

Central Administrative Tribunal, Principal Bench

Original Application No.676 of 1996

New Delhi, this the 4th day of April, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)
Shri Kishan Singh, S/o Shri Khemani Singh,
working as Clerk under P.W.I. (II) Northern
Railway, Tundla, r/o Tundla Khem near New
Railway Colony, Primary School, Tundla. - Applicant

(By Advocate- None)

Versus

Union of India : Through

1. The General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, Allahabad.
3. Divisional Engineer, Northern Railway,
Tundla. - Respondents

(By Advocate - None)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

The applicant has assailed the following orders - (i) No.724-E/E.0.4/ENGG.C1/Promotion/ loose dated 16.2.1996 (Annexure-A-1) passed by the Divisional Personnel Officer, Northern Railway, Allahabad whereby the applicant who was working as an adhoc Clerk Gr.Rs.950-1500 was reverted to his substantive post of Storeman grade Rs.800-1150; and (ii) No.752-E/2/EO/4/Pt.VI/Selection dated 8.12.1994 (Annexure-A-1A) issued by the Divisional Railway Manager, Northern Railway, Allahabad wherein he was placed in the provisional panel of Clerk Gr. Rs.950-1500 against promotee quota from amongst Group 'D' staff.

2. The applicant was appointed as a Gangman on 18.9.1962. He was promoted as Storeman in grade Rs.210-290 / Rs.800-1150 with effect from 28.8.1978. He was promoted on adhoc basis as Clerk in grade

Rs.950-1500 on 29.1.1985 (Annexure-A-3). The post of Clerk in the Railways is filled up partly by direct recruitment and partly through promotion. Respondent no.2 initiated a selection process to fill up the post of Clerks against promotee quota vide letter dated 14.7.1988. The applicant was declared successful in the written examination and was placed at serial no.6 vide result dated 16.3.1994 (Annexure-A-5). The interview was held from 27.4.1994 to 29.4.1994. The result of final selection was declared vide letter dated 8.12.1994 (Annexure-A-1) in which 40 candidates were declared to have been empanelled but the applicant's name was missing. However, the applicant was not reverted till 16.2.1996. According to the applicant none has been posted vice him and the regular vacancy against which the applicant was working is still existing. The applicant has drawn attention to Railway Board's circular letter No. E(NG)1-75 PMI/264 dated 25.1.1976 (Annexure-A-6) stating that panels should be formed for selection posts in time to avoid adhoc promotion and while forming panels care should be taken to see that employees who have been working in the posts on adhoc basis and satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment. The aforesaid circular has been upheld by the Hon'ble Supreme Court in SLP No.9866 of 1993 decided on 3.11.1995, R.C.Srivastava Vs. Union of India and another (Annexure-A-2). The applicant has stated that though orders of reversion has been issued but he has not been reverted because he was on sanctioned leave



from 19.2.1996 to 24.2.1996.

3. The respondents in their counter have raised a preliminary objection that the application is barred by limitation as the applicant has challenged order dated 8.12.1994 whereby a provisional panel of 40 persons for promotion as Clerk against promotee quota was issued, and that the applicant had not filed any representation against the aforesaid order. We find that the applicant has also assailed the order dated 16.2.1996 whereby orders of applicant's reversion from the post of adhoc Clerk to Storeman were issued. Thus, the respondents' objection regarding limitation is rejected, as order Annexure-A-1 which has also been assailed is dated 16.2.1996. Thus, the application is quite within limitation.

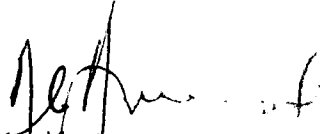
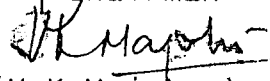
4. In the case of R.C.Srivastava (supra) Hon'ble Supreme Court accepted the appellant's reliance on Railway Board's circular dated 19th March, 1976 and had held that "the appellant was entitled to the benefit of the direction contained in the circular dated March 19.1976. Applying the said Circular it must be concluded that the appellant was wrongly denied selection on the basis of the marks given to him in the viva voce test". The appeal was, therefore, allowed and it was declared that the appellant should be considered to have been selected for the post of Law Assistant in the selection for the said post as per the panel dated November 29, 1992. We find that the facts of the present case are quite similar to those of Shri R.C.Srivastava.

5. In the present case also whereas the applicant had been declared successful in the written test, he was

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detained in the viva voce. Placing reliance on the ratio of R.C.Srivastava (supra) and applying the said circular, we find that the applicant was wrongly denied selection on the basis of marks given to him in the viva voce test.

6. The OA is, therefore, allowed and the order dated 16.2.1996 (Annexure-A-1) is quashed qua the applicant. The respondents are further directed to include the applicant's name in the panel of the selected candidates declared vide letter dated 8.12.1994 (Annexure-A-1A). He should also be regularised from the date his junior in the panel was so promoted in the post of Clerk Gr.Rs.950-1500 with all consequential benefits. No order as to costs.


(Ashok Agarwal
Chairman

(V.K. Majotra)
Member (Admnv)

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