

Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (T.A.) No. 721 of 1986

(O.S. No. 731 of 1981)

G.D. Agarwal & 8 others Plaintiff-Applicants.

Versus

Union of India & another Defendant-Respondents.

Hon'ble K.J. Raman, A.M.
Hon'ble J.P. Sharma, J.M.

(By Hon. J.P. Sharma, J.M.)

In this suit, which has been received on transfer from the court of Munsif, Jhansi, under Section 29 of the Administrative Tribunals Act, 1985, the plaintiffs, Sri G.D. Agarwal & 8 others, have prayed for the grant of declaration that the written tests held on 6.9.1981 and 4.10.1981 at Jhansi, for filling in the upgraded posts of Chief Clerks in the grade of Rs.550-750, be declared illegal and against Rules, and further a decree for permanent injunction to restrain the defendants from promoting any person to the post of Chief Clerks on the basis of the written examinations held on 6.9.1981 and 4.10.1981.

2. The case of the plaintiff, as given out in the plaint, is that they are serving the respondents honestly and conscientiously for a number of years to the post of their ability and capacity. It is stated that 16 posts of Head Clerks have been ordered to be upgraded to that of Chief Clerks in the grade of Rs.550-750. These upgraded posts of Chief Clerks are to be filled in from amongst the Head Clerks in order of their seniority. Instead of doing so a selection test was ordered to be held by defendant no.2, DRM, Jhansi, by the letter dated 1.6.1981. This letter also enclosed a list of 16 persons, who are eligible to take that examination. In consequence thereof a written examination was held. The plaintiffs have challenged the illegality of the examination and further

alleged that holding of written test was totally not visualized and laid down in the various instructions issued by the General Manager and the instructions of October, 1979 and October, 1990 have, therefore, be not followed in promoting the plaintiffs without holding the examination, as they are seniormost. It is further stated that proper syllabus of the examination was not circulated.

3. The plaintiffs also prayed for an ad interim injunction at the time of filing the suit in the year 1981 before the learned Munsif, Jhansi and their prayer was rejected and was upheld in Misc. Civil Appeal by the learned District Judge. As persons, who took the examination and empaneled, were p[ro]moted as Chief Clerks and, as is evident, are working since all the y[ear] on the said post.

4. The official respondents have filed a written statement contending that the post of Chief Clerk is classified as selection post, which is filled through positive act of selection and not only on the basis of seniority, as alleged. According to the instructions of the Headquarters (HQ) on the subject, 31 vacancies including 16 posts, created on account of restructuring, have been worked out for formation of the panel to fill up the selection post of Chief Clerks. 93 candidates, i.e. three times a number of the vacancy, were called for written test, as per Rules. There was no supplementary test and the test held subsequently was only of those persons who, for unavoidable reasons, could not take the scheduled examination at the appointed time. No irregularities and illegalities were committed in conducting the examination as well as at the time of selection. The plaintiffs took the examination, but they failed. It is further stated that the written examination, which was held, was to the knowledge of the candidates. It is prayed that the suit of the plaintiff has no cause of action and is to be dismissed.

5. We have heard the learned counsel for the parties at length and have perused the records. The plaintiffs, in respect of their contentions, in the light of the above, have filed copies of

GM's letters dated 29.10.1979 and 10.10.1980 (papers no.34C-2 and 37C-2). There is no doubt that in certain minutes of the meeting it was decided that the filling of the restructured upgraded posts be done solely on the basis of seniority and as per settlement in the said meeting, the extract was issued by the GM for guidance. Though the fact is not admitted by the defendant-respondents, it is evident that certain structured posts got to be filled afterwards basis of only seniority and those posts which fall vacant due to any casualty, retirement, etc. are to be filled by selection basis comprised in itself written test, viva voce, etc. Even if there is no examination then the Character Roll (CR) is to be the basis of performance of the eligible candidate to show that person is fit or unfit. Thus, only seniority by itself will not entitle a promotion, as alleged in the plaint and argued by the learned counsel for the plaintiffs.

6. However, it is to be seen whether the plaintiffs can get any relief, even admitting that for the 16 upgraded posts by restructuring. ~~could get any relief~~ Firstly, the plaintiffs have taken the examination in its entirety and when they became unsuccessful and the result was declared then they filed the present suit on 16.11.1981. It is important to note here that the suit was filed without giving mandatory notice under Section 80 C.P.C. to the respondents and a prayer was made for exempting them seeing the nature of the relief claimed by the plaintiffs and that they were allowed. So the only question remains is that when the plaintiffs had taken the examination held in the months of September & October 1981 then they cannot be allowed to challenge the various instructions in that regard on the principle of acquiescence. The matter was colaterally considered in another case by the Bench of this Tribunal of which one of us was the Member (Veer Bahadur Singh v. Union of India & others) reported in SLJ (2) 1990 CAT 438. The Bench observed as follows :-

"7. As has been stated by the respondents, the applicant has himself applied for the post in pursuance of the impugned impugned advertisement dated 6.9.1989. Having done so, he cannot challenge the validity of the said advertisement. In this connection a reference may be made to the decision of the Madras High Court in O.A.O.K. Lakshmanan Chattiyar v. Corporation of Madras (AIR 1927 Mad. 130) in which it was held that where a party had submitted himself to a jurisdiction, he cannot afterwards be allowed to repudiate it. In M/s. Panna Lal Baijra v. Union of India (AIR 1957 SC 397), the Hon'ble Supreme Court followed the decision of the Madras High Court in the case referred to above. A Bench of this Tribunal applied the above ratio of these cases in Brij Kishore Dubey & 5 ors. v. Union of India & anr. (1989 577 (CAT))."

The present case is analogous in all respects inasmuch as the plaintiffs have taken the examination and when they were unsuccessful they took the shelter of certain instructions issued by the General Manager as a guideline. Thus the present suit of the plaintiff is barred by the principles of acquiescence.

7. Even taking a lenient view the guidelines are to be observed, but they are not in such a way that the process of selection which has been undertaken is negatived. This is because if a selection has taken place and a number of persons have been empanelled and one who comes to the court to challenge that selection then in every case those persons, who are likely to be affected by a decision in the case, in the event in favour of the plaintiff, should be made parties. None can be condemned unheard. The anomalous position before us is that 10 years have passed and the persons who have been promoted 10 years ago as Chief Clerks and enjoyed the usufruct of that post cannot be condemned unceremoniously without being heard in this case. The impleadment of party was considered by the Hon'ble Supreme Court in the case of Ranga Reddy and others v. State of Andhra Pradesh and others (1987 SCC (L&S) 271) and there is a decision of the Tribunal in J.S. Dhillon v. Union of India & another (1989 (11) ATC 499). Both these authorities have discussed in detail in the case of Khem Singh Arya

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v. Union of India & others decided by this Bench of the [redacted] of us was a Member and reported in (1990 (13) ATC 594). In the reported case of 1990 of Khem Singh Arya the reasonings have been detailed in para 7 at page 598 of the same Journal. Though it was a matter of seniority, yet the principle shall be applied to the present case because the matter here is more serious. The persons have to be reverted in the event of success of the plaintiffs from the post which they have occupied and about 10 years.

8. We, therefore, find that the suit of the plaintiff is barred by the principles of acquiescence and also that the persons who are to be affected have not been impleaded as party. The suit remained pending in this Tribunal for about four years, but no steps in that light have been taken nor there was any prayer made orally or in writing today when the query was put to the learned counsel for the applicant. We, therefore, find that the present suit is devoid of any merit and is dismissed with no order as to costs.

J. S. Manohar
MEMBER (J).

K. R. Narayanan
MEMBER (A).

Dated: August 3, 1990.

PG.