

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 22nd DAY OF NOV, 2010)

**Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)**

**Original Application No.1233 of 2001
(U/S 19, Administrative Tribunal Act, 1985)**

Smt. Usha Idnani a/a years D/o Sri Arjun Idnani, Presently working as Substitute Clerk in the scale of Rs.950-1500/-, In the Office of Divisional Accounts Officer, NE Railway Izzatnagar, Bareilly.

..... **Applicant**

By Adv.: Shri A.K. Dave

Versus

1. Union of India, through the General Manager NE Railways Gorakhpur.
2. The Railway Board, through its Chairman Rail Bhawan New Delhi.
3. The General Manager, NE Railways, Gorakhpur.
4. The Divisional Railway Manager, NE Railways, Izatnagar.
5. The Divisional Rly Manager (Karmik)/Sr. Divisional Personnel (Officer, NE Railway Izatnagar)
6. The Financial Advisor and Chief Accounts Officer (Admn) NE Railways Gorakhpur.
7. The Divisional Accounts Officer, NE Railways Izatnagar.
8. The Railway Recruitment Board, Gorakhpur through its Chairman.

..... **Respondents**

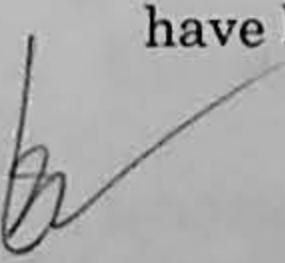
By Adv. : Shri K.P. Singh

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The applicant was appointed under the orders of Railway Board as a 'substitute junior clerk in the N.E. Railways Gorakhpur, vide order dated 04-07-1993 (Annexure A-3). The Board had given age relaxation as an one time exemption. The FA & CAO advised vide his letter dated 21-04-1995 that the service of the applicant be regularized as Junior Clerk first in consultation with the Sr. DAO/IZN as per extant orders and thereafter her change of cadre from Junior Clerk A/cs clerk be considered on receipt of request from the applicant. Annexure A-6 refers.

2. Relying upon the decision of the Railway Board vide order dated 09-04-1997 (Annexure A-7), which provides for regularization of casual labourers in Group C posts, for which pass in the examination conducted by the R.R.B. or Railways was essential, the respondents have, vide Annexure A-8 directed the applicant to appear in the test being conducted by the Railways and the applicant had conveyed her consent for the same, vide Annexure A-9 letter dated 05-05-1997. The applicant was declared successful, vide Annexure A-10. However, no formal letter of regularization was communicated to the applicant. The omission on the part of the respondents resulted in deprivation of a number of advantages including seniority, which otherwise would have been available to the applicant.



3. While the applicant was anticipating orders for regularization and the consequential benefits thereof, she received a communication from the respondents to appear for a written examination now being conducted by the R.R.B, vide Annexure A-2 dated 17-10-2001 which was issued in pursuance of the R.R.B. letter dated 12-10-2001. vide Annexure A-I. The applicant enquired and got confirmed that the earlier examination in which she was declared successful was not cancelled. Thus, the applicant preferred a representation dated 26-10-2001 asserting that there is no need for her to appear in the proposed examination conducted by the R.R.B. Annexure A-11 refers. She was informed that her not appearing in the exam would entail adverse consequences such as non regularization.

4. The Applicant has thus, preferred this OA seeking the following relief/s:-

"8.1 to quash the orders dated 12.10.2001 and 17.10.2001 (Annexure A-1 and A-2 to Comp 'I') issued by respondents no.8 and 6 respectively in so far as it pertains to the applicant.

8.2 to issue a mandamus directing the respondents no.4 to 7 to issue formal order regularizing the applicant on the post of Junior Clerk in the scale of Rs.950-1500/- (Presently in the scale of Rs.4000/- 6000/-) in pursuance of the applicant's selection vide Memorandum dated 05.09.1997 Annexure A-10 to Comp. II with effect from the date with all consequential benefits."

5. Respondents have contested the O.A. According to them, when the Railway Board accorded the approval for appointment of the applicant the DRM (P) Gorakhpur was directed to observe necessary formalities and to give working post of substitute Jr. Clerk with one time relaxation of age limit as exception. The Board, vide Annexure 3

letter dated 17-10-1996 to the counter, clarified that the applicant has to appear in the R.R.B. Examination. The fact of the applicant having qualified in the test conducted at the Division level had been admitted by the respondents. The Board had also questioned the N.E.Railways to explain as to the authority under which the DRM/Izzatnagar conducted the written test and viva voce test of the applicant, violating the Board's orders, vide Annexure A-5 dated 21-11-1997 added to the counter. A D.O. letter was also written by the Member Staff Railway Board addressed to the then General Manager, N.E. Railway, Gorakhpur vide Annexure A-6 dated 01-06-1998 added to the counter. As late as on 27-03-2000, the Railway Board had permitted, vide Annexure A-8 added to the counter, regularization of the applicant subject to the following conditions:-

(i)	<i>She should have completed 03 (three) years of service as Substitutes.</i>
(ii)	<i>The suitability for her absorption should be adjudged by a screening committee of the Railway comprising at least three JA Grade Officers including Chairman/Member Secretary of the Railway Recruitment catering to the Railway and screening for this purpose includes written test.</i>
(iii)	<i>She should be within the age limits after allowing service rendered by them as substitutes and possess essential educational qualification required for the</i>
(iv)	<i>If found fit her services shall be regularized with prospective effect.</i>

6. The applicant has at this juncture, preferred an amendment application to impugn the Railway Board letter dated 17-10-1996 as well and accordingly amended the OA on the same being allowed by

the Tribunal. The ground for challenging the said order is that the Master circular relating to the regularization of casual labourers provides for such regularization by way of screening by a Screening Committee and not by a Selection Board constituted for this purpose before being absorbed in regular Group C and Group D posts. Annexure RA 3 refers. Precedent in the case of one Shri Ataur Rahman has been cited vide Annexure RA-6 to the rejoinder.

7. Supplementary counter and rejoinder had also been exchanged, which by and large revolved round the contentions as concentrated in the OA and counter as the case may be.

8. Counsel for the applicant argued that the applicant's appointment is one of compassionate appointment and as such, various exemptions which are available to such compassionate appointees should be available to the applicant. He has further argued that the Railway Board had given age relaxation and advised the DRM to observe other formalities. As the applicant had been appointed as a substitute, one of the formalities in respect of regularization of substitute employees as per the master letter is to hold a screening, by a screening committee and the applicant having qualified in the written test conducted, there is no need to subject the applicant again.

A handwritten signature in black ink, appearing to be 'B' or 'B.R.' followed by a stylized flourish.

9. Counsel for the respondents submitted that the Railway Board clearly had stated in their communications that there shall be a test conducted at the RRB level, which the applicant had to clear for her regularization.

10. Arguments were heard and documents perused. The appointment is one through the Railway Board and as the records show, the same is in pursuance to the advice of the Hon'ble Railway Minister at the material point of time. The applicant had been functioning since 1993 as substitute clerk. She had qualified in the written test conducted by the D.R.M. in May 1997. The Railway Board's direction to have the examination conducted is anterior to the above test. The communication was dated 17-10-1996. It is not exactly known as to how the DRM conducted the test. The Railway Board had again reiterated vide Annexure A-8 order dated 27-03-2000 that the applicant has to clear the test conducted by the R.R.B. Be that as it may; notwithstanding the error, if any, on the part of the DRM, subjecting the applicant to a further examination at this distance of time may not, in our opinion, be appropriate, unless the standard of examination conducted by the D.R.M. earlier was not comparable to the standard fixed by the R.R.B. for the post of Clerk. In all probability, since in 1997 the matter was under consideration by the Railway Board as to under what Authority the DRM conducted the examination in violation of the order dated 17-10-1996, the respondents would not have weeded out the question paper or answer

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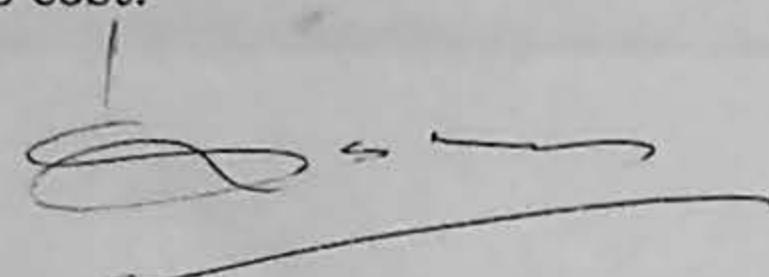
sheet of the applicant. As such, if the question paper and answer sheets are available, it would be appropriate that the same be scanned by the Railway Recruitment Board to contrast and satisfy that the standard of the examination is comparable to that conducted by the Railway Recruitment Board for L.D.C. In the event of the standard of examination conducted being comparable, the regularization of the applicant should take place from the date of the examination or any other date, if so prescribed under the rules. If however, the difference in the standard is substantial, the R.R.B. may inform the G.M. North Eastern Railway, Gorakhpur, and the applicant would be subjected to a fresh examination to be conducted by the Railway Board. If the applicant is through in the said examination, then again, the applicant is deemed to have qualified in the examination from the date the earlier examination was conducted. In case the applicant does not succeed in the examination, further action as per the Rules may be taken.

11. In view of the above, this O.A. is disposed of with a direction to the respondents to contrast Railway Recruitment Board the standard of examination conducted by the DRM, Izzat Nagar, with that of the Railway Recruitment Board for direct Recruitment for the post of Clerks and if the standards are comparable (with a variation of say, 10%), the exam qualified by the applicant be deemed to have been one conducted by the RRB. If not, the RRB may hold the examination in the near future, with sufficient advance notice, indicating the syllabus

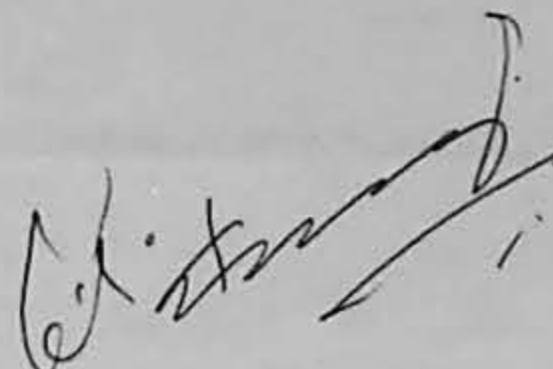
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to the applicant for preparation and in case the applicant qualifies in the same, she would be deemed to have qualified from the date she qualified in the earlier examination conducted by the D.R.M. In case the applicant does not qualify, further action as deemed necessary may be taken by the General Manager, North Eastern Railway, Gorakhpur. Till such time such examination is conducted and result declared, the applicant shall not be ousted from service.

12. No cost.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil