

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 1<sup>st</sup> day of June 2003.

QUORUM : HON. MR. A.K.BHATNAGAR, J.M.

Original Application No. 1340 of 2002

Lalji prasad S/o Late Kishori R/o Village Nathpur, Post  
Bhulanpur, District Varanasi.....

..... Applicant.

Counsel for the applicant : Sri Anoop Baranwal.

V E R S U S

- 1- Union of India through the General Manager, Diesel Loco Works, Varanasi.
2. Chief Personal Officer, Diesel Loco Works, Varanasi.
3. Deputy Chief Personal Officer, Diesel Loco Works, Varanasi
4. Deputy Chief Engineer (Civil), Diesel Loco Works, Varanasi.

..... Respondents.

Counsel for the respondents : Sri Anil Kumar.

O R D E R

BY HON. MR. A.K.BHATNAGAR, J.M.

By this O.A. filed under section 19 of A.T.Act, 1985, the applicant has sought reliefs for directing the respondents to appoint him on the post of Clerk for which he was duly selected and qualified but denied on account of the pendency of a criminal case, and a further direction to the respondents to provide all consequential benefits from which he was deprived on account of the pendency of the criminal case.

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2. The case, as per the applicant is that he is working as a Khalasi Helper in the department of Diesel Locomotive Works, Varanasi. It is claimed that the applicant was initially appointed on regular post off Khalasi on 01.08.1982 and has worked with full satisfaction of the authorities. It is also claimed that for the period from 04.10.1990 to 14.08.1991 he was placed under suspension on account of the pendency of a criminal case, u/s 302 IPC & P.S. Manduadih, Varanasi (Session Trial No. 157 of 1992), which ultimately led to acquittal vide order dated 05.05.1998 by the court of VIth Additional Session Judge, Varanasi. It is also claimed that on account of pendency of the above criminal case, the applicant was deprived of his promotion from the post of Khalasi to Senior Khalasi and further from the post of Senior Khalasi to the post of Khalasi Helper in the year 1993 and on the other hand, the candidates junior to him were promoted in the year 1993. It is also claimed that in pursuance of the advertisement dated 22.7.1994 for the post of clerk in the pay scale of Rs. 950-1500, the applicant appeared in the written ~~test~~ conducted on 28.8.1994. The applicant along with other 17 candidates declared passed and the name of the applicant was shown at Sl. no. 16 of the panel, which is Annexure-I. All the 17 persons including applicant were invited to appear in the interview on 05.10.1994. As per the applicant his name came in the merit list of the selected candidates for the post of clerk on the basis of seniority but only on account of pendency of criminal case, the applicant's career has been ruined. Feeling aggrieved, the applicant approached the respondents, who verbally assured the applicant to consider his case only after the acquittal from the criminal case. It is also claimed that the name of the finally selected candidates for the post of clerk was sent by the Deputy Chief Personal Officer to the General Manager (Personal) on 11.10.1994 (Annexure A-2). On being acquitted

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by the court, the applicant approached the respondents with the order of acquittal dated 05.05.1998 and made a representation on 15.05.1998 requesting the respondents to treat the period of suspension of the applicant as spent on duty and be promoted on the post of Senior Khalasi and Khalasi Helper to the post of Clerk in pay scale of Rs. 950-1500 as he was duly selected but could not be appointed on account of pendency of the criminal case, the representation is Annexure-4. The respondents treated the period of suspension of the applicant as spent on duty ~~vide~~ order dated 11.07.1998 (Annexure A-5) but they did not consider the promotion of the applicant on the post of clerk in the pay scale of Rs. 950-1500. It is claimed that the applicant was given promotion on the post of Senior Khalasi on 30.9.1998 and on the post of Khalasi Helper on 01.03.1998 (Annexure A-6 & A-7) but claim of the applicant for the post of clerk has still been left undecided, against which the applicant filed representations (Annexure A-8 & A-9). He has been denied the post of clerk on account of pendency of the criminal case ~~in~~ although he was duly selected and qualified, hence the present O.A.

3. I have heard counsel for the parties and perused the record. The submission of the applicant is that even though his name appeared in the select list, he has been deprived only because of pendency of a criminal case and <sup>W/latron in</sup> he got acquitted as such the action of respondents is arbitrary and illegal.

4. Counsel for the respondents invited my attention towards para 3(I) of C.A. and stated that 33 $\frac{1}{3}$ % departmental quota of clerk in scale of Rs. 950-1500 are filled up through the process of selection consisting of written and viva-voce test from amongst the Group 'D' employees of the different department. In para 3(II) & (III) it has been stated that to fill up 13 posts of clerk against 33 $\frac{1}{3}$ % departmental quota of clerk in scale Rs. 950-1500 a notification was

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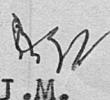
letter  
issued vide No. 27/180/59E/Pt. XI on 22.7.1994. In response to this notification, 172 employees including the applicant belonging to group 'D' category of different department applied, out of which only 140 employees appeared in the written test including the applicant. Out of 140 candidates only 18 candidates qualified in the written test and were called for viva-voce test, including the applicant. The competent authority approved the recommendations made by the Selection Committee and accordingly a panel of 13 candidates was formed and published vide letter Dated 11.10.1994 and the applicant was placed at Sl.No.16. As per panel formed, first 13 candidates were to be selected and thus, the applicant could not find place in the panel. It is also contend-ed by the respondent's counsel that no junior to the applicant has been promoted in the normal channel of Khalasi and the applicant was fully satisfied with the benefit given to him after his acquittal. <sup>that is</sup> why the applicant did not raise any such grievance in 1998 and the applicant cannot raise any claim for promotion as clerk against departmental quota after such a long time. Counsel for the respondents also stressed that the applicant cannot save the bar of limitation by filing repeated representations. The respondent's counsel further argued that the applicant has not impleaded the necessary parties and if the application is allowed, the person's interest will be adversely affected. Hence the application deserves to be dismissed for non-joinder of parties. Learned counsel for the applicant has placed reliance on the judgment of Hon'ble High Court in case of Awadhesh Kumar Sharma Vs. Union of India & Others (2000) 2 UPLBEC 1181, judgment of Sahngoo Ram Arya Vs. Secretary MI & Others (2003) 1 AWC 830 and Luxman Singh Vs. State of Punjab and Others 2000(2) UPLBEC 1829 SC.

*Arg*

5. I have gone through the rulings placed by the counsel for applicant and I found them not helpfull to the applicant in the facts and circumstances of the case. I have also perused Annexure-5, a letter dated 11.7.1998 which shows that fairness of the respondents in converting the suspension period of the applicant from 4.10.1990 to 14.8.1991 as spent on duty. I have also perused the letter dated 30.9.1998 which shows that the promotion has been given to the applicant from the date his junior Kallu was promoted. Letter dated 16.10.1998 also shows that the pay of the applicant has been fixed in the grade of Rs.800-1150 from 1.3.1993 on proforma basis. It is nowhere stated that the applicant was not promoted as clerk due to pendency of his criminal case but it is categorically stated in para 6 of the counter that the applicant's name was at Sl.No.16 in the panel whereas only 13 posts were to be filled<sup>up</sup> as per interse seniority of the candidates. If the applicant was aggrieved by any action of the respondents he would have agitated the matter in 1998 itself when he was acquitted. The O.A. was filed on 22.2.02 after a lapse of about more than three and half years. The applicant did not care to file any delay condonation application also. In my opinion, this O.A. deserves to be dismissed on the point of limitation itself.

6. In view of the aforesaid discussion and circumstances the O.A. is dismissed as barred by limitation as well as being devoid of merit.

No order as to costs.

  
J.M.

Asthana/