein, that they could be regularised against the posts available under 33.1/3% quota but they will have to give an option in writing to return the benefit they got under reclassification. It is also mentioned therein that such ad hoc clerks who are in excess of 33.1/3% rankers quota will have to be reverted to their original trade on arrival of candidates selected by the RRB. In this office order of 19.4.98 the name of respondent No.3 figures at Sl.No

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It is quite clear that respondent No.3 was an adhoc Clerk and this appears to be in contradiction of the reply of the official respondents that he was appointed as Junior Clerk following a selection process. The entire controversy, therefore, appears to be focussed on the minutes of the joint (informal) meeting dated 30.8.88, as per the reply of the official respondents. The minutes of the joint meeting held with WREU (W) and WRMS (W.KTT) state that in 1981 14 employees were selected for the post of Clerk and thereafter 16 employees were also promoted on the basis of prima-facie suitability test. Out of 16 employees 9 have been reverted to their parent cadre and 7 are presently working as Clerk against the quota meant for direct recruitment. It appears that the respondent No.3 was also one of the latter category. It also appears that by giving him retrospective regular appointment, he is sought to be made senior to the applicant. In any case it is clear that the orders have been issued regarding regularising the service of respondent No.3 retrospectively on the basis of minutes of a joint meeting dated 30.3.88 and no rules have been mentioned before us in support even during arguments. We, therefore, find that we are handicapped in giving a clear verdict in this case because of unclear pleadings as also the reply and non-production of important documents like initial appointment of the applicant, the date of passing of selection test, if any, for promotion


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in the post of Junior Clerk by respondent No.3 etc. We are however very clear in our mind that seniority ~~cannot~~ <sup>(emphasis added) can</sup> ~~cannot~~ be determined on the basis of minutes of the joint meeting held on 30.3.88 and signed on behalf of the respondents by CWM-KTT, a copy of which is at Ann.A/9. In view of this, we are of the considered view that the respondents have to redetermine the seniority of respondent No.3, ignoring the minutes of the Joint meeting dated 30.3.88 (Ann.A/9) and keeping in mind the relevant rules which are applicable in case of the applicant as well as respondent No.3.

6. We accordingly dispose of this OA with a direction to the respondents to re-work out the seniority in the cadres of Junior Clerk and Senior Clerk without taking into consideration the decision arrived at in the joint meeting held on 30.3.88 (Ann.A/9) and strictly on the basis of rules regarding seniority, as contained in IREM Vol.I. This direction may be carried out within a period of four months from the date of receipt of a copy of this order. There will be no order as to costs.

  
(N.P.NAWANI)  
MEMBER (A)

  
(B.S. RAIKOTE)  
VICE CHAIRMAN