

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

Original Application No.131/2001.

Date of Decision : 12.07.2004

Ashok Mathur, S/o Shri Brij Lal Mathur, aged about 43 years Resident of 11/49, Bhramपुरi, Ajmer (Rajsthan) presently posted as Head Clerk in the office of the Assistant Controller of Stores, (Loco Stores) Western Railways, Ajmer.

: Applicant.

VERSUS.

1. The Union of India through General Manager, Western Railway, Churchgate Mumbai.
2. The Deputy Controller of Stores, Western Railway District, Ajmer.
3. Rajender Singh, ACOS (C&W) Head Clerk, C& W stores, Western Railways, Ajmer.

Respondents.

Mr. P.P. Mathur : Counsel for the applicant.

Mr. U.D.Sharma: Counsel for the respondent Nos 1 & 2

None present for respondent No. 3.

CORAM:

The Hon'ble Mr. S.K Agrawal, Administrative Member.

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

ORDER


Mr. J.K. Kaushik, Judicial Member.

Shri Ashok Kumar Mathur, has entered into the second round of litigation in the same matter and has filed this Original Application for seeking a direction to the respondents to count his adhoc service rendered on the post of clerk for the purpose of seniority with an alternative prayer reckoning his seniority from the date of passing the test and thereby quashing of the

seniority list dated 22.09.95 and also the order dated 15.07.2000 with all consequential benefits amongst other reliefs.

2. The abridged facts of this case which are necessary for resolving the controversy involved are that the applicant was initially appointed as Khalasi in the Western Railway in the year 1975. He was promoted to the post of Typist in January 1979. The applicant cleared the test conducted by the respondents for the post of Clerk against non-matriculate quota in the year 1979. He was further promoted to the post of Clerk in the pay scale of Rs.260-400 with effect from 16.02.1982 on adhoc basis. The applicant was subjected to selection to the post of Clerk which he has passed and the same was informed vide communication dated 21.12.1983 and a penal was approved vide communication dated 31.01.84 (Annex. R/1). A formal order for promoting the applicant on regular basis came to be issued on 16.04.84 (Annex. A/4). The selection of the applicant was made against promotion quota.

3. Certain persons were appointed against 67-1/3% quota from amongst existing working Group 'D' category on divisional basis by D.R.M. Ajmer with effect from 27.03.1984. (Annex A/5) to the post of Temporary Clerk in the scale of Rs.260-400. The name of the private respondent finds place at Sl. No. 7 of the order. The applicant was not assigned his due seniority and therefore he had approached this Tribunal whereby a direction was given to decide his representation. On



one occasion the applicant was assigned his due seniority. Subsequently, the seniority was revised vide Annex. A/1. He has been placed below persons who were appointed subsequent to his appointment on his promotion to the post of Clerk. The date of entry in the grade on the post of clerk has been indicated as 16.04.84 in the seniority list. As regards the private respondents, the date of entry as Clerk has been entered as 30.04.84, but still the applicant has been placed below Shri Rajinder Singh. The applicant claims his seniority by reckoning the period of adhoc service on the post of clerk.

4. As regards the variances, it has been averred in the reply that the final panel in which the applicant was empanelled was issued on 31.01.84 after approval of the competent authority. The panel in respect of the direct recruits was received on 17.01.84 and was implemented with effect from 27.03.84. Subsequently, the persons who were appointed as direct recruits joined on various dates in April 1984, the date of joining of the private respondent was 30.04.84. The plea of the respondents is that since the panel of the direct recruits was received earlier to the one for the promotees, direct recruits would be senior and in this way no fault can be found with the action of the respondents. The applicant has been assigned seniority as per para 302 of IREM Vol. I. The representation submitted by the applicant has been duly considered and the period during which he had worked on adhoc basis would not count for seniority since the applicant was required to clear the prescribed selection process and

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he cannot be deemed to have been regularised or confirmed retrospectively.

5. We have heard the learned counsel for the parties at a considerable length and have anxiously considered the pleadings and the records of this case.

6. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the O.A which have been noticed above. The learned counsel for the applicant has submitted that there is no doubt that the applicant was firstly promoted to the post of clerk on adhoc basis and the same has been regularised after he has passed the requisite selection and therefore he is entitled to count the period worked on the post of Clerk on adhoc basis for seniority purposes which the respondents have denied him without any rhyme or reason.

7. On the contrary, the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicant and has submitted that since the applicant has passed the selection only on 31.01.84 and the direct recruits passed the selection on 17.01.84, the direct recruits shall be senior to the applicant as per the mandate of para 302 of IREM Vol. I. He has cited the judgement of the Apex Court, in cases of Swapan Kumar Pal and others vs. Samitabhar Chakraborty and others. [2001 SCC (L&S) 880]; Anuradha Mukherjee (Smt) & Ors etc. vs. Union of India & ors. etc. [1996 (2) SLR 625] and has submitted that these judgements fully apply to the controversy involved in

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this case and the applicant has been correctly assigned his due seniority by ignoring the period of service rendered on adhoc basis and the action of the respondents has been well in consonance with the rules relating to the seniority and therefore the Original Application cannot be sustained. He has also submitted that the applicant has not impleaded the affected persons as party respondents and therefore the Original Application as such is not maintainable.

8. We have considered the rival submissions made on behalf of both the parties. Before coming to the crux of the matter we would like to deal with the preliminary objection which seems to have been raised only during the arguments relating to the non-joinder of necessary parties. Firstly, such objection has not been raised in the reply to the Original Application. The learned counsel for the applicant has met the said objection by stating that one of the affected person (Rajinder Singh) has been impleaded as respondent in a representative capacity and as per the settled legal position of law, we are of the firm opinion that that would suffice and the objection seems to have been raised only for the objection sake and which is only to be rejected and therefore the preliminary objection stands repelled and we propose to decide the Original Application on merits.

9. As far as the factual matrix of the case are concerned there is no quarrel except that the panel in respect of the direct recruits is said to have been of dated 17.01.843 is not corroborated with the records.

[Signature]

The said panel has in fact not been placed on record and only a list stated to be the panel has been placed as Annex. R/2 and the same is dated 27.03.84. The learned counsel for the respondents has not been able to controvert this position that the panel for the direct recruitees was dated as 27.03.84. The other fact that the panel in respect of the promotees is dated 31.01.84 is not in dispute rather it is admitted by the respondents themselves.

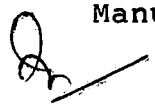
10. Before examining the crux of the matter, we would like to point out that if we rest our finding on the specific plea of the respondents that the direct recruits were belonging to the earlier panel and the applicant was from the subsequent panel, the position gets tilted in favour of the applicant since factually the applicant belongs to earlier panel. Keeping in view our specific finding of the fact, the panel in which the applicant's name was placed is of dated 31.01.84 and that of the direct recruits is dated 27.03.84. In this view of the matter, we have absolutely no hesitation in declaring that the applicant is senior to such direct recruitees including that of private respondent and the Original Application merits acceptance on this contention itself.

11. However, we would advert to the other aspects of the matter as well. At the cost of repetition, the admitted position of the case is that the applicant was promoted on adhoc basis to the post of Clerk with effect from 16.02.82 and he has been continued on adhoc basis



uninterruptedly till his regular appointment vide communication dated 16.04.84. It is also admitted that the applicant has passed the requisite selection vide panel dated 31.01.84. As per the settled law on the seniority by the Apex Court in number of cases one get seniority from a date when he has undergone all the formalities as per the recruitment rules. i.e. in case where suitability test is required to be passed, one has to be pass the suitability test, where selection is to be faced one has to pass the selection and comes out successful or where the approval of any authority like public service commission or Staff Selection Commission etc is required, the approval has to be obtained and he has passed the requisite selection conducted by such bodies. The issue has been settled by the Apex Court in the case of Md. Israils and others vs. State of West Bengal and others [2002 (3) SLJ (SC) 80 refers] wherein it has been specifically held that once the incumbent is appointed to a post accordingly to rules, his seniority is to be counted from the date of his appointment. The corollary is that where initial appointment is only on adhoc and not according to rule and made as a stop gap arrangement, the officiation in such post cannot be taken into account for consideration of seniority. In this view of the matter, the seniority of the applicant would count from 31.01.84.

12. Now, we shall examine the matter from yet another angle. To appreciate the controversy, we would like to refer to para 302 of the Indian Railway Establishment Manual Vol. I, which has been heavily relied on by the




learned counsel for the respondents as well as the learned counsel for the applicant. The contents of the same are reproduced as under:

"302. Seniority in initial recruitment grades- Unless specifically stated otherwise the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be date of regular promotion after the process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority in each group.


Note: In case the training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruitment shall be the date he would have normally come to the working post after completion of the prescribed period of training. "

13. The learned counsel for the respondents submitted that the seniority of the applicant has been assigned strictly according to the aforesaid para and in support of this contention he cited the two decisions of the Apex Court in the cases of Swapan Kumar Pal and others (supra) and Anuradha Mukherjee (Smt) and others (supra). As far as the legal position is concerned there can hardly be any controversy. We would straightaway test the action of the respondents on the anvil of touch stone of aforesaid para 302, wherein it has been specifically provided that in case of promotees the



criteria for determination of the seniority, it should be reckoned from the date of promotion after due process and in case of direct recruits, it is the date of joining on the working post after due process. In the instant case, admittedly, the applicant had joined much earlier than the private respondents and other similarly situated direct recruits. i.e. in the instant case, the applicant's date of regular appointment been 31.01.84 as held by us in the previous paragraphs and that of the private respondent it is 27.03.84 or later. In this view of the matter, the submissions made on behalf of the applicant has to be accepted and which naturally attracts our concurrence. We may aptly point out here that the last three lines of para 302 specifies that when the date of entry into the grade of promotee railway servants and direct recruit railway servants are the same, they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter se seniority in each group. Incidentally such is not the situation here in as much as the direct recruitees have joined much later than that of the applicant. Thus the said portion of the ^{no} para would not come into play and the respondents could have any defence for the same. In this view of the matter, none of the authority relied upon by the learned counsel for the respondents support their defence inasmuch as the facts of this case are distinguishable and the applicant's case is sustainable on all counts.


14. We have therefore absolutely no hesitation in reaching an inescapable conclusion that the action o



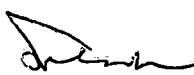
the respondents has not been in consonance with the rules and the seniority of the applicant has not been correctly assigned to him. Thus the case of the applicant is well founded and the original application has substantial force.

15. In the premise, the O.A. has substance and the same stands allowed accordingly. The respondents are directed to assign the seniority to the applicant on the post of clerk with effect from 31.01.84 and the applicant would be entitled to all consequential benefits. The impugned seniority list is ordered to be modified accordingly. However, in the facts and circumstances of this case, the parties are directed to bear their own costs.

16. In view of the order passed in O.A M.A. No. 324/01 rendered as infructuous and the same stands disposed of accordingly.


(J.K. KAUSHIK)

Judicial Member.


(S.K. Agrawal)

Administrative Member.

jsv.