

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 1246 of 2003
This the 5th day of April, 2005

HON'BLE MR V.K. MAJOTRA, VICE CHAIRMAN
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

Jogendra Kumar Bali, Aged about 39 years,
S/o Sri Chet Ram Bali, Posted as Special Messenger,
R/o 11 260-D, Railway Harthala Colony, Moradabad.

.....Applicant.

By Advocate : Sri V. Budhwar.

Versus.

1. Union of India through General Manager, Northern Railway, Boarada House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Moradabad.
3. Senior Divisional Personnel Officer, Moradabad.
.....Respondents.

By Advocate: Sri P. Mathur.

O R D E R

BY V.K. MAJOTRA, V.C.

The applicant has sought quashment of the following orders:-

- (i) Annexure -1 dated 6.6.2003. whereby he has yet not been promoted on the post of Clerk Gr. 3050-4590/- against 33 1/3 promotion quota.
- (ii) Annexure 1-A dated 1.12.2003 whereby applicant has been posted on Class IV post of Special Messenger taking away from him Local Purchase Work which is of clerical nature.

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2. The learned counsel of the applicant pointed out that earlier on the applicant had filed O.A. no. 14-9 of 2003 which was disposed of by order dated 25.2.2003 with a direction to the respondents that if the applicant files a representation, the respondent no.2 shall consider his case in accordance with law within three months from the date of representation. Annexure-1 is stated to have been passed by the respondents in pursuance of Tribunal's aforesaid directions.

3. The learned counsel contended that applicant had appeared and qualified in the written test held on 13.8.2002 for recruitment on the post of Clerk in the year 2002. He was interviewed on 21.10.2002 which was stated to have been cancelled as per the stand taken by the respondents in the earlier O.A. However, now the respondents have changed their stand and stated in the impugned order Annexure-1 that the interview could not be held due to administrative reasons and was kept in abeyance and not cancelled.

4. Referring to the Rejoinder, the learned counsel for the applicant pointed out that applicant's junior Sri Hari Om Sharma who had been granted CPC scale on 9.12.1989 vis-à-vis the applicant who was granted such scale on 21.2.1987

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has been granted promotion in the clerical cadre ^{being 4th} on 13.11.1999 despite similarly circumstanced as the applicant.

5. Drawing our attention to Annexure CA-1 dated 6.1.2004, the learned counsel of the applicant pointed out that respondents have contended that the selections not finalized by 1.11.2003 have been cancelled/abandoned in terms of this circular of the Railway Board. The learned counsel stated that only such selections were conceivable under this circular to which modified selection procedure was made applicable. The selection, in question, was not under the modified procedure. It pertains to normal selection procedure and could not have been cancelled under these instructions.

6. On the other hand, the learned counsel of the respondents stated that the respondents had cancelled the selection, in question herein, under Railway Board's Circular Annexure CA-1. However, respondents have made it clear in the impugned order dated 6.6.2003 that applicant shall be called for interview as and when it is held. The learned counsel further stated that applicant had appeared in the examination against 33 1/3 % Limited Departmental Promotion Quota, however, the related interview was postponed due to administrative reasons but stood cancelled in

terms of Railway Board's circular as the selection had not attained finality till 1.11.2003 in terms of the said Circular.

7. We have considered the respective contentions of the parties as also the material available on record.

8. According to the respondents, the selection, in question, had been cancelled in terms of Railway Board's circular dated 21.1.2004. The relevant paragraphs of the said circular are reproduced below:-

"Existing classification and filling up of the vacancies :- The existing classification of the posts covered by these orders as selection and non-selection as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual Railway Servant becomes due for promotion to a post classified as a selection post, the existing selection procedure will stand modified in such a case to the extent that the selection will be base only on scrutiny of service records and confidential reports without holding any written and /or viva voce test. Naturally, under this procedure the categorization as outstanding will not figure in the panels. This modified selection procedure has been decided upon the Ministry of Railways as a one time exception of special dispensation in view of the numbers involved with the objective of expediting the implementation of these orders. Similarly for posts classified as non-selection at the time of this restructuring the promotion will be based only on scrutiny of service records and confidential reports. In the case of Artisan staff, the benefit of restructuring under these orders will be extended on passing the requisite trade test. However, in case of placement of supervisors (erstwhile Mistries) to grade Rs. 5000-8000/- the instructions contained in para 13.2 should be followed.

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- 4.1 Normal vacancies existing on 1.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence.
 - (i) From panels approved on or before 1.11.2003 and current on that date;
 - (ii) And the balance in the manner indicated in para 4 above
- 4.2 Such selection which have not been finalized by 1.11.2003 should be cancelled/abandoned.
- 4.3 All vacancies arising from 2.11.2003 will be filed by normal selection procedure."

9. The selection not completed up to 1.11.2003 in terms of this circular stood cancelled. However, these selections related to those conducted under the modified selection procedure. The dispute herein relates to selection under the normal selection procedure relating to that against 33 1/3% Limited Departmental Promotion Quota. These instructions are certainly not applicable to the selection disputed here. As such this selection could not have been cancelled under the aforesaid circular of the Railway Board.

10. The contention of the applicant that one Sri Hari Om Sharma has been granted promotion under the clerical cadre on 31.12.2001, although he was similarly circumstanced as the applicant, will not cut any ice here as it has not been established on behalf of the applicant that Sri Hari Om Sharma was granted promotion in spite of Railway Board's Circular though he was similarly circumstanced as the applicant. As such, if Sri Hari Om Sharma was granted the benefit as claimed by the applicant

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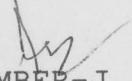
erroneously and not rightfully, applicant would not be entitled to such a benefit. Applicant has to establish his own entitlement/right.

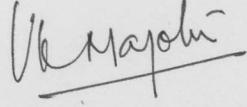
11. Vide Tribunal's order dated 25.2.2003 in O.A. no. 149 of 2003, it has been observed that applicant is eligible for consideration for the post of Clerk as per rules provided that he satisfies the eligibility conditions. The respondents were directed to consider the applicant's case on filing a representation. The respondents have passed the impugned order dated 6.6.2003 in pursuance of Tribunal's aforesaid directions. They have stated that the applicant "shall be called for interview as and when it is held by the Division." The learned counsel of the respondents has reiterated this undertaking during the course of arguments as well. In this backdrop, there is no need to quash Annexure -1 dated 6.6.2003.

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 this Division and to consider the applicant for promotion against 5 general vacancies of Clerk Grade 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 Purchase 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.


MEMBER-J


VICE CHAIRMAN
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GIRISH/-