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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 130/2003

Date of decision: 28.04.2004

CORAM:

Hon'ble Mr. J. K. Kaushik, Judicial Member

Hon'ble Mr. M.K. MISRA, Administrative Member

Asu Ram Choudhary s/o Shri Nimbha Ram Choudhary, aged 23 years, r/o Near Railway Colony, Luni Dist. Jodhpur. At present Sr. Booking Clerk, Pali Marwar, North-Western Railway.

...Applicant

Mr. Harish Purohit, Adv. Brief Holder for
Mr. Govind Mathur, counsel for the applicant

V e r s u s

- (1) The Union of India through the General Manager, North-Western Railway, Jaipur.
- (2) The Divisional Rail Manager, North-Western Railway, Jodhpur Division, Jodhpur.
- (3) The Divisional Personnel Officer, North-Western Railway, Jodhpur Division, Jodhpur.

...Respondents.

Mr. Salil Trivedi, counsel for the respondents

ORDER

PER J.K. KAUSHIK, JUDICIAL MEMBER

Shri Asu Ram Choudhary has filed this Original Application for assailing the order dated 24th May 2003 (Annexure A/1) vide which the name of the applicant has been deleted from the panel which was prepared for the post of Good Guard Grade 4500-7000 (RSRP). He has further prayed that the said order may be

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quashed and the applicant's position be restored and he may be given appointment on the post of Goods Guard.

2. The case was listed for admission. Keeping in view the urgency of the case, the same was taken up for final disposal at the stage of admission. We heard the learned counsel for the parties and have carefully perused the records of this case.

3. The factual scenario of this case is at a very narrow compass. The admitted relevant facts of the case are that applicant while working on the post of Booking Clerk applied for selection to the post of Good Guard in pursuance with the notification dated 16.05.2001 (Annexure A/2). The notification contains a condition that one must have completed three years of regular service as on 30.04.2001. The applicant was initially appointed as a Booking Clerk on 06.08.1998 and thereafter he was sent for training which has completed on 08.01.1999. He did not complete the requisite period of service which was one of the basic eligibility condition for appearing in the examination. The applicant was allowed to undertake the examination which consisted of written test as well as viva voce test and he was successfully empanelled for the same. He was also deputed for training which was for a period of 45 days.

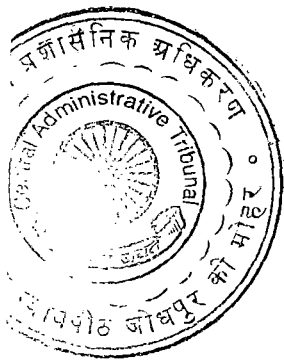
4. The further case is that while the applicant was undertaking the training for the said post, just two days prior to



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the date of completion of the training an order dated 24.05.2003 (Annexure A/1) came to be passed by which his name has been deleted from the panel and his training was terminated on the ground that he was not eligible for appearing in the selection itself since he did not complete the three years service on the last day of submission of application. The learned counsel for the applicant has strived hard and has endeavoured to persuade us that there was no mis-representation from applicant's side who gave the complete details regarding his service particulars to the respondents. He also has submitted that the applicant was allowed to undertake the test, empanelled, and sent for the training and in this way he has changed his position. Thus the respondents cannot now turn about and find fault with the applicant. The cancellation of the empanelment of the applicant cannot be sustained. Otherwise also on the date when the written test was conducted the applicant incidentally completed the three years service also. Therefore, on equity grounds, the applicants may be allowed to complete the training and also given posting to the post of Good Guard.



5. On the contrary, the learned counsel for the respondents vociferously contended that the applicant cannot take advantage on the wrong committed by the respondents. He has also submitted that there is no doubt that there was mistake on the part of the Clerk who was dealing with the matter and the respondents have already taken action against the dealing clerk

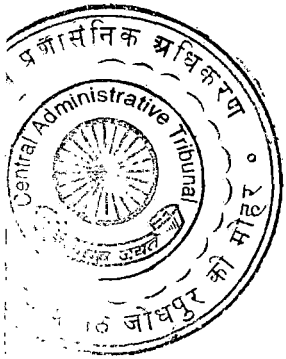
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for the mistake he committed. But that would not give a premium to the applicant and the applicant cannot be treated as selected for the post of Goods Drivers since he lacked the basic eligibility conditions. He has also submitted that the respondents with an abandon caution issued a notice to the applicant prior to the terminating the training period as well as the cancellation of deletion of name from the panel. The applicant admitted the position that there was a mistake and simultaneously asked for certain changes in the rules. It has also been submitted that this Hon'ble Tribunal is to regulate its business as per the rules in force and no relief on account of equity can be granted. He has also submitted that if any relief is given to the applicant and his case is entertained that would have a far reaching effect and certain candidates would have a cause of complaint since they would also become eligible and that would itself tantamount to infraction to the equity clause.



6. We have considered the rival submissions made on behalf of both the parties. We are constrained to observe that the applicant is a well educated person and very well knew the eligibility conditions which incidentally were in Hindi language very first sentence of the notification itself contains that the eligibility conditions would be three years service before appearing in the examination. We failed to understand as to what inspired the applicant to apply for the post once he was basically not eligible. We have also certain doubts as regards

the dealing officials and the possibility of some concerted efforts cannot be ruled out as to how it escaped from the said dealing clerk who is supposed to be expert person and as to how the applicant despite not being eligible was permitted to undertake the examination. We are of the view that the submissions made by the learned counsel for the respondents that the illegality cannot be perpetuated otherwise also we are of the considered opinion that any appointment which is de hors of the rules cannot have any existence and since the foundation of the very claim of the applicant is laid on a weak base, the complete action thereafter may be aptly termed as void which does not have any illegality existence. It is also equally true that there is no estoppel against the state especially when the applicant himself is responsible in the matter. He should rather thank to himself for the episode instead of blaming the respondents. No benefit can be extended to the applicant in this Original Application.



7. In the result the Original Application sans merits and the same fails and stands dismissed, accordingly; however, without any order as to costs.


(M.K. Misra)
Administrative Member


(J.K. Kaushik)
Judicial Member