

19

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JODHPUR BENCH; JODHPUR**  
**Original Application No. 21/2007**  
*with Misc. Application No. 23/2007.*

**Date of decision: 15<sup>th</sup> December, 2010 -**

**CORAM: HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (J) &**  
**HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

1. Sukumar Dandapat s/o Sudhir Chandra Dandapat, R/o Rly. Qtr. No. 2114, New D.S. Colony, Jodhpur. Presently working as Private Secretary-II in the office of DRM, NW Rly, Jodhpur.
2. S.M.H. Abidi S/o Sh. S.Z.H. Abidi, R/o Kamla Nehru Nagar, Plot No. 4, Jodhpur. Presently working as Private Secretary-II in the O/o CWM, NW Rly, Jodhpur.
3. Kailash Chandra Somani S/o Sh. Kanyahalal Somani, R/o Rly Qtr. No. 21114, New D.S. Colony, Jodhpur. Presently working Private Secretary in the O/o DRM, NW Rly, Jodhpur.
4. S. Nair S/o Sh. Narayan Pillai, R/o House No. 2/938, Kudi Bhaktasani Jodhpur. Presently working as Private Secretary-II in the O/o DRM, NW Rly, Jodhpur.
5. Subhash Agarwal S/o Kundal Mal Agarwal, R/o 37-B, Section-7, New Power House Road, Jodhpur. Presently working as Private Assistant in the O/o DRM, Nw Rly, Jodhpur.

..... Applicants.

Rep. By Mr. Kuldeep Mathur, Counsel for the applicants.

**Versus**

1. The Union of India through the General Manager, North West Railway, Jaipur (Rajasthan).
2. Chief Personal Officer, North-West Railway, Jaipur.
3. Sh. Ramesh Kumar, PS-II Head Quarter, North-West Railway, Jaipur.
4. Sh. P.S. Chouhan, PS-II Head Quarter, North-West Railway, Jaipur.
5. Sh. Ved Pal Singh, PS-II Head Quarter, North-West Railway, Jaipur.

*[Signature]*

6. Sh. Hemant Kumar, PS-II Head Quarter, North-West Railway, Jaipur.
7. Sh. Pawan Kumar Sharma, PS-II Head Quarter, North-West Railway, Jaipur.
8. Sh. Shree Narayan Meena, PS-II Head Quarter, North-West Railway, Jaipur.

.....Respondents.

Rep. By Mr. Manoj Bhandari, Counsel for the respondents 1&2.

Mr. Salil Trivedi, Counsel for respondents 3,5,6 & 8

None for respondents 4 & 7

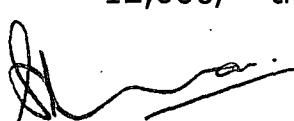
### **ORDER**

#### **Per Mr. Sudhir Kumar, Member (Administrative)**

The present Original Application has been filed by five applicants together with a prayer that their prayers be heard jointly, because the cause of action and the reliefs claimed are the same in the case of all five of them. The applicants are all Private Secretary Grade-II in the O/o North Western Railways, Jodhpur. They have arraigned names of six of their colleagues as private respondents 3 to 8, apart from the official respondents, who were all Private Secretaries Grade-II in the Head Quarter of North Western Railways, Jodhpur. The grievance of the applicants is against the provisional inter-se-seniority list of Private Secretaries Grade-II/Personal Assistant/ Confidential Assistant in the pay scale of Rs. 5000-8000/- published on 19.9.2009, the final inter-se-seniority list of the same published on 05.04.2006, the eligibility list for promotion to the Group-'B' post of Private Secretary Grade-I dated 05.04.2006, and the result of the written test conducted on the basis of that seniority list on 17.10.2006. They had also filed an application praying for condonation of delay in filing the present O.A.




2. The applicants claim that the official respondents issued a provisional seniority list on 19.5.2005, in which the names of the applicants appeared at Sl. No. 1,17,20,33 to 42, whereas the names of the six Private Respondents appeared at Sl. No. 22 to 27. Thereafter a joint seniority list was published by the respondents for the purpose of selection for promotion to the Group-B posts of Private Secretary Grade-I in the pay scale of Rs. 7500-12,500, and applicants claim that this provisional seniority list shows that date of entry of the Private Respondents in the Grade Rs. 5500-9000/- is 01.10.2004, and the date of their entry into the Grade Rs. 6500-10,500/- 03.08.2005. They are also aggrieved that the Private Respondents 3 to 8 were given promotional Grade of Rs. 6500-10,500/- before completion of the mandatory period of 2 years in the lower grade of Rs. 5500-9000/-, as required by the instructions at Sl. No. PS9186 dated 3.3.1987, issued vide the Railway Board letter No. E(N.G.)I-85/PMI-13(RRC) dated 19.2.1987. The applicants claimed that soon after issuance of this provisional seniority list, through Annexure A/3 dated 25.4.2005, the applicants had objected to the seniority list and requested the respondents to rectify their mistake before issuing the final seniority list. They have submitted that without taking action on this representation, and without giving the applicants any hearing in this regard, the official respondents issued the inter-se-seniority list in the Grade Rs. 5000-8000/- on 05.4.2006, determining the eligibility for selection to the Group-B posts of Private Secretary Grade-I in the pay scale of Rs. 7500-12,000/- through (Annexure A-4). On the same date itself the



1  
22

respondents issued another letter (Annexure A/5) through which selection for 15 posts, (12 General merit, 2 SC quota and 1 ST Quota) was issued and the eligible staff was asked to submit their readiness to appear for written examination to be held for this promotion. The written test was later on conducted on 02.09.2006 and the result of the written test was declared by the respondents on 17.10.2006. By enclosing a copy of the result at Annexure A/6 dated 17.10.2006, the applicants pointed out that all of them could not qualify the written test, but the Private Respondents, who had in the meanwhile been given interim promotion in the intermediate Grade of Rs. 6500-10,500/- w.e.f. 03.08.2005, by ignoring the Rules of 2 years residency period in the lower grade, had been declared successful. The applicants submitted a representation against this through Annexure A/7 dated 31.10.2006. Applicants are further aggrieved that the posts of Private Secretary Grade-I in the pay scale of Rs. 7500-12,000/- were available to the respondents in 2002, but the selection was initiated after a lapse of 4 years, and in that too, the Private Respondents, who had already got promotions by relaxing the requirement of 2 years residency period in the intermediate pay scale of Rs. 6500-10,500/- have been declared successful.

3. In response to their representation, dated 31.10.2006, the applicants were asked to appear before the Chief Personnel Officer N.W. Railways, Jodhpur, to submit their grievances which they did and prayed that the entire process of selection for promotion to the posts of Private Secretary Grade-I deserves to be cancelled just for



the reason that if the relaxation had not been provided in the case of Private Respondents, they would not have been able to secure place in the eligibility list. They prayed for fresh selection to be made again. However, the official respondents announced the date for viva voce for the selection to the posts, going ahead with the process of selection already initiated.

4. At this point, the applicants approached this Tribunal, and through order dated 16.1.2007 on the prayer for interim relief, this Tribunal ordered that the respondents may finalize the selection in question including grant of promotion etc. but the same shall be subject to final outcome of this O.A., and the factum of filing of this O.A. shall be annotated on each communication made hereinafter. Both the official and the Private Respondents put in their appearance through their Advocates thereafter, and the case was argued and reserved for orders.

5. The applicants allege that the Private Respondents have been given promotion to the intermediate Grade of Rs. 6500-10,500/- only so as to make them eligible to face the selection process for the higher post of Private Secretary Grade-I Group-B, and the written request of the applicants had been turned down just to help and support the Private Respondents. They express shock and surprise that persons working in Head Quarter Office, particularly those who had been given relaxation of eligibility criteria, had been declared successful. In the result, the applicants have sought the following reliefs:-

" i) The record of the case may kindly be called for;



- ii) The provisional inter-se-seniority list of PS-II/PA/CA Grade 5000-8000 published on 19.9.2005, final inter-se-seniority list of PS-II/PA/CA Grade 5000-8000/- published on 05.04.2006, eligibility list for promotion to the Group-B Post of PS-I dated 05.04.2006 and the result of the written test conducted on the basis of these seniority list dated 17.10.2006 deserves to be declared illegal, arbitrary by this Tribunal;
- iii) The letter/communication dated 05.01.2007 for conducting viva-voce on 17.1.2007 for selection to the post of PS-I may be declared illegal and arbitrary.
- iv) The respondents may be directed to hold fresh selection for the post of PS-I Grade 7500-12000/- by correcting the seniority list and eligibility list of PS-II/PA/CVA for this purpose.
- v) Any other relief, which this Tribunal deems fit and proper in favour of the applicant may be granted . The Original application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.
- vi) Costs of this application be ordered to be awarded in favour of the applicant.
- vii) The applicants may kindly be allowed to file and prosecute this O.A. jointly."

6. Respondents filed a detailed written statement on 1.11.2007. They prayed for the O.A. to be rejected since the cause of action



arose way back in 2005, and the O.A. has been filed only in the year 2007. They submitted that only one selection for the posts of PS-II intermediate pay scale of Rs. 6500-10500/- had been conducted, and 15 candidates were empanelled, out of which 6 candidates have completed 2 years of service in the lower Grade and they were promoted on 09.5.2005, while the other candidates were promoted after 1.8 years of service in the lower grade, by relaxing the 2 years' residency period requirement in the lower pay scale, with the approval of the competent authority.

7. The Official Respondents pointed out that the Private Respondents were promoted in the intermediate pay scale of Rs. 5500-9000/- w.e.f. 30.12.2003 through an order passed on 1.10.2004 (Annexure R/1 and R/2), which, they submitted, had not been challenged by the applicants. The respondents therefore submitted that the subsequent orders and seniority lists cannot be assailed because of the fact of prior promotion of the Private Respondents.

8. It was also submitted that through Annexure R/3 Railway Board circular dated 11.11.94, the powers to relax the requirement of 2 years' service for the purpose of promotion has been delegated to the General Managers of the Railways, and that in pursuance of that circular, and the powers conferred upon him under Rule 124 of the Indian Railway Establishment Code Vol. I, the General Manager had relaxed the residency period in the lower pay scale, since there was acute shortage of Private Secretaries in the Zonal Offices. The Private Respondents were therefore given promotion in the pay scale



of Rs. 5500-9000/- w.e.f. 30.12.2003, but the applicants could not be promoted against the vacancies in the pay scale of Rs. 6500-10,500/- without any such empanelment. Since, the Private Respondents had completed less than 2 years, but more than 1 year of service, in the lower pay scale, they came within the zone of consideration by the General Manager exercising his powers to relax the condition of residency period.

9. The Official Respondents pointed out that there is cadre of 17 posts in the Private Secretary Grade-II in the scale of Rs. 6500-10,500/- in the Zonal offices, which are selection posts. For selection against these posts, a panel of 16 employees was issued on 31.1.2005, and out of these 16 empanelled employees, 6 had more than 2 years of service and they were immediately promoted/regularized in the month of April 2005. They submitted that all the objections raised by the applicants were considered before finalizing the inter-se-seniority list and before the final list was issued on 5.4.2006. They pointed out that after considering the grievances raised by the applicants through their letter dated 31.10.2006, a proper reply was given to the applicants vide Head Quarter office letter dated 05.01.2007, Annexure (R/4), which the applicants have not pointed out in their O.A., by making a misstatement of material fact. They further pointed out that it was wrong to contend that relaxation could not have been ~~provided~~ <sup>provided</sup> to the Private Respondents or that any illegality or irregularity had been committed in preparing the seniority list in accordance with law. They further submitted that the applicants cannot now challenge the



selection which has been held in accordance with law and in which they appeared, but did not pass. They further pointed out that the Private Respondents had also appeared in the written examination, and they qualified, and therefore the contention of the applicants in this regard is not sustainable. They therefore prayed that the interim relief already granted by this Tribunal on 16.1.2007 may be vacated and the O.A. be dismissed with exemplary costs.

10. The Private Respondents chose not to file a reply to the O.A.

11. The applicants filed a rejoinder. They controverted the stand of the official respondents that the private respondents had been promoted in the intermediate pay scale of Rs. 5500-9000/- w.e.f. 30.12.2003, and stated that instructions dated 9.9.1998 of the Railway Board clearly restrict adhoc promotion on the non selection posts and that the promotion order dated 30.12.2003 ( R/1) clearly states that the seniority and other benefits would not be granted against such adhoc promotion, as the adhoc promotion had been made strictly for 90 days. It was only through later order dated 1.10.2004 (Annexure R/2) that the private respondents were regularized on the basis of which they were treated to have been promoted on adhoc basis vide order dated 30.12.2003. The applicants submitted that as a result seniority and other benefits could be granted in favour of the Private Respondents only w.e.f. 1.10.2004, the date of Annexure R/2 and not from 30.12.2003, the date of issuance of (Annexure R/1). The applicant, therefore, submitted that the relaxation granted by the official respondents in favour of the Private Respondents was erroneous, and bad in the



eyes of law. The applicants further pointed out that the relaxation provided by the respondents in favour of the Private Respondents clearly states that there were 14 posts of Private Secretary Grade-I, Group-B in the pay scale of Rs. 7500-12,000/- for which the required number of employees working in the Grade of Rs. 6500-10,500/- were not available, while the foot note itself clearly states that there were 19 employees working on the post of Private Secretary Grade-II in the pay scale of Rs. 6500-10,500/-. They further submitted that the duties in the pay scales of Rs. 5500-9000/- and Rs. 6500-10,500/- are same, and therefore no circumstances or exigencies arise for which the Private Respondents could have been awarded relaxation by the official respondents. They submitted that the Private Respondents have been illegally favoured by the official respondents, as on the one hand the relaxation has been granted to them in spite of not fulfilling the residency period in the lower pay scale, and on the other hand seniority and other notional benefits have also been granted to them, for their appearing at the test in relaxation of the prescribed period of 2 years' residency under the IREM para 327 General (5) produced by the respondents as (Annexure R/3). They therefore prayed that for unknown reasons the Private Respondents have been favoured by the department, and the seniority list prepared by the respondent department suffers from grave errors, and the rights of the applicants have been prejudiced.

12. During the course of arguments the learned counsel for the applicants and the learned counsel for the respondents argued along the lines of O.A. and rejoinder, and the counter written statement



respectively. In support of their contentions the learned counsel for the respondents filed copies of following cases and sought the attention to the relevant paragraphs of those Judgments which ostensibly support their case.

1. 1977(2) SLR Page 289 (Para 5)
2. 1996 (8) SCC Page 762 (Para 14)
3. 2001 (6) SCC Page 380
4. 1978(1) SCC Page 158 (Para 7 &8)
5. 2005 (5) SCC Page 181
6. AIR 1999 SC Page 3837

13. After going into the details of the case before us, it is relevant to go through some facts related to the preparation of the inter-se-seniority list notified on 19.1.2005 through the impugned notification (Annexure A/1) extracted in brief as follows:-

	Name (S/Sh)	Date of Entry in 5000-8000	Date of Entry in 5500-9000	Date of Entry in 6500-10,500
1.	Sukumar Dandpath	17.2.82	1.1.84	14.8.87
2.	S.M.H Abidi	1.12.86	10.10.92	29.6.2005
3.	Kailash Somani	13.12.88	30.11.99	01.08.2005
4.	Ramesh Kumar	14.08.87	01.10.2004	03.08.2005
5.	P.S. Chauhan	11.09.90	01.10.2004	03.08.2005
6.	Ved Pal Singh	05.05.95	01.10.2004	03.08.2005
7.	Hemant Kumar	11.09.97	01.10.2004	03.08.2005



8.	Pawan Kumar Sharma	11.09.97	01.10.2004	03.08.2005
9.	Srinarayan Meena	30.6.99	01.10.2004	03.08.2005
10.	S. Nair	13.12.88	30.11.1999	
11.	Subash Agarwal		13.12.1988	29.07.2003

14. The list dated 5.4.2006 at Annexure A/4 and the provisional eligibility list annexed with the counter dated 5.4.2006 (Annexure A/5) flow from this list only, and the relevant dates are the same and hence not been reproduced here. The eligibility for selection for the Group-B post notified through (Annexure A/5) dated 5.4.2006 has to be examined in the light of the orders passed by the respondents on 30.12.2003 and 01.10.2004 (through Annexures R/1 and R/3) which have been explained through the clarificatory reply dated 5.10.2007 (Annexure R/4).

15. It is seen that through Annexure R/1 dated 30.12.2003, through paragraphs 2,3 and 4 some persons had been given adhoc promotions from their existing pay scale to the next higher pay scale for a period of 90 days. Paragraph 2 related to the adhoc promotions of 4 candidates not connected with the present case who were in the pay scale of Rs. 5500-9000/- and who had been promoted for a period of 90 days to the pay scale of Rs. 6500-10,500/-. Through Paragraph 3 of that office order 9 persons including Private Respondent no.3,4,5,6,7,8 and 3 persons, namely Sh. Sanjay Kumar, Sh. Naryan Meena and Sh. Rajinder Bhadur Singh, who were then in the pay scale of Rs. 5000-8000/- had been promoted on



1  
3

adhoc basis for a period of 90 days to the intermediate Grade of Confidential Assistant in the pay scale of Rs.5500-9000/- The last paragraph 4 related to the adhoc promotions of 14 persons who were in the pay scale of Rs. 4000-6000/- to the pay scale of Rs. 5000-8000/-, but none of them are concerned with the present case. The present case therefore relates only to the persons who were promoted on adhoc basis through paragraph 3 of office order dated 30.12.2003.

16. From a plain reading of office order it is apparent that such adhoc promotions were made for a specific period of 90 days, which expired on 28<sup>th</sup> March, 2004, on completion of the stated period of 90 days. Neither the respondents have produced any order, nor have they made any averment in this regard that there was any other order between 28<sup>th</sup> of March, 2008 and 30<sup>th</sup> September, 2004, i.e. before the date Annexure R/2 was issued on 1.10.2004, by which the adhoc promotions of the respondents 3 to 8 had been continued for the further more than 6 months' period which elapsed thereafter from 29<sup>th</sup> March, 2004 to 30.9.2004.

17. As a result, it appears that the office order dated 1.10.2004, regularizing the adhoc promotion of 10 persons in the non selection pay scale of Rs. 5500-9000/- was irregular and illegal, inasmuch as their adhoc promotions itself had ceased to exist after the completion of 90 days' period from 30.12.2003, on 28<sup>th</sup> March, 2004. Therefore, it is clear that the order dated 1.10.2004, Annexure R/2, was irregular, and the Private Respondents 3 to 8 cannot be deemed to have entered the pay scale of Rs. 5500-9000/- with the back date



from 30.12.2003. At the most, this office order can be read to confer the promotion to the Respondents 3 to 8 and 4 others to the pay scale of Rs. 5500-9000/- in their substantive capacity w.e.f. 1.10.2004, and not from any date earlier to that. Therefore, the impugned notification dated 19.9.2005, which takes the date of entry of the respondents 3 to 8 in substantive capacity in the pay scale of Rs. 5500-9000/- to be 1.10.2004 is correct, but it is clear that no benefit can be provided to the private respondents by the official respondents in respect of their adhoc promotion order of 30.12.2003, which was never continued beyond 90 days, for the remaining period upto 30.9.2004. In this sense, the letter dated 05.1.2007 (Annexure R/4) is incorrect in as much as it takes the date of entry of the private respondents into the pay scale of Rs. 5500-9000/- to be 30.12.2003, rather than the correct date of 1.10.2004, as given in Annexure A/1, A/4 and A/5.

18. Counting the substantive promotion of the Private Respondents 3 to 8 from 01.10.2004, it is clear that on 03.08.2005 they had completed only 10 months of service in the substantive capacity in the pay scale of Rs. 5500-9000/-, and, therefore, the order treating them to have completed more than 1 year of service in the lower grade as on 03.08.2005, and to have become eligible for relaxation of the 2 years' residency period with the approval of the competent authority, is incorrect.

19. In the result, the O.A. succeeds in respect of the reliefs prayed for at paragraphs 8(ii) and 8(iii).

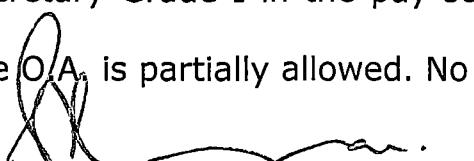


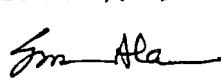
33

20. However, it is settled law that a person who has taken an examination of his volition without protesting, and fails in that, cannot later turn around and allege the examination to be irregular and prayed for it to be held afresh to provide to him another chance. This was laid down by the Hon'ble Supreme Court in the case of **Madan Lal Vs. State of Jammu & Kashmir 1995 SCC (L&S) 712; (1995) 3 SCC 486; AIR 1995 SC 1088** and also in the case **of Dhananjay Malik & Ors. Vs. State of Uttarakhand & Ors. AIR 2008 SC 1913**. In the present case, it is seen that the applicants have voluntarily appeared at the examination held on 02.09.2006, and only after they were declared unsuccessful in the result of the written test declared by the respondents on 17.10.2006 did they represent against the selection through their letter dated 31.10.2006 (Annexure A/7). Therefore, the applicants are not entitled to the relief as prayed by them in paragraph 8(iv), for any direction to the respondents to hold the selection for the post of Private Secretary Gr.-I afresh.

21. The respondents shall be at liberty to correct the seniority list in accordance with the above observations, and then decide the eligibility of the persons concerned who may come within the zone of consideration for promotion to the Group-B posts of Private Secretary Grade-I in the pay scale of Rs. 7500-12000/- accordingly.

The O.A. is partially allowed. No order as to costs. M.A. is disposed off.

  
**(SUDHIR KUMAR)**  
**MEMBER(A)**

  
**[JUSTICE S.M.M. ALAM]**  
**MEMBER (J)**

SK