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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ORIGINAL APPLICATION NO. 1546 OF 2005

ALLAHABAD, this the 23rd day of August, 2007.

C O R A M

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. P.K. CHATTERJI, ADMINISTRATIVE MEMBER

Jogendra Kumar Bali, Aged about 39 years, S/o Sri Chet Ram Bali, Posted as Special Messenger, R/o H.260-D Railway Harthala Colony, Moradabad.

.....Applicant

V E R S U S

1. Union of India through the General Manager, Baroda House, New Delhi.
2. Assistant Personnel Officer, Northern Railway, Moradabad.

.....Respondents

Present for the Applicant: Sri Vikas Budhwar.
Present for the Respondents: Sri P. Mathur.

O R D E R
BY DR. K.B.S. RAJAN, JUDICIAL MEMBER

The applicant through this OA has prayed for the following:-

- (i) To set aside the orders dated 28.9.2005;
- (ii) To issue an order or direction commanding respondents to absorb the applicant in clerical cadre and to grant all consequential benefits after ignoring the order dated 28.09.05;
- (iii) To issue any other suitable order or direction, which this

Tribunal may deem fit and proper in the facts and circumstances of the case;

(iv) To award cost of the petition in favour of the applicant.

2. The brief facts of the case as contained in the OA are as under:-

(a) Applicant was initially appointed as a casual labourer in 1985. On 20th February, 1987, he was absorbed as Special Messenger in the pay scale of Rs. 196-750. Subsequently, by an order dated 7.6.1990, the applicant was directed to clear the cases of local purchases vide Annexure-2. The said local purchase is a clerical job. When the applicant was not considered for promotion on higher post, he filed various representations in December, 1994 and on 27.3.96 and 18.8.1997. On 31st October, 2001, Annexure-3 order was issued stating that the applicant was though working as Special Messenger in the pay scale of Rs. 2610-3450 but it constituted feeder cadre of clerical post (Ministerial).

(b) In 2002, a notification was issued for recruitment on the post of Clerk. The written test was to be conducted on 3.8.02 and interview on 22.10.2002. The applicant appeared for the written test and qualified the same but the interview was cancelled by the respondents. Hence the applicant had no option but to prefer O.A. No. 149 of 2003, seeking relief to the extent that the petitioner may be granted all consequential benefits on the post of clerical cadre in the light of orders dated 31.10.2001 and 22.1.2002. The Tribunal on 25th January, 2003 disposed of the said O.A. directing the respondents to consider the case of the applicant for the post of Clerk as per rules and it was also mentioned that the representation preferred by the applicant was also to be considered in accordance with law within a period of three months. Vide impugned order dated 6.6.2003, the

representation of the applicant was turned down.

(c) The applicant filed another O.A. No. 1246 of 2003 challenging the validity of the orders passed by the respondents on 6.6.2003. During the pendency of O.A., the respondents passed an order dated 1.12.03, which was also a subject matter of challenge in O.A. No. 1246 of 2003. The aforesaid OA was disposed of by this Tribunal directing the respondents to call the applicant for interview as and when it is held by this Division and to consider him for promotion against 5 general vacancies of Clerk Grade in the pay scale of Rs. 3050-4590 against 33 1/3 % Limited Departmental Promotion quota in which selection the applicant had appeared. Tribunal further directed the respondents to restore the applicant to the post of Special Messenger-cum- Local Purchaser forthwith till he is called for interview in consequence of his clearance in the written examination held on 3.8.2002 in connection with the selection against 33 1/3 % Limited Departmental Promotion quota.

(d) The applicant submitted his representation and in reply the respondents passed the impugned order dated 28.09.2005 wherein the genuine grievance of the applicant was turned down. The Tribunal had clearly stated that the respondent should treat the applicant as Special Messenger-cum-Local Purchaser meaning thereby the applicant is discharging the duty of the said post and Special Messenger is a feeder cadre for the Clerical post as per the order dated 31.10.2001 issued by the respondents. Hence the action of the respondents is illegal and arbitrary.

3. Respondents have contested the O.A. Their version is as under:-

(a) The applicant Shri Jogendra Kumar Bali was initially engaged as Casual Labour Khalasi on 24.6.1977 and

subsequently he was declared medically unfit in Class B/1 category but fit Class B-2 and below category vide Medical Memo No 126135 dated 15.12.1986. Consequent upon such medical categorization and fitment of the applicant he was absorbed as a Special messenger under Loco Foreman, Moradabad in the pay scale of Rs. 750-940 vide Annexure CA-I order dated 20.2.1987. While working under Loco Foreman, Moradabad, the applicant vide Annexure CA-II order dated 7.6.1990 was ordered to work under DCOS, Moradabad, to clear the cases of local purchases with a specific condition that the pay of the applicant will be charged on the basis of the attendance given by the DCOS, Moradabad.

(b) By virtue of working with the Administration, the applicant was subjected to screening against Class - IV staff of Carriage and Wagon, Loco, Signal and Telecommunication Departments which was held on 11.8.1997. The applicant's name was placed on the respective panel at Sl. No. 4 vide Office Order No. 725-E/EP/ERS-III/Screening/C&W/93-96 dated 8.10.1997 as a consequence of which his services were regularised and vide Annexure CA-III order dated 28.11.1997, he was appointed Temporary Special Messenger with effect from 21.02.1987.

(c) A notification against 33 1/3 % was notified calling for the eligible staff working in Class-IV against promotee quota consisting written examination against five posts of general vacancies of Clerks in the grade of Rs. 3050-4590 and accordingly, the written part of the examination was scheduled to be held on 3.8.2002. As a consequence of the test so conducted by the Divisional authorities, the petitioner alongwith 42 other candidates had qualified in the written part of the examination. The viva voce test was also scheduled to be held on 10.10.2002 but could not be held due to certain administrative reasons and was kept in

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abeyance. The applicant could not be called for interview as the same was kept in abeyance for administrative reasons. In other words, the applicant could not be placed on the panel. Ultimately, the applicant has challenged the action of the respondents by filing O.A. No. 149 of 2003 and the said O.A. was disposed of by this Tribunal directing to decide the representation preferred by the applicant.

(d) In compliance of the order passed by this Tribunal in O.A. No. 149/03, the representation so preferred by the applicant was examined and the same was disposed of by the competent authority vide Annexure CA-IV order dated 6.6.2003. The applicant was accordingly informed about the decision taken at the level of competent authority as per the direction of this Tribunal. Since the selection was not attained its finality till 1.11.2003 and was pending as the entire matter was kept in abeyance in view of the Railway Board's order dated 6.1.2004 (Annexure CA-V) which specifically contemplates that all the selections which have not been finalised by 1.11.2003 stands cancelled. In view of the specific stand taken by the Railway Board, there was no other option before the authorities but to cancel all the selections pending with the Administration at the Divisional level which was not finalised till 1.11.2003.

(e) The applicant at subsequent stage had filed fresh O.A. No. 1246 of 2003 in which this Tribunal passed an interim order (Annexure CA-VI) dated 13.1.2004 in favour of the applicant directing the respondents to restore the applicant on the post of Special Messenger-cum-Local Purchaser. However, the said O.A. was disposed of by this Tribunal vide order dated 4.4.2005. The case of the applicant was reconsidered in the light of the order passed by this Tribunal on 20.9.2005 by duly constituted Selection Committee which did not find the petitioner suitable for the post in question

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and as such the applicant was apprised of the decision taken by the Railway Administration vide order dated 28.09.2005. The claim of the petitioner is, thus, devoid of merit as the applicant cannot claim his promotion as a matter of right and it is only after due consideration of the applicant, necessary decision has been taken by the competent authority.

(f) The facts and circumstances stated and explained above, the impugned order dated 28.09.2005 passed by the respondents is merely a communication of the Selection Committee duly convened for consideration of candidature of the applicant for his promotion against 33 1/3 % promotion quota but since the applicant was not found suitable, the same was regretted and communicated to him. The claim of the applicant thus being devoid of merit is liable to be dismissed.

4. Applicant has filed the rejoinder in which he had stated that the contention of the respondents is untenable and the applicant has annexed RA-1, an order dated 5th April 2005 in O.A. No. 1246 of 2003 in which the operative portion is as under :-

"12. In the facts and circumstances of this case as also the discussions made above, the respondents are directed to call the applicant for interview as and when it is held by the Division and to consider the applicant for promotion against 5 general vacancies of Clerk Grade Rs. 3050-4590 against 33 1/3 % Limited Departmental promotion quota in which selection applicant had appeared; the respondents in any case have not denied existence of 5 general vacancies of Clerk for which selection was undertaken. In the given circumstances Annexure 1-A dated 1.12.2003 is also held to be invalid and is quashed. The respondents are directed to restore to the applicant the post of Special Messenger cum Local Purchaser forthwith till he is called for interview in consequence of his clearance in the written examination held on 3.8.2002 in connection with selection against 33 1/3 % Limited Departmental promotion quota. Respondents are further directed to conduct the related interview expeditiously and

preferably within a period of three months from the date of receipt of copy of this order.

13. The O.A. is allowed in the above terms with no order as to costs."

5. Respondents have filed their additional reply stating that the applicant after having been declared medically unfit was absorbed as Special Messenger and while working as such he was ordered to work as DEOS / MB to clear the cases of local purchase clearly specifying as a precondition that he would be subjected to screening test as per his turn for his placement on panel to become a regular employee. The lien of the applicant while he was so working in local purchase was maintained with Mechanical Department.

6. Counsel for the applicant has filed written arguments and the crux of the same is as under:-

(a) The applicant was absorbed as Special Messenger and directed to clear case of local purchase. Local purchase is the object of clerical nature. No type test was conducted by the respondents. By Annexure RA-1 order dated 5th April, 2005, the applicant appeared in the written examination and cleared the same, but he was not successful in viva. The order in **Pritpal Singh vs. Union of India and Ors.** (Civil Appeal No. 3155 of 2005) as per which a person could be absorbed in Group 'C' post even without clearing viva should equally apply to the applicant.

7. Counsel for the respondents too has filed his written submission stating that the posting of the applicant in local purchase was on temporary basis and qualifying in the viva-voce is a must. Order in O.A.

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No. 1246 of 2003 has already considered instructions of the Railway Board dated 21.10.2004 whereby certain procedure was prescribed.

8. The applicant had furnished supplementary rejoinder reiterating the stand already taken.

9. Arguments were heard, the written arguments as well as the documents perused. It is the admitted fact that the applicant has been serving only as messenger and even as per the version of the applicant the post is feeder grade to clerical post. The post of Clerk is a Group C post and as such, unless the applicant qualifies in the requisite examination, there is no question of the applicant being afforded the post of clerk. The decision of the Apex Court in the case of Pritpal Singh stands on a different footing and there is no comparison of the facts in that case with those in this OA. That was a case where the individual had been sent from the open line to construction wing and from group D to Group C. After working for a substantial period of 6 years in Group C, when the appellant in the aforesaid Civil Appeal appeared and cleared the written examination for appointment to Group C, he was declared failed in interview. It was under that contingency that the Apex Court on the basis of the previous decision in the case of R.C. Srivastava, allowed this appeal holding that notwithstanding the appellant not clearing the interview, as he had worked for substantial period in a comparable post, the applicant should be appointed as Clerk with due seniority. In the case of the applicant, the post of messenger not being comparable to the post of Clerk, the benefit of the decision in Pritpal Singh does not assist the applicant. Even if the respondents have permitted the applicant to function as special messenger in local purchase, since the

Tribunal directed vide its earlier order dated 5th April, 2005 in OA No. 1246/03 had directed to conduct related interview, the applicant could be appointed as Clerk only if he cleared the interview.

10. The applicant having not made out any case, the OA is **dismissed**. No costs.



P.K. CHATTERJI
ADMINISTRATIVE MEMBER



DR. K B S RAJAN
JUDICIAL MEMBER