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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 139/2003

Date of Decision : this the 25th day of November, 2003.

Present

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

Govind Ram S/o Ramdhan,
By caste Balai (Schedule Caste),
Aged about 43 years,
R/o C/O Mohd. Safiq, H.No. 50,
Agar Chand Fateh Chand Colony,
Near Old Loco Jodhpur (Rajasthan).

Presently working on the post of Safaiwala in Rly. Workshop in
Shop No. 22 under Dy. CME, NWR, Jodhpur (Raj.)

Mr. S.K. Malik, counsel for the applicant.



.....Applicant

versus

1. Union of India through the General Manager,
North Western Railway, Jaipur (Rajasthan).
2. Deputy Chief Mechanical Engineer (Dy. C.M.E.)
(Workshop), North Western Railway, Jodhpur
(Rajasthan).
3. Assistant Personnel Officer (Workshop),
North Western Railway, Jodhpur (Rajasthan).

Mr. Salil Trivedi, counsel for the respondents.

.....Respondents.

ORDER**BY J.K. KAUSHIK:**

Shri Govind Ram has filed this Original Application assailing the impugned order dated 29.05.2003 at Annexure A/1 amongst other relief.

2. We have heard the learned counsel for the parties and perused the records of this case.

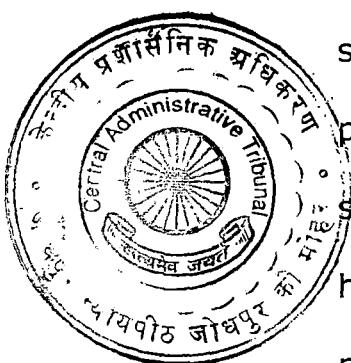
3. The case has been taken up for final disposal at the stage of admission with the consent of the parties. A very short controversy is involved in this case. The applicant belongs to S.C. reserved category. There was a selection organised for the post of Clerk in the pay scale of 3050-4590 against the 40% promotion quota. The applicant and seven others were allowed to undertake the written test. In the written test, it was only the applicant who qualified for appearing in the viva voce test. The applicant appeared for the viva voce test and the result was that he was declared as unsuitable. The applicant has filed this case for giving the benefit of reservation under best among failures rule and he approached this Tribunal since the said benefit was not extended to him. During the pendency of this case, the order dated 19.08.2003 at Annexure R/1 has been passed vide which the applicant has been extended the benefit of best among failure rule and he has been put on six months trial by promoting him to the post of Clerk on adhoc basis as per the rules in force.



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4. Both the learned counsel for the parties have reiterated their pleadings. The learned counsel for the applicant has submitted that once the applicant was subjected to viva voce test on 31st March 2003 and he was sole candidate but still the respondents have taken about two months time and they declared result on 29th May, 2003. Thereafter, instead of promoting him from the date of the result they have promoted him only on 19 August 2003 and abnormal time has been taken in this. The main stress has been that the applicant ought to have been promoted w.e.f. 29th May 2003 instead of 19th August 2003. On the contrary, the learned counsel for the respondents has submitted that there was no abnormal delay in finalising the selection and Government machinery takes sometime. In the present case no doubt the result was declared in May 2003, since the process has taken some time and the approval of higher authorities at HQrs is required in case of promoting the persons on adhoc basis under best amongst failure rule. Under the rule of best among failures there has been no fault on the part of the respondents and one does not have any right least to say indefeasible right to get promotion from the date even in normal cases where one has been empanelled. Whereas in the present case, applicant was declared unsuitable and after the administrative process the respondents have issued the order dated 19.08.2003 at Annexure R/1 granting him the due benefits as per the rules and therefore no infirmity in the action of the respondents can be found out. The learned counsel for the



respondents has also been submitted that after issuance of the letter dated 19.08.2003 (Annexure R/1) this very O.A. has become infructuous and no cause of action survives.

5. We have considered the rival contentions and we find ourselves unable to subscribe with the views of the learned counsel for the applicant that the applicant ought to have been promoted from the date the result was declared. We are also of the view and endorse the view submitted on behalf of the respondents that it takes sometime to issue the final orders especially in the special cases like the present one where the report of working of such individuals would be required to be sent to the General Manager. Such promotions are given with the approval of the General Manager. Therefore, we do not find any fault with the action of the respondents.

6. In view of the aforesaid discussion, we do not find any merit or substance in the instant case and the O.A. has also become infructuous, since the very due relief has been granted vide order dated 19.08.2003 at Annexure R/1. The Original Application stands disposed of accordingly, however, with no order as to costs.

GRP
(G.R.Patwardhan)
Adm.Member

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

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

Section officer (Record)