

I/S

In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

Original Application No. 224/2003
Date of Decision: this the 6th day of November, 2003

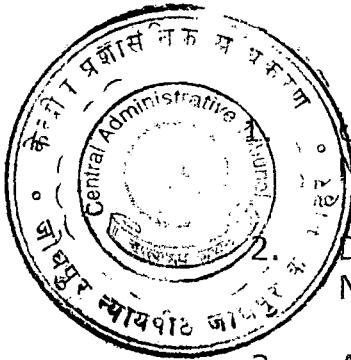
Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. G.R. Patwardhan, Administrative Member

Amar Nath Singh S/o Sh. Pran Singh,
Aged about 36 years, R/o C/o Kana Ram Choudhary,
Plot No. 9, Shakti Colony, Gali No. 1,
Ratanada, Jodhpur (Raj). Presently working on the
Post of Senior Clerk in the office of
Deputy Chief Mechanical Engineer (Workshop)
North Western Railway, Jodhpur (Raj).

(By Advocate Mr. S.K. Malik, for applicant)

.....Applicant.

vs.



Union of India through General Manager,
North Western Railway, Jaipur.

Deputy Chief Mechanical Engineer (Workshop)
North Western Railway, Jodhpur.

3. Assistant Personnel Officer (Workshop)
North Western Railway, Jodhpur.
4. Sh. Udaiveer Singh (SC),
Head Clerk, Time Office in the
Office of Dy. Chief Mechanical Engineer
(Workshop), North Western Railway, Jodhpur.

.....Respondents.

ORDER

BY J.K. KAUSHIK :

Shri Amar Nath Singh, applicant, has filed this O.A.
seeking mainly the following reliefs :-

A handwritten signature in black ink, appearing to read "J.K. KAUSHIK".

- (a) by an appropriate order, writ or direction, impugned order dated 27.8.2001 (Annex.A/1) qua the respondent No. 4 be declared illegal and be quashed and set aside being excess of quota fixed for SC candidates,
- (b) by an appropriate order, writ or direction impugned order dated 10.12.2002 (Annex.A/2) be declared illegal and set aside,
- (c) by an appropriate order, writ or directions, respondents may be directed to consider the case of applicant for promotion to the post of Head Clerk as per roster and promote him on the said post from the date respondent No. 4 has been promoted with all consequential benefits."

2. The Application was listed for admission today and we have heard the learned counsel for applicant on admission.

3. The abridged facts of the case are that applicant belongs to ST category and was initially appointed as Gangman on 7.10.89. He enjoyed his next promotions as Clerk and Sr. Clerk w.e.f. 26.10.98 and 25.10.2000 respectively. As per the channel of promotion, the next promotional post is of Head Clerk which is a non selection post.

4. It is the further case of applicants that sanctioned strength of Head Clerk cadre is 24 and as per the reservation roster, three posts are reserved for SC and 1 for ST candidates. Presently, there is no ST category candidate in the said cadre. In 1997, there was an exchange of ST category post with that of SC vide order dated 23.12.97. Seniority lists have been published in respect of Sr. Clerks and Head Clerks vide Annexures A/4 and A/5. The respondent No. 4 was promoted to the post of Head Clerk vide letter dated 27.8.2001 against the short fall of SC vacancy whereas, there were already three SC candidates on Head Clerk post. As per applicant, that vacancy should have

DR

7/

been filled up by a ST category candidate only. A representation was made by him in the matter which was followed by reminders also but, the same has been turned down on the ground that one post is available for ST in the cadre of Head Clerk but, due to non availability of ST candidate, it was filled up by a SC and now, no post is available against reserve point. His case ought to have been considered against the short fall of ST candidate. It is also averred that there is a provision of relaxation of two years in the lower grade and certain circulars have been referred to in Para 4.10 in this respect. An O.A. 103/2003 was also filed earlier which came to be withdrawn with liberty to file a fresh one since certain documents were not available with him.

5. The salient grounds on which this OA has been filed are that there is a short fall of ST category in cadre of Head Clerk and the impugned order deserves to be quashed on this ground alone. The post should have been filled up by a ST category candidate instead of SC as per the provisions of interchanging the vacancies. But, there has been violation of Articles 14 and 16 of the Constitution. The action of the respondents is against the reservation policy and same, therefore, deserves to be quashed.

6. The learned counsel for applicant has invited our attention to Annexure A/4 and indicated that name of applicant is placed at No. 32 in the seniority list of Sr. Clerks. Then, he has drawn our attention to No. 26 of Annexure A/5 Seniority List of Head Clerks, wherein, name of the private respondent has been

shown, who has been promoted w.e.f. 27.1.2001. Thereafter, he took us to various circulars regarding relaxation of two years rule wherein it has been provided that relaxation can be made by the General Manager for a period of one year. As per the normal rules, two years relaxation is provided for those who are working on the feeder post so as to be eligible for promotion to the next higher post.

7. We have considered the submissions made on behalf of applicant and find that the applicant was promoted as Sr. clerk on 26.10.2000 and by the time, respondent No. 4 (Shri Udaiveer Singh, SC candidate) was promoted w.e.f. 27.8.2001, the applicant had not completed even one year of service. In this way, applicant did not fulfil the minimum eligibility condition of two years at the relevant time. The learned counsel has strived hard that respondents could be given a direction to relax the eligibility condition in his case. We are clear in our mind that giving certain relaxation in the matter of appointments is the discretion of the executives and even if respondents thought it fit to give him relaxation, it could be given only up to a period of one year and had he been given relaxation of one year, still applicant would not have been eligible for consideration since he had not completed even one year. Such direction cannot be given by a Court of law.

8. The learned counsel for the applicant has placed reliance on the decision of Hon'ble Supreme Court in case of Superintending Engineer, Public Health, U.T. Chandigarh and

Ors. Versus Kuldeep Singh & Ors., reported in 1997 SCC (L&S) 1044, wherein, their Lordship considered the questions relating to carry forward of reserve vacancies and also held that it was the constitutional duty of the public servant to implement the rules relating to reservation. He has also cited another decision of Andhra Pradesh High Court in case of R. Nageswara Rao Vs. Union of India reported in 2001 (3) ATJ 374, wherein, the question involved was relating to de-reservation of reserved vacation. No such question is involved in the instant case and, therefore, these decisions are of no help to the applicant and do not support any of the contentions raised.

9. The inescapable conclusion is that applicant has absolutely no case and the very O.A. is misconceived. There is no cause of action which could have been said to have been arisen to the applicant and the question of any illegality or impropriety by the respondents in issuance of impugned order, does not arise.

10. In the premises, the O.A. is devoid of any merit and substance. The same stands summarily dismissed at the admission stage itself.

9 P
(G.R.Patwardhan)
Adm.Member

J.K. Kaushik
(J.K.Kaushik)
Judl.Member

My Stander design
R. 1 to R. 4
Malts Anna sent to
Vigorels 335
to 338
d. 10-11-03

J. 10/11/03
S. 10/11/03

with 50

AD 10/11/03

R. 1
S. 10/11/03

Part II and III destroyed
in my presence on
under the supervision of
section officer (J) as per
order dated.....,

Section officer (Record)