

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIAHABAD BENCH,  
ALIAHABAD

Dated : Allahabad this the 14th November, 1995.

QUORUM :-Hon'ble Mr. S. Das Gupta, Member-A.  
Hon'ble Mr. T. L. Verma, Member-J.

Original Application No. 752 of 1992.

Vijai Verma son of Sri Ahibaran Lal,  
R/o. Quarter No. E-137-A, Railway Colony,  
Roza Jn. Shahjahanpur. ....Applicant.  
(By Advocate Sri Anand Kumar)

Versus

1. Union of India through the Secretary,  
Ministry of Railway, Rail Bhavan,  
Baroda House, New Delhi.
2. The General Manager,  
Northern Railway, H.O.  
Baroda House, New Delhi.
3. The Chief Personnel Officer,  
Northern Railway, H.O.  
Baroda House, New Delhi.
4. The Divisional Rail Manager,  
Northern Railway, Moradabad.
5. The Assistant Engineer,  
P.C.R.S. Northern Railway,  
Shahjahanpur. ....Respondents.  
(By Advocate Sri Amit Sthalker)

O R D E R (ORAL)

(By Hon.Mr. S. Das Gupta, Member-A)

In this O.A., the prayer is that the  
order dated 18.11.1991 by which the representation

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of the applicant for being promoted as Clerk has been rejected, be quashed. It has been further prayed that the applicant would be deemed to be working as Clerk continuously unless he is found <sup>not</sup> in departmental screening test for clerk and a direction be given to the respondents to pay balance of arrears for the working on the post of Clerk to which the applicant is entitled.

2. The applicant had earlier filed an O.A. No. 332 of 1990, seeking a direction to <sup>effect</sup> approve the applicant's promotion <sup>from</sup> on the post of Gangman to a Class III post with effect from December, 1985. This application was disposed of by a direction to the respondents to consider the representation of the applicant in this regard. This representation was considered by the respondents and was rejected by the impugned order dated 18.11.1991. The applicant had also in the meanwhile filed a contempt application for alleged non-compliance with the direction contained in earlier judgment and order dated 26.4.1990. This Contempt Application was dismissed by order dated 4.2.1992 in which it was held that the representation of the applicant was considered but it was turned down on the ground that Gangmen do not have a channel of promotion to the Clerical Grade. Thereafter this O.A. has been filed for the reliefs aforementioned.

3. The applicant's case is that he was initially appointed as Casual Worker and being Graduate, he was made to work as Clerk in the office. He has contended that subsequently he was regularised as a Gangman and he claimed that he be promoted as

Clerk as he was working on that post. By amendment application he has contended that there is 33-1/3 % <sup>quota</sup> for promotion to the post of Clerk for candidates of Group 'D'. As the applicant belongs to Group 'D' being Gangman, he should be considered for promotion to the post of Clerk.

4. The respondents have contested the case by filing written reply in which it has been stated that there is no promotional channel from the post of Gangman to the post of Clerk. They have also contended that the applicant is not a regular Class-IV staff. It has been stated that the applicant was granted temporary status and the regular scale of pay. It has further stated that he was <sup>declassified</sup> ~~declassified~~ but not made regular.

5. We have heard the learned counsels for both the parties and perused the record.

6. There is no dispute that the applicant was working as Gangman and that he had been granted temporary status and also regular scale of pay. There is, however, a dispute as to whether he be regularised or not. The applicant has not annexed a copy of the order by which he has been regularised. Therefore, <sup>whether</sup> he was regularised as Gangman or not, is a disputed fact. However, from the perusal of evidence on record it <sup>prima facie</sup> ~~appeared~~ that the applicant was not regularised as Gangman. The impugned order itself states that he was not a regular Gangman and

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in the rejoinder-affidavit, the applicant has not made specific averment that his services as Gangman were regularised. We have, however, seen from Indian Railway Establishment Manual, Volume-I that as per para 174 thereof, 33-1/3% of the post of Office Clerks, are to be filled by promotion by selection of specified Group 'D' Staff. (emphasis supplied). The rules do not however, clarify which are specified Group 'D' category which ~~qualify~~ for this quota of vacancies. Neither the learned counsel for the applicant nor the learned counsel for the respondents could enlighten this aspect nor there is any averment either by the applicant or by the respondents in their respective affidavits in this regard.

7. In view of the foregoing we are of the view that in case ~~the one of the~~ specified categories which qualify for 33 1/3% quota for promotion ~~to~~ the post of Clerk also include the post of Gangman, the applicant on his regularisation as Gangman shall be eligible for consideration for promotion against that quota. We therefore, direct the respondents that as and when the applicant is regularised as Gangman, and in case the specified Group 'D' staff indicated in para 174 of Indian Railway Establishment Manual (Volume-I), also include the post of Gangman, the applicant shall be allowed to appear in the selection test for promotion to the post of Clerk.

8. With this direction, this application is disposed of. There will be no order as to costs.