

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/693/1993

Date of Decision : 12-12-2000

B. C. Upadhyay : Petitioner [s]

Mr. M. S. Trivedi : Advocate for the petitioner [s]

Versus

Union of India and Ors. : Respondent [s]

Mr. N. S. Shevde : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. A. S. SANGHAVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri. B.C. Upadhyay
Retired H.G.C. W. Rly.,
KKF, Ahmedabad

= Applicant =

Advocate : Mr. M. S. Trivedi

Versus

1. Union of India,
Through the General Manager,
W. Rly., Church gate,
Mumbai.
2. The Divisional Railway Manager,
O/o. DRM, Divisional Office,
W. Rly., Vadodara.

= Respondents =

Advocate : Mr. N. S. Shevde

JUDGMENT
O.A 693 of 1993

Date : 12/11/2000

Per Hon'ble Shri. A.S. Sanghavi : Member (J).

The applicant who is working as Head Goods Clerk has challenged the action of the respondents to cancel the selection test held on 29.8.92 for the promotion to the post of Chief Goods Clerk. He has also prayed for a declaration that the action on the part of the respondent authority to issue promotion orders vide memo dated 23.9.93 pursuant to memorandum dated 27.1.93 and 12.5.93 is illegal and null and void. According to the applicant on dated 5.8.92 the respondents had issued a memorandum as at Annexure A/1 for

holding the selection for the promotional post of Chief Goods Clerk in the scale of Rs.1600-2660/- . The statement showing the list of the employees who were eligible for appearing in the said selection was also issued by the respondents and the applicant was shown to be eligible in that list. The selection was held on dated 29.8.92 and written test was also completed. No reservations for SC / ST were disclosed in the said memo which meant that the required quota for SC / ST was full in the said cadre. After the written test was held on 29.8.92, *viva voce* was to be held but the result of the written test was not declared till 12.5.93. However, on 12.5.93 a memorandum was issued by the respondents canceling the selection of Chief Goods Clerk initiated earlier vide letter dated 5.8.92 and it was mentioned in the said memo that the post of Chief Goods Clerk would be filled up as per the modified procedure laid down in Board's letter dated 27.1.93. The applicants have contended that this action on the part of the respondents to cancel the selection held in the month of August 1992 was *mala fide* and bad in the eyes of law and hence, requires to be quashed. It is also further contended by the applicant that on dated 27.1.93 the respondents had issued a circular restructuring the cadres in the Grade of 'C' and 'D' of various departments of the Railways. The circular clearly mentions that it would be effective from 1.3.93 and the effect of the restructuring of the post would be of increasing the number of post from 23 to 34 in effect of increasing the SC and ST quota by five seats each and would thereby deprive the employees of the general community of their legitimate right of promotion while increase the promotional

opportunity of SC and ST employees. In the selection which was initiated on dated 29.8.92, no reservation in SC /ST was available and therefore the promotional avenues for the applicant was reduced on account of the subsequent restructuring of the cadre and hence the action of the respondents in canceling the selection initiated on dated 29.8.92 is prejudicial to the interest of the applicant. The applicant has prayed that the action on the part of the respondent authority to cancel the selection test held on 29.8.92 for promotion to the post of Chief Goods Clerk in the scale of Rs.1600-2660/- be quashed and set aside and it be declared that the promotion orders issued vide memo dated 23.9.93 are illegal and null and void.

2. The respondents have resisted this O.A and in their reply have contended inter alia that the selection notified vide Annexure A/1 dated 5.8.92 was for the post of Chief Goods Clerk (Rs.1600-2660/-) and pursuant to that notification result of the written test was declared in May'1993. The selection was delayed because supplementary test for the absentees was required to be conducted and thereafter the result of the written test was to be declared. However, in the meantime the Railway Board vide their letter No. PC/III/91/CRC/1 dated 27.1.93 circulated a letter notifying the restructuring of the cadres of Chief Goods Clerk. The said letter also stated that the selection which was not finalised by 1.3.93 should be canceled / abandoned. The selection initiated on dated 5.8.92 for the post of Chief Goods Clerk and the written test conducted on 29.8.92 had to be canceled in view of the circular issued by the Railway Board as the said selection was not finalised by that time. They have

contended that the averments of the applicant that restructuring the post of Chief Goods Supervisor in the scale of Rs.2000-3200/- would be increased from 23 to 34 is not relevant as the applicant was working as Head Goods Clerk in the scale of Rs.1400-2300/-. They have also contended that the applicant has no right to challenge the promotion made to the scale of Rs.2000-3200/- from the eligible candidates working in the scale of Rs.1600-2660/-. The Annexure A/1 and Annexure A/2 relates to the selection for promotion to the post of Chief Goods Clerk in the scale of Rs.1600-2660/- only and therefore promotion to the scale of Rs.1600-2660/- is irrelevant. They have denied that only to favour the SC / ST candidates and to deprive the general community candidates with ulterior motive the said test was canceled. According to them the Railway Board circular dated 27.1.93 applied to all cadres and therefore there was no question of favouring certain candidates or dis-favouring others. They have maintained that the promotions are being regulated as per the Railway Board's letter dated 16.6.92 on the subject and that the averments of the applicant about mala fides and prejudice to the applicant are without merit. They have denied that the promotional orders passed on dated 23.9.93 are null and void and have prayed that the O.A be rejected with costs.

3. We have heard the learned advocates of both the parties. According to Mr. Trivedi, learned advocate for the applicant once the selection process was started by the respondents for the post of Chief Goods Clerk in the scale of Rs.1600-2660/-, the same could not have been canceled by the respondents and the action of the respondents

in canceling the same without sufficient grounds requires to be struck down. He has further submitted that though the written test was held on 29.8.92 its result was not declared till May 1993. He has alleged that this was done deliberately by the respondents so that benefit of the restructuring of the cadres can be given to the SC / ST candidates pointing out that for the selection which was notified in 92, there was no reservation quota for SC / ST candidate as the required quota of SC / ST was full in the promotional cadre at that time and pursuant to the restructuring of the cadre, both SC and ST would be getting five posts each by way of reservation. He has submitted that this has caused prejudice to the general caste employees and therefore the earlier selection canceled without any reason ought not to have been allowed to be canceled. He has also further submitted that it is a settled position of law that vacancies arising under the old rules should be filled as per the old rules and not by applying new rules. Since the selection notified for the post of Chief Goods Clerk was to be made as per the old rules, for the vacancies of that selection new procedure could not be applied.

4. Mr. Shevde, learned advocate for the respondents on the other hand has contended that the selection test had to be canceled on account of the Railway Board's circular dated 27.1.93 and this has not caused any prejudice to any of the employees. According to Mr. Shevde this circular dated 27.1.93 is not challenged by the applicant in this O.A and since this circular is not challenged the action taken by the respondents on the basis of this circular also cannot be challenged. He has also denied the averments of the applicant that

on account of this circular the number of post for the SC / ST has increased and that the general category employees were prejudiced so far the promotional post were concerned. He has submitted that there is nothing wrong in the cancellation of the selection test for the post of Chief Goods Clerk in the scale of Rs.1600-2660/- as the said test was succeeded by another test as per the procedure laid down in the circular dated 27.1.93.

5. We find great deal of substance in the submissions of Mr. Shevde. The applicant has challenged the cancellation of the selection test held on 29.8.92 for the promotion of Chief Goods Clerk in the scale of Rs.1660-2660/- but has not said anything about the circular dated 27.1.93. The circular is not challenged by the applicant and therefore, the action taken by the respondents on the strength of the circular cannot be allowed to be challenged. The copy of the circular is produced at Annexure A/2 and clause 4.2 of this circular inter alia provides that the selection which have not been finalised by 1.3.93 should be canceled / abandoned. Admittedly, the selection initiated by the respondents for the post of Chief Goods Clerk in the scale of Rs.1600-2660/- vide their notification dated 5.8.92 was not finalised till 1.3.93 and therefore the respondent no.2 had no other alternative to cancel the said selection. He was bound by the circular dated 27.1.93 of the Railway Board and as such he had no option but to cancel the said selection. It is averred by the applicant that though the written test was held on dated 29.8.92 the result of the same was not declared till May 1993 and this was done deliberately to favour the SC / ST candidates. The respondents have

however, replied that the result could not be declared as the supplementary test for the absentees was to be held and after holding the supplementary test the result was declared in May 1993. However, in the meantime, the Railway Board circular had come into effect and therefore the test had to be canceled.

6. Though it was tried to be argued that on account of the cancellation of the test the applicant was prejudiced as the number of reserved posts came to be increased on account of the restructuring of the cadre while there was no reservation in the notified selection, we are unable to appreciate the submissions made in this behalf. The circular dated 27.01.93 does not provide for any increase in the reservation quota for SC / ST and clause - 10 of the circular clearly states that the existing instructions with regard to reservation of SC / ST will continue to apply while filling additional vacancies in the higher grades arising as a result of restructuring. It may be that due to restructuring of the cadres more posts would be available in the higher cadres thereby necessitating increase in the reserve quota but then the post for the general category also would be increased simultaneously. It therefore cannot be said that by the said restructuring of the cadres the promotional avenues of the applicant are reduced and that the cancellation of the selection test has adversely affected his right of promotion. In fact no material has been adduced by the applicant to show what was the percentage of reservation quota earlier and how much increase in the reservation quota is made after the restructuring of the cadres. In any case since the circular dated 27.1.93 is not under challenge, the action

taken by the respondents on the basis of this circular cannot be struck down as invalid or null and void. Mr. Trivedi, learned advocate for the applicant has relied upon the decision in the case of said State of Bihar Vs. Secretariat Assistant Successful Examinees Union 1986 Others reported in (1994) 1 SCC 126, but we fail to understand how this decision apply to the facts of the instant case as the said case related to the filling up the vacancies available up to the last date of the calendar year following the year of the announcement of the vacancies and not against the new vacancies. In that case the number of vacancies were announced and examination were held two years after inviting the applications while the results were announced still three years later. The Supreme Court has held that under the circumstances, the candidates empanelled on the basis of the examination held, were entitled to appointment only against the vacancies available up till the last date of the calendar year following the year of the announcement of the vacancies and not against the vacancies available on the date of the publication of the result or later. This decision has apparently no application to the facts of the instant case as in the instant case there is no empanelment as the selection was canceled. The vacancies arising on the date of the announcement of the selection were to be regulated as per the Board's circular and this circular is not challenged before us.

7. Mr. Trivedi, learned advocate for the applicant has submitted that the main challenge of the applicant is not the circular issued by the Railway Board but the challenge of the applicant is the cancellation of the selection whereby the applicant was deprived of

availing of the vacancies existed on the day of the cancellation of the selection. The relief prayed for by the applicant in this O.A however does not say anything about the directions to the respondents to fill up the post as per the old vacancies. Furthermore, it is not shown that on account of the restructuring of the cadres change has been affected in the number of vacancies available for promotion to the cadre of the Chief Goods Clerk and therefore it cannot be said that cancellation of the selection has been prejudicial to the interest of the applicant. It is contended that 29 vacancies were available prior to 1.3.93 but this is not shown that after 1.3.93 any change had occurred in this vacancy adversely affecting the promotional prospectus of the applicant. The relief prayed for also is not in consonance with the submissions made regarding the filling up of the vacancies after 1.3.93 being prejudicial to the interest of the applicant. It is to be noted that by the said circular no change in the rules or the procedure for recruitment or promotions to the post of Chief Goods Clerk is made and therefore it cannot be said that the vacancies available on 1.3.93 ought to be filled up under the old rules or old procedure.

8. Mr. Trivedi has also relied upon decisions in the case of Purendra Kumar Sharma Vs. Union of India and Ors. reported in (1990) 13 ATC 880 as well as Rabindra Kumar Mohanty Vs. Director of Printing & Ors. reported in (1990) 14 ATC 298, but none of these decisions has any application to the facts of the instant case. There is no quarrel about the principle that the vacancies existing prior to the revision of the rules have to be filled up according to the un-

revised rules but, in the instant case there is only restructuring of the cadres and not the revision of the rules. It is also not shown that the restructuring of the cadre has acted against the interest of the applicant. The circular affecting the restructuring of the cadre and laying down the procedure for filling up the vacancies etc is not under challenge before us and therefore, it cannot be said that the cancellation of the test was done by the authorities with a mala fide or ulterior motive. Since the cancellation of the impugned selection to the post of Chief Goods Clerk was in compliance with the directions given in the circular itself, the same cannot be held to be bad in law. Under the circumstances, we do not see any merit in this O.A and are of the opinion that the O.A deserves to be rejected. In the conclusion therefore the O.A is rejected with no order as to costs.

Concurrence
(G.C. Srivastava)
Member (A)

A. S. Sanghavi
(A. S. Sanghavi)
Member (J)

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