

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 7th day of December, 2006

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Original Application No. 1010 of 1999

Bir Bahadur Yadav, S/o Faujdar Yadav,
R/o Village and Post Tajopur,
Distt: Mau.

. . . Applicant

By Adv: Sri Ganga Prasad

V E R S U S

1. The Union of India through Secretary, Railways,
New Delhi.
2. The General Manager (Karmik)
North Eastern Railway,
Gorakhpur.
3. Senior Personnel Officer (Recruitment),
North Eastern Railway,
Gorakhpur.
4. Vinay Kumar Singh, S/o S. Singh
5. Akhila Nand Tripathi, S/o T. Tripathi
6. Km. Suman Singh, D/o J.P. Singh
7. Umesh Kumar, S/o Avinash
8. Iltaf Ali, S/o Sumani

Address of all C/o Financial Advisor (Chief
Account Officer) North Eastern Railways,
Gorakhpur.

. . . Respondents

By Adv: Sri A.V. Srivastava

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AlongwithOriginal Application No. 1233 of 1999

Bhimji, S/o late Sri Alakh Naranjan,
 R/o Thakur Bari Shankar Ram Ka Hata Post Rasara,
 Distt: Ballia.

. . . . Applicant

By Adv: Sri A.K. Pandey

V E R S U S

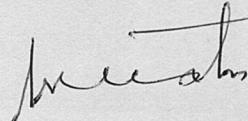
1. The Union of India through General Manager,
 North Eastern Railway,
 Gorakhpur.
2. The General Manager (Personnel)
 North Eastern Railway,
 Gorakhpur.
3. Senior Personnel Officer Recruitment,
 North Eastern Railway,
 Gorakhpur.

. . . . Respondents

By Adv: Sri A.V. Srivastava

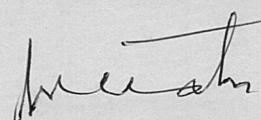
O R D E RBy Hon'ble Mr. P.K. Chatterji, Member (A)

The applicants in both the OAs had applied for the post of Accounts Clerk against the notification No. 1-97-98 dated 15.10.1997 of respondent No. 2 i.e. General Manager, Karmik North Eastern Railway, Gorakhpur. In the said notification application from eligible candidates were invited for the posts of Clerk (8 Posts) in the Grade of Rs. 950-1500, Commercial Clerks (4 post) in the Grade of Rs. 975-1500 and Accounts Clerks (6 Posts) in the grade of Rs. 9500-1500. The applicants having requisite qualification applied for the post of Account Clerk



and was allotted Roll No. 2147 in the admit card. They appeared in the written test on 02.05.1999. Respondents No. 4 to 7 also applied for the post of Clerk and were allotted different Roll numbers for the test. Respondent No. 8 applied for the post of Commercial Clerk and was allotted Roll No. 4139.

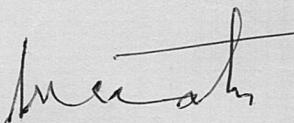
2. Both the applicants were declared successful in the written test for Accounts Clerk, but were exempted from type test being handicapped. Applicant in OA 1233 of 1999 also applied for the post of Commercial Clerk in addition to Accounts Clerk. He qualified in the written test of the Accounts Clerk but not in the test for Commercial Clerk. Respondents No. 4 to 7 were declared successful in the written test for the post of clerk and respondent No. 8 was declared successful for the post of Commercial Clerk and all of them were called for viva-voce on 08.07.1999. The applicants has further stated that for the six posts of Accounts Clerk 27 candidates were declared successful in the written test out of which only 25 candidates appeared for typing test and two candidates including the applicants were exempted from typing test on the basis of medical certificate issued by the CMO. Only four candidates out of the 27 were eligible for viva-voce. But when the final result was declared on 09.07.1999 none of the candidates for the Accounts Clerk category who had succeeded in



the written test were selected for the post of Accounts Clerk, but respondents No. 4 to 8 had applied for the posts of clerks and Commercial Clerk were selected for the post of Accounts Clerk. The applicants has further alleged that respondent No. 8 had applied for the post of Commercial Clerk for which typing test was not necessary and he also did not appear for typing test. But still he was selected for the post of Account Clerk for which typing test was necessary.

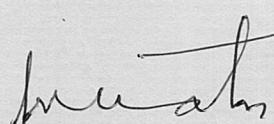
3. Having given the aforementioned fact the applicants has sought the direction of the Tribunal to quash the impugned selection/appointment dated 09.07.1999 and also direction to select the applicants to the post of Accounts Clerk and pay his salary regularly.

4. In their submission the respondents have more or less confirmed the factual position as stated by the applicants and made the following further submissions. Before fixing the date of written examination it was detected that there was an inadvertent clerical error in calculation of the vacancies amongst the respective posts and the same error was corrected with the approval of the competent authority and a corrigendum dated 04/08.06.1998 was issued and notified. The respondents have further stated that except for the

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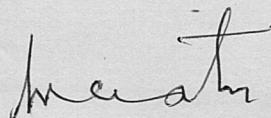
Commercial Clerk for which typing test was not required, for Accounts Clerks and Clerks the typing test was a requisite qualification. The respondents have further stated that as per rules the competent authority has the discretion to fill the short fall in recruitment of any particular category from any other category. Moreover, the requirements of Accounts Clerks and the Clerks were more or less the same as far as the qualification and work contents was concerned. Therefore, there was nothing wrong in selecting the successful candidates in the Accounts category for the posts of clerks. In this context the respondents have however, not submitted any reason as to how this argument would hold good in respect of respondent no. 8 who was a candidate for Commercial Clerk.

5. The respondents have further stated that on receipt of a complaint a vigilance enquiry was conducted and vigilance department seized the original selection proceedings, documents and records. It was therefore, not possible for the respondents to give any more clarification in the matter. The respondents however, have stated that after selection vide letter dated 09.07.1999, the clerks were appointed and they were working against their posts all these years.

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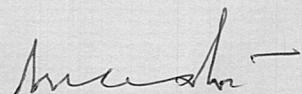
6. Upon a direction by this Tribunal the records of vigilance enquiry were summoned for production in the Tribunal. Accordingly, these were produced by the learned counsel for the respondents before us. We have perused the records to find there was some procedural irregularity in the matter, which the learned counsel for the respondents has not denied. He has however, pleaded that to nullify the appointment of respondents 4 to 8 at this distant date when they have already worked for over six years and a right has already accrued to the respondents 4 to 8 for having worked for such a long time, would be harsh and unjust.

7. We have applied out mind to the facts and records of this case. We are of the view that it would not be appropriate to issue any direction regarding the course of vigilance enquiry which may proceed on merit for conclusion and appropriate action. At this juncture we are also loath to cancel the appointment of respondents' No. 4 to 8 in the posts of Accounts Clerk. However, to ensure justice to the applicants in these two OAs, the respondents should consider his eligibility for appointment as Clerks for which they had applied on the basis of their performance in the test, keeping in mind that they were exempted as per rules from type test being a handicapped person. If they are found fit to be selected on comparative merit

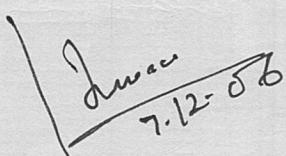


amongst the candidates for the post of Accounts Clerks in the said selection excluding respondents 4 to 8, and within the declared number of six vacancies, they should be offered an appointment, which however, will have only prospective effect. If no vacancy exists for the present, they should be accommodated in the first two vacancies which will occur henceforth.

8. With this consideration, we direct respondent No. 2 i.e. General Manager, Karmik North Eastern Railway, Gorakhpur to examine the records pertaining to the test and take a just and appropriate decision in respect of the applicants in the light of the observations made above. This action should be taken within a period of four months from the date of receipt of copy of this order. No cost.



Member (A)


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Vice-Chairman

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