

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1301 of 1993

This 3rd day of June, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Vijay Singh,
F-324(F) Sector 2,
Vijay Nagar,
Ghaziabad - 201 009

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Applicant

By Advocate: M.L. Sharma

VERSUS

Union of India, Through:

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Personnel Officer,
Northern Railway Headquarters,
Baroda House,
New Delhi.
3. The Deputy Chief Personnel Officer
(Headquarters),
Baroda House,
New Delhi.

Respondents

By Advocate: Shri N.K. Aggarwal

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A))

This O.A. No.1301/93 has been filed under Section 19 of the CAT Act, 1985 against the impugned letter No. 42-E/94/pt XVI/EiiA dated 28.10.1992 issued by the General Manager (Personnel), Northern Railway. The material averments in the OA are these. The applicant was appointed as Rakshak/RPF on 8.11.1977. He was subsequently promoted as Clerk in the pay-scale of Rs.950-1500 (revised) and was posted in the Operating Branch Headquarters on 5.11.1985. Some clerks/ who were rendered surplus in the operating branch were ordered to be transferred to other units. In this respect the case

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of one Balwant Rai has been cited who was retained in the Operating Branch and also got promotion to the next higher post of Senior Clerk in the grade of Rs.1200-2040. The applicant who joined Signal Telecommunication Branch, was eligible in all respects for promotion as Senior Clerk against the resultant vacancy but due to callous attitude of the respondents the suitability test for the post of Sr. Clerk could not be held for almost six years. In view of the fact that no suitability test was held by respondent No.3 for the last 6 years, the Dy. C.S.T.E. (Tele) under his Note No.570-Sig./31/pt III dated 29.11.91/2.12.91 (annexure A-5) appointed the applicant to officiate as Senior Clerk along with three others w.e.f. 18.7.91 pending passing of the suitability test with due approval of his Head of Department, i.e. Chief Communication Engineer. This was duly informed to the respondent No.3 that the applicant along with three others has been granted officiating promotion to Senior Clerk and also made a request to him to issue promotion order accordingly and this was followed by a reminder dated 26.12.91. The Respondent No.3 instead of obtaining post facto approval of the Chief Personnel Officer for making ad hoc arrangement shot back a letter vide APO (HQ)'s note No.42E/94.offg. arrangement/Eii dated 6.2.92 that the post of Sr. Clerk is a suitability post and the ad hoc officiating arrangement requires C.P.O's prior approval and that officiating arrangement be discontinued forthwith.

2. The applicant has sought the following reliefs:

- (a) that the respondents be directed to officiating allowance in the grade Rs.1200-2040 (RPS) w.e.f. 18.7.91;
- (b) direct the respondents to hold the suitability test against the total 18 vacancies of Sr. Clerk; and
- (c) award cost of application in favour of applicant; and
- (d) any other relief as deemed fit by the Tribunal.

3. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for.

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4. We heard the learned counsels, Shri M.L. Sharma for the applicant and Shri N.K. Aggarwal for the respondents and perused the record of the case.

5. The admitted facts are that the applicant was transferred from the Operating Branch to S & T branch having been declared surplus. The record does not show that the applicant submitted any representation to the respondents for his retention in the Operating Branch qua Balwant Rai who is stated to be junior to him. Since he did not file any representation nor raised any grievance in this matter, he cannot raise the same now when Balwant Rai has been promoted in a higher grade earlier than the applicant and he is stagnating in the Unit where he was transferred. The doctrine of estoppel will apply in his case. He has, therefore, to seek further advancement in his career only in the S&T branch on the basis of his seniority position in that Branch. In the counter affidavit it has been clearly stated that the number of vacancies have been correctly calculated and the applicant does not fall within the zone of consideration for being called for the suitability test and as such the question of his empanelment does not arise. The respondents have denied the averments made in the OA para-wise. It is stated that the applicant will be called for the suitability test in his turn whenever such a test is held. It has been further stated that due to shortfall of staff in graduate quota/serving graduate quota, the suitability test of Senior Clerk could not be held by the respondents. Ultimately a decision was taken to withhold 25% vacancies against both these quota and hold suitability test in respect of the remaining vacancies. Since the respondents are the custodian of the records and there is no document available with the applicant to controvert the facts stated by the respondents, we have to go by the statements given in the counter affidavit. It has been stated that out of 6 vacancies available in 1992, two were reserved for direct graduate quota and serving graduate

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quota and against 4 vacancies of Sr. Clerk, suitability test was conducted on 20.10.1992. There are averments in the counter affidavit to the effect that suitability test could not be held as quite a few vacancies meant for graduate quota and serving graduate quota could not be filled earlier and ultimately a decision was taken to keep 25% of the existing vacancies to fill the shortfall of graduate quota and serving graduate quota by way of direct recruitment. Accordingly, assessment of vacancies of Sr. Clerk against promotee upto was made and suitability test was held for four vacancies. It is admitted that the applicant was ordered to be promoted as Sr. Clerk on ad hoc basis by CSTE but since prior approval of the C.P.O. was mandatory and the same was not obtained, the officiating arrangement made by the said Unit was ordered to be discontinued with, since it was dehors the rules.

6. The contents of para 4.17 of the OA have been rebutted by the respondents and it has been pointed that certain staff did represent for inclusion of their names in the seniority list of Clerks in the scale of Rs.950-1500 (RPS) eventhough they maintained their lien in the S&T Branch/Headquarters office. Their case was examined and the claim of 10 persons was found to be genuine and their names were interpolated in the seniority list of Clerks (grade Rs.950-1500). The revised seniority list of Clerks of S&T Branch was circulated under ofice letter dated 15/16.6.92 (annexure R-1 of the counter).

7. The averments made in para 4.18 and 4.19 of the OA have also been denied by the resopndents. It has been stated that the stand of the Personnel Branch was in conformity with the rules and the ad hoc appointment of the applicant as Sr. Clerk was dehors the rules, since the approval of the competent authority, i.e. the CPO, had not been taken. As regards the allegation made in para 4.20 of the applicant it has been stated by the respondents that the system of ~~doE~~ ad hoc arrangement without prior approval of CPO was not proper and this is precisely the reason why it was ordered to be discontinued with and as such even the officiating allowance could not be payable to the applicant along with the three

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who were given ad hoc promotion along with him. It is not denied that there had been delay due to administrative reasons in conducting selection/suitability test and it is also emphatically stated that no one can be promoted without clearing selection/suitability test and any ad hoc arrangement would be against the rules. It has been categorically stated that ad hoc arrangement in the cadre of Sr. Clerk/Head Clerk can be made only with specific approval of the CPO and not otherwise. As regards revised seniority list of Clerks (Rs.950-1500), it is stated that it was issued after proper scrutiny of all the representations received from the concerned staff with the result that the seniority position of the applicant was adversely affected and his name was brought down from Sl. No.7 to 7-A. The respondents have correctly calculated the vacancies of Senior Clerks against promotion quota and the applicant was not within the zone of consideration for being called for suitability test in 1992. The responsibility of calculation of vacancies in any Branch is with the Personnel Branch and no other Branch can claim any authority or prerogative in this matter. It has been clearly stated in reply to para 4.28 and 4.29 of the OA that that all the vacancies of Senior Clerk which were of regular nature, were taken into account for holding the suitability test of Senior Clerks. The respondents have categorically stated that the statement of the applicant that there were 18 vacancies at that time is wrong and that only 6 vacancies were available out of which two were reserved for graduate quota/serving graduate quota from open market and 4 vacancies were filled up on the basis of selection/suitability test.

8. In reply to para 4.30 of the OA it has been stated that Smt. Niranjan Kaur, Sl. No.3 of the list of eligible candidates, appeared for suitability test of Sr. Clerks, S&T Branch, and qualified the test in Eastern Railway and she was retained against the work-charge post on the SSTE/LDH. Smt. Vant Rani also qualified the suitability test and was promoted against regular vacancy available in the office of Dy. CPO, Headquarters.

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9. It is emphatically stated in the counter that regular vacancies of Sr. Clerks have been correctly assessed and work-charge posts which had ceased to exist were not taken into account after ascertaining the position from S&T Branch. In reply to para 4.32 of the OA, the respondents have stated that the applicant was not eligible to appear in the suitability test and as such there was no question of depriving him of his fundamental right of promotion. No injustice has been done to the applicant inasmuch as he was not due to be called for the suitability test of the Sr. Clerks on the basis of revised seniority list of Clerks (Rs.950-1500) issued vide letter dated 15/16.6.92, mentioned above.

10. It has also been admitted by the respondents that the appeal filed by the applicant is still pending with them. The applicant has filed his rejoinder reiterating the same facts which have been stated in the OA. As stated above, the applicant did not raise any howl or protest when he was transferred to S&T Branch from the Operating Branch. Therefore he has forfeited his right to challenge the promotion of Balwant Rai as Sr. Clerk earlier than him. After he was declared surplus and transferred to S&T Branch along with others, his seniority will be fixed along with those who joined with him against the post available in that Branch. The question raised by him regarding his seniority vis-a-vis those retained in Operating Branch has no relevance after he joined the S&T Branch having been declared surplus from the Operating Branch.

11. As regards his argument against the letter of the respondents dated 6.2.92 (annexure A-5), the grievance of the applicant as made out by the learned counsel for the applicant, is misplaced because this letter has been issued in terms of Railway Board's circular No. E(NG)/11/RS1 I dated 1.3.1991 where it has been stipulated that officiating arrangements are not admissible and have to be discontinued at the earliest. Wherever such an arrangement is to be made, prior approval of the CPO of the concerned zone is necessary. Any arrangement made without the CPO's prior approval will not confer any right on the applicant or any other person for continuance in that post. Thus the grievance

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letter
of the applicant in regard to this/ is totally misplaced.

12. We have carefully gone through the contentions of the learned counsel for the applicant and the reliefs prayed for in the OA and we find that the relief No. 1 regarding officiating allowance w.e.f. 18.7.91 is not admissible to him since the arrangement was made without the prior approval of the competent authority, i.e. the CPO. As regards relief No. 2 the respondents are the custodian of the vacancies and in view of their categorical assertion that there were only 6 vacancies, the statement of the applicant that there were 18 vacancies in the grade of Sr. Clerk, cannot be accepted. The learned counsel for the respondents even during the course of arguments controverted this statement and said that there were only 6 vacancies of which 2 were reserved for serving graduate quota/graduate quota to be filled up directly from open market and suitability test was conducted in case of the other 4 vacancies and since the applicant did not fall within the zone of consideration, he was not called for the suitability test. Thus, this relief also cannot be allowed. The respondents further stated that they would hold suitability test as and when vacancies occur in the S&T Branch and that the assessment of vacancies in the various branches of the Railways being the responsibility and prerogative of the CPO, will be notified according to the rules before holding the said test and the applicant will get a chance in his own turn and cannot be allowed to be considered out of turn. He has no right for promotion till the vacancy exists and till he clears the selection/suitability test conducted by the respondents.

13. In the light of the above facts and circumstances, the applicant has failed to make out a case in his favour for grant of any of the reliefs prayed for and accordingly the application is dismissed as devoid of any merit and substance, leaving the parties to bear their own costs.

(B.K. Singh)
Member (A)

J. P. Sharma
(J.P. Sharma)
Member (J)