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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.202/2012

Jodhpur this the 12th day of July, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Man Roop Singh Meena S/o Shri Bhana Ram ji, aged 35 years, R/o Q.No.3, Railway Colony, Jaisalmer at present posted as Rest House Chowkidar, Jaisalmer, Rajasthan.

.....Applicant

(Through Advocate Mr. Harish Mathur)

Versus

1. Union of India through General Manager, N.W. Railway, Jaipur, Rajasthan.
2. Sr. Divisional Engineer /Cont., N.W. Railway, Jodhpur.
3. Sr. Divisional, Personnel Officer, N.W. Railway, Jodhpur.
4. Senior Section Engineer (Works), N.W. Railway, Raikabag, Jodhpur.
5. Assistant Divisional Engineer, N.W. Railway, Jodhpur.

.....Respondents

(Through Advocate Mr. Girish Sankhala)

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985, by Shri Man Roop Singh Meena, by which he has challenged the legality of the order at Annexure-A/1, by which Senior Section Engineer (Works) informed the Assistant Divisional Engineer, North Western

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Railway, Jaisalmer that the form of the applicant for clerical category was forwarded inadvertently/ by mistake because he was posted as Chowkidar in Jaisalmer Rest House only as a stop-gap arrangement. The applicant by way of this application has sought the following reliefs:-

- "(i) That the respondents be directed to give promotion to the applicant on the selection post of Clerk-cum-Typist for which the applicant already completed the training after the selection.*
- (ii) That any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may kindly be given.*
- (iii) That cost of the application be awarded."*

2. The facts of the case in narrow compass as averred by the applicant are that the applicant is a post graduate scheduled tribe candidate appointed in respondent department in on 19th June, 2005 as a Gangman. The applicant while posted as Gangman received an order dated 29.06.2009 to join as Chowkidar in Jaisalmer Rest House and in compliance of that order the applicant joined his duties as Chowkidar at Jaisalmer Rest House. The applicant was transferred to the Jaisalmer Rest House only due to urgency of the department. The respondent department invited application forms for clerk-cum-typist with wide publicity as at Annexure-A/5 (11.04.2011) and also published the eligibility criteria for the post, and applicant applied for the same and he passed the written test as well as the type test and then the respondent department nominated the name of the applicant for the training purposes as at Annexure-A/9. After completion of training, the respondent department, instead of posting him as a Clerk-cum-

Typist, issued a letter vide Annexure-A/1 and has cancelled the candidature of the applicant for the post of clerk-cum-typist. Being aggrieved by the above order, the applicant has approached this Tribunal for the reliefs as narrated in para No.1 of this order.

3. The applicant in support of his application annexed 11 documents.

4. By way of reply the respondent department denied the claim of the applicant to be appointed on the post of Clerk-cum-Typist on the ground that the applicant has never been substantially appointed as Chowkidar, whereas he was appointed as Chowkidar at Jaisalmer Test House only as a stop-gap-arrangement due to the retirement of the Gopal Singh, Chowkidar. The applicant was appointed on the basis of Annexure-A/3 letter dated 29.05.2009 sent by the Assistant Divisional Engineer, North Western Railway, Jaisalmer addressed to the Senior Divisional Engineer, North Western Railway, Jodhpur and thus he has got no right to apply for the Clerk-cum-Typist post and simply on the basis of stop-gap-arrangement he cannot be said to have three years' experience of substantial post of Chowkidar. It has been further averred that his form was inadvertently dealt with and he was allowed in written as well as in the type test but soon after coming into knowledge of the respondent department the fact of ineligibility, the letter at Annexure-A/1 was issued. Therefore the action of the respondent department is legal and as per the provisions of law, and the

application lacks merit and accordingly the respondent department averred that no case for quashing Annexure-A/1 is made out.

4. By way of rejoinder, while reiterating the same facts, the applicant averred that the applicant has lost his promotion in the departmental channel of Gangman because had he been allowed to take the chance for promotion as a Keyman and then to PWS, he would have been promoted in that channel because six employees, who were junior to him, has got promoted to PWS and the applicant pleaded the name of all the six junior persons in the rejoinder. The respondent department never informed the applicant about the promotion to the Keyman and examination for PWS was conducted by the department. The respondents themselves admitted their own fault, therefore, this application must be allowed and the respondents be punished by imposing heavy costs.

5. Heard both the parties. Counsel for the applicant contended that the application of the applicant was duly forwarded by the competent authority and the applicant passed the written test as well as typing test and after due selection, he was nominated for training and applicant when the completed his training, he was informed by the competent authority vide Annexure-A/1 that his form was considered inadvertently because the applicant filled up his form as a Chowkidar and this mistake could not be pointed by the office, therefore, he was allowed in the examination. Counsel for the applicant further contended that the applicant cannot be now

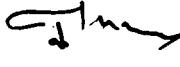
punished for no fault of his, therefore order at Annexure-A/1 requires to be quashed because it is against the provisions of Law.

6. Per contra, counsel for the respondents contended that once an illegality has been committed inadvertently by allowing the applicant to appear in the written test as well as in the typing test, the irregularity and illegality committed cannot be allowed to perpetuate, and when this fact of the inadvertent negligence came to the knowledge of the concerned authority, order at Annexure-A/1 has been issued. Counsel for the respondents also contended that so far as channel of promotion as a Keyman and PWS is concerned, the applicant could appear for the required examinations and after qualifications, he could be promoted as a Keyman and PWS, but no case for eligibility to appear in the Clerk-cum-Typist is made out by the applicant and he is not entitled for the same.

7. We have considered the rival contention of both the parties and also perused the record. It is an admitted fact that applicant was not holding the substantial post of Chowkidar Rest House because he was posted as Chowkidar at Rest House Jaisalmer as a stop-gap arrangement on account of retirement of Gopal Singh, Chowkidar on the request of Assistant Divisional Engineer, North Western Railway, Jaisalmer, who on his own volition requested the Senior Divisional Engineer, Jodhpur and suggested the name of the applicant (and also enclosed the applicant's application form), who

was working at that time in Gang No.23 as at Annexure-A/3. In our considered view when the applicant was not holding the substantial post of Chowkidar, he cannot be said to be eligible to appear in the written examination as well as in the typing test for the post of Clerk-cum-Typist. Therefore he is not entitled to get any relief and the order issued by the respondent department at Annexure-A/1 cannot be said to be illegal or irregular because the illegality inadvertently committed cannot be allowed to perpetuate, by the Tribunal. Accordingly, the OA lacks merit, and the same is dismissed. No order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member