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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 16/02/2001

O.A. No. 181/1998

Bhanwar Lal S/O Shri Ramjivan aged about 47 years, R/O Hand Pump Ki Gali, Seva Sadan School, Kaga Mahamandir, Jodhpur, at present employed on the post of Senior Gangman in Gang No.36, Jaisalmer, Northern Railway.

... Applicant

vs

1. The Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur Division, Jodhpur.

... Respondents

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. Kamal Dave, Counsel for the Respondents.

CCRAM :

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. A.P. Nagrath, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. A.P. NAGRATH)

The applicant, Bhanwar Lal, has prayed for directions to the respondents to consider his case for promotion to the post of Store Issuer/Clerk in the scale of Rs.950-1500 in the next available vacancy without subjecting him to suitability test again, as he had passed the suitability test on 17.6.79.

2. Facts as per the applicant are that he was appointed to the post of Gangman on 27.7.1973. He appeared in the suitability test for the post of junior clerk in scale Rs.225-308 on 12.6.1979 and he was declared successful. He assumed the

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charge on the promotion post as Store Issuer on 17.8.1979, and was reverted under letter dated 08.10.'79. The said post of Clerk was restored to scale Rs.260-400 in 1980-81. Again, a suitability test was conducted and the applicant passed the written test, but the selection was cancelled. He was then provisionally promoted as Store Issuer vide letter dated 26.4.1991. After about 11 months, he was reverted vide letter dated 03.3.1992 alongwith one Narsingh Lal. As per the applicant, Narsingh Lal who was junior to him, filed O.A. No.73/88 before this Tribunal for considering him for the post of Clerk on the basis of the suitability test already passed by him (the applicant), the O.A. was allowed and Narsingh Lal was promoted to the post of clerk under letter dated 24.1.1995.

3. Applicant submits that referring to the said judgment he represented for the similar treatment to him on the ground that his case was covered by the ratio of that judgment. His representation has been rejected by the respondents though as per panel position, he is senior to Narsingh Lal. It is stated by the applicant that the respondents' action of ignoring his claim amounts to hostile discrimination against him and violation of Article 14 and 16 of the Constitution of India.

4. The respondents in their reply have opposed the claim of the applicant by raising a preliminary objection on the grounds of limitation. It has been stated that Narsingh-Lal's case was decided in 1994, but the applicant filed the O.A. in 1997 and that will not overcome the ground of limitation. We do not find this plea of the respondents acceptable in view of the fact that the respondents have rejected the claim of the applicant, but while doing so, limitation was not a ground for denying the claim. Hence, we proceed to

decide this O.A. on merits.

5. The respondents have stated in their reply that the applicant has no case as when the post of Clerk was restored to grade Rs.260-400, a selection was held and was finalised on 29.4.1982, when a panel of 50 candidates was declared and for another 04 candidates on 01.1.1983. In this panel, the applicant was not considered eligible. Respondents admit that the applicant was provisionally posted as Store Issuer grade Rs.225-308 from 4.5.1991 to 3.3.1992. It has been emphasised that Narsingh Lal was senior to the applicant and any relief to Narsingh Lal does not provide any basis for similar relief to the applicant. The applicant was promoted w.e.f. 17.8.'79 to 2.11.'79 only on ad hoc basis and that does not create any right in him. The applicant is presently holding the post of Senior Gangman which he was promoted w.e.f. 1.3.1996.

6. Heard the learned Counsel for the parties whose submissions were on the basis of respective written averments. Learned Counsel for the applicant drew our attention to Annex A/4 pointing out that many of those in that list have been posted as clerks and have found further advancement whereas applicant in the same list is not being considered. It was explained by the learned Counsel for the respondents that as per decision taken by the department, those who had continued to work as clerk were regularised as clerk w.e.f. 21.9.1983 under order dated 6.4.1989. Since the applicant was only working as a Gangman, he was not eligible for such regularisation as he did not belong to eligible category.

7. Since the applicant does not belong to the eligible category for advancement to the post of clerk, ~~xx~~ he cannot claim promotion to the post ^{in his} avenue of promotion. He could not succeed in the selection finalised in 1982 and 1983.

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even though he was permitted to avail of that opportunity. When he failed in that selection, he cannot claim his promotion based on an earlier suitability test held in 1979. In view of these circumstances, applicant's claim is liable to be rejected.

8. We, therefore, dismiss this Original Application as devoid of any merits. No order as to costs.

Amrit



(A.P. NAGRATH)
Adm. Member

J

Amrit 16/12/2001

(A.K. MISRA)
Judl. Member

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Part II and III destroyed
in my presence on 21.3.07
under the supervision of
section officer J as per
order dated 19.12.2007

Section officer (Record)