

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH, KOLKATA**

ORIGINAL APPLICATION NO. 213/1996

Date of order: 04-02-2005

CORAM:

HON'BLE MR. MUKESH KUMAR GUPTA, JUDICIAL MEMBER

HON'BLE MR. M. K. MISRA, ADMINISTRATIVE MEMBER

Sri Kamal Kumar Mukherjee son of Late Phani Bhushan Mukherjee working as Head Clerk in the Office of Chief Operations Manager's Allotment Section/Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001 presently residing at 54, Chatterjee Para Lane, Post Office-Hind Motor, District - Hooghly.

....Applicant.

Mr. A.K. Banerjee, counsel for the applicant.

VERSUS

1. Union of India represented by General Manager, Eastern Railway, Calcutta, 17, Netaji Subhas Road, Calcutta - 700001.
2. Chief Personnel Officer, Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
3. Chief Operation Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
4. Chief Freight Traffic (I) Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
5. Senior Personnel Officer (T), Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
6. Senior Transportation Manager (Allotment), 17, Netaji Subhas Road, Calcutta - 700001.
7. Assistant Personnel Officer (T), Eastern Railway, 17, Netaji Subhas Road, Calcutta - 700001.
8. Shri P.K. Bandyapadhyay.
9. Shri Tushar Lahiri.
10. Smt. Anima Romi Roy.

Respondent No. 8 to 10, all Office Superintendent Grade II in the Office of the Chief Operation Manager, Eastern Railway.

(Added as party-respondent vide order dated 27.2.98 in
MA No. 443 of 1997).

Mr. P.K. Arora, counsel for the respondents.

....Respondents

O R D E R
:PER MR. M.K. MISRA, MEMBER (A):

Sri Kamal Kumar Mukherjee, the applicant, has filed this Original Application under Section 19 of the Administrative Tribunals, Act, 1985 and has prayed for the following relief:

- "(a) An order be passed directing the Respondent authority to cancel, rescind and/or withdraw the impugned letter no. E.1025/T.HQ/Allot dated 12.12.1995 issued by Respondent No. 2 in connection with cancellation of selection procedure of Office Superintendent Grade-II in Scale Rs. 1600-2600 (RP).
- (b) An order be passed directing the Respondent Authority to publish the result of the Selection of Office Superintendent Grade-II held on 3.10.1994 and 23.11.1994 to materialise the formation of panel of Office Superintendent Grade-II for filling up the vacancy.
- (c) Any Order be passed directing the respondent authority to cancel, rescind and/or withdraw the Memo dated 19.1.1996.
- (d) To pass such other or further order or orders, and/or direction or directions, as Your Lordships may deem fit and proper."

2. The brief facts of the case are that the vide office order dated 12/19.12.1995, the Chief Personnel Officer, Eastern Railway cancelled the selection/ formation of a panel of Office Superintendent Grade-II in the pay scale of Rs. 1600-2660 (RP) in COM Allotment Unit, due to procedural lapse and the result of the selection/test for the post was not published. However, vide order dated 19.01.1996 of the Railway Authority another fresh selection for that post was held. Both the office orders are challenged by the applicant, who joined Railway service on 29.07.1965 as Clerk Grade-II was recruited through the Railway Service Commission (Now Railway Recruitment Board), Calcutta. Later on he was promoted as Clerk Grade-I w.e.f. 19.9.1985 and subsequently evaluated to the post of Head Clerk on 30.06.1993. A written test for promotion to the post of Office Superintendent Grade-II was held on 11.01.1994

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and the applicant qualified in that test and also appeared in viva-voce test held on 04.04.1994. He could not be promoted because he was shown junior to his colleagues as per seniority list. However, the second selection was held through written test on 03.10.1994 and the applicant again qualified in that test and also appeared in viva-voce test on 23.11.1994 but he could not succeed in getting the promotion. The claim of the applicant is that the Interview Board and the Selection Committee did not conduct the interview/written test in a fair manner and other candidates who had got poor marks were selected. However, the entire process since suffered procedural lapses, was cancelled vide order dated 12/19.12.1995 (Annexure "F"). Vide letter dated 19.01.1996, the Competent Authority proposed to hold written test for the post of Office Superintendent Grade-II in near future and the applicant was also intimated for this deployment. The learned counsel for the applicant was also desired that the records of the written test as well as viva-voce test should be produced before this Bench of the Tribunal by the Respondents to ascertain the position.

3. The respondents, in their reply to the Original Application, submitted that after forming of EDRM a centralised Coal Allotment Section at Calcutta, the applicant was transferred and posted at the Adra, S.E. Railway, on his own request. In the EDRM, the staff was drafted from Eastern and South Eastern Railway on lien basis by calling option. Later on, the applicant was transferred to Coal Allotment Section on 27.05.1981 as Clerk Grade-II, vide office letter dated 27.05.1981, on his own request. Later on, he was promoted to Head Clerk grade on 30.06.1993. As per his seniority, he was invited to appear in the written test for Office Superintendent Grade-

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II but he was not found suitable by the Selection Board. Subsequently, he qualified in the written test of Office Superintendent Grade-II but due to procedural lapses, the Competent Authority cancelled the selection process. The next written test was held on 07.06.1996 and the applicant qualified in that test but in viva-voce test he failed. Another test was held for that post on 28.10.1997 but the applicant could not qualify even in written test. The applicant although joined the Coal Allotment Section but he kept his lien with the South Eastern Railway on 04.12.1967.

4. In the rejoinder, the applicant submitted that the selection was cancelled with ulterior motive to oblige few favourite candidates.
5. We have heard learned counsel for both the parties and have carefully perused the pleadings and records of this case. The notings made in the file by the competent authority, produced by the respondents during the course of arguments, was also perused. It has been observed by us that the Competent Authority found that the selection process was not held as per rules. The Selection Board also recommended the cancellation of the entire selection proceedings and the same were endorsed by the accepting authority who was also the Competent Authority to cancel the selection proceedings. It is also observed that no junior to the applicant has been empanelled/promoted till date, except one Shri B.N. Sarkar, (SC) who has got promotion as OS-II by virtue of rule of reservation. We also noticed that the selection for which written examination was held on 03.10.1994 followed by Viva-voce test on 23.11.1994 was cancelled with due approval of the Competent Authority of the Executive Office i.e. C.O.M. & C.P.O on 12.12.1995.

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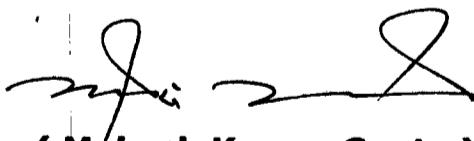
The same was cancelled when the selection process was continuing and the panel was yet to be formed. Subsequently, two more selections have been held one on 7.6.1996 and other on 28.10.1997. In the selection held on 7.6.1996, the applicant appeared but not empanelled because of his lower seniority position. In the selection held on 28.10.1997, the applicant appeared but could not come out successful in the written test. As regards the seniority, we found that the same has not been challenged in this Original Application.

6. The Hon'ble Apex Court in the case of Union of India & Ors. vs. O. Chakradhar reported in 2002 (1) SC Services Law Judgement 286 held that the Competent Authority is fully empowered to cancel the selection proceedings if the same is not as per the prescribed rules. In the present case, the Competent Authority noticed some procedural lapses in the selection process, therefore, the respondents concerned had justifiably cancelled the selection process.

7. The upshot of the above discussion is that the Original Application is sans merits, hence, it is dismissed. No order as to costs.



(M.K. Misra)
Administrative Member



(Mukesh Kumar Gupta)
Judicial Member