

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 914/97
with
O.A. 915/97

THIS THE 1ST DAY OF APRIL, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDL)
HON'BLE MR. K.V. PRAHALADAN, MEMBER (ADMN.)

O.A. 914/97

1. Dulal Chandra Lodh,
son of late Chhaya Kanta Lodh,
aged about 49 years working as
Head Clerk in Sr. D.S.T.E./Office,
Sealdah, Eastern Railway, residing
at 28, Rabindra Path, PO Birati,
Calcutta-700051.
2. Nepal Chandra Pathak,
son of Ram Sundar Pathak,
aged about 48 years, working in
the office of Sr. Divisional Personnel
Officer, Sealdah, in Eastern Railway,
residing at P.O. Sonarpur Rly Colony,
Rly. Quarters No.87-B, District
24-Parganas (South). ... Applicants.

(By Advocates Mr. A.K. Basu and Ms. S. Banerjee)

Versus

1. Union of India, service through
the General Manager, Eastern Railway,
17, Netaji Subhas Road,
Calcutta-700001.
2. Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Calcutta-700001.
3. Divisional Railway Manager,
Eastern Railway, Sealdah.
4. Sr. Divisional Personnel Officer,
Eastern Railway, Sealdah. ... Respondents.

(By Advocate Ms. S. Roy)

O.A. 915/97

Swapan Kumar Bandopadhyay,
son of late K.C. Banerjee,
aged about 48 years working as
Head Clerk in Sr. D.S.T.E./Office,
Sealdah, Eastern Railway, residing at
282, P.K. Guha Road, Calcutta-700028.... Applicant.

(By Advocates Mr. A.K. Basu and Ms. S. Banerjee)



Versus

1. Union of India, service through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-1.
2. Chief Personnel Officer, Eastern Railway, 17, Netaji Subhas Road, Calcutta-700001.
3. Divisional Railway Manager, Eastern Railway, Sealdah.
4. Sr. Divisional Personnel Officer, Eastern Railway, Sealdah. ... Respondents.

(By Advocate Ms. S. Roy)

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (Judl).

Both these O.As are identical in nature, the reliefs claimed are also same, therefore, they are being dealt with by a common order.

2. O.A. 914/97 has been filed by two persons, namely, Shri Dulal Chandra Lodh and Shri Nepal Chandra Pathak while O.A. 915/97 has been filed by Shri Swapan Kumar Bandopadhyay. For the purpose of giving the facts, O.A. 914/97 is being taken up.

3. The admitted facts in this case are that Railway Board issued a letter dated 31.7.1981 on restructuring of cadre of the ministerial staff of Departments other than Personnel, wherein it was held that 10% of the vacancies of Senior Clerks in grade Rs.330-560 arising on 1.10.1980 consequent on implementation of the order dated 18.6.1981 should be filled up by direct recruitment of graduates to be made through the Railway Service Commission. The balance 10% of the vacancies of Senior Clerks arising on 1.10.1980 against direct recruitment quota, shall be filled by promotion



of Junior Clerks on the basis of seniority-cum-suitability as per the existing procedure. 13-1/3% of the vacancies of Senior Clerks in grade Rs.330-560 arising on 1.10.1980 consequent on implementation of the order dated 18.6.1981 will be filled from amongst the Graduate Clerks already serving in the lower grades in the manner indicated in Para 1 (ii) of the Ministry's letter dated 18.6.1981. Pursuant to this Notification, applicants appeared in the test. Though they cleared the written test but in the final panel declared on 13.4.1986, names of all the applicants were shown in the list of over-age candidates. Therefore, they were not selected.

4. Some of the candidates being aggrieved filed O.As before the Tribunal, namely Shri S.L. Guria (OA 177/87) and Shri Naba Kumar Ghosh (O.A.784/89). Both the O.A.s were decided on 20.4.1988 and 20.7.1990 wherein the cut off date of 30.11.1983 was held to be bad in law. Respondents were, therefore, directed to treat the cut off date as 1.10.1980. Applicants also gave their representations but since no reply was given to them, they had no other option but to file the present O.A.

5. Counsel for the applicants submitted that since this matter has been decided right upto Hon'ble Supreme Court and in one of the judgments, this Tribunal had held that the benefit should not only be given to the applicants in the said O.A. but to all similarly situated persons, The same benefit should be given to the applicants as well. As such, they are entitled to the following reliefs:



- "(a) To include the names of the applicants in the panel of serving Gr.II Clerk for promotion to Gr.I, Clerk since 19.1.1985 when other Gr.II clerks junior to them were promoted.
- (b) To issue necessary orders so that arrears due to the applicants as a result of such promotion from 19.1.1985 be paid at an early date.
- (c) To allow any other relief or reliefs which the applicants are found entitled in loco and equity.
- (d) Leave may be granted to file the petition jointly as they have the common interest and same relief sought for under Rule 4 (5) (a) of CAT (Procedure) Rule 1987".

Counsel for the applicants also relied on Railway Board's Circular dated 7.2.1986 to contend that subsequently the Railway Board also decided to delete the condition of bar of age. Therefore, they are entitled to get the promotion.

6. Respondents on the other hand have submitted that Railway Board vide their letter dated 18.6.1981 decided to fill up 13-1/3% of the total posts of Sr. Clerk in scale Rs.330-560 from amongst the Graduate clerks already serving in the lower grade after allowing them the age relaxation already in force, through a process of competitive exam. to be conducted by RSC and the orders will take effect from 1.10.1980 but no arrears can be given. Accordingly, divisions/workshops were advised vide CPO's letter dated 18.11.1983 to send the list of serving graduate clerk Gr.II to RSC/Patna for processing their selection and submission of panels. The cut off date for




determining their upper age limit was not indicated therein. Since the RSC asked for application on 30.11.1983, it was later intimated by letter dated 29.10.1984 that the date should be reckoned as on 30.11.1983 for fixation of upper age limit.

7. On a reference from RSC/Patna, Railway Board vide their letter dated 13.11.1985 to the Chairman/RRB, Patna clarified that concession available in para 114 (iv) of IREM will also be admissible i.e. relaxation upto 3 years in case of recruitment in initial category and upto 5 years for appointment in intermediate category. Accordingly, RRB/Patna sent a revised panel dated 13.4.1985 for 518 candidates allowing age relaxation as on 30.11.1983 as per Railway Board's letter dated 13.11.1985 and sl. No.8939. RRB/Patna also annexed a list of 154 candidates who are otherwise eligible but not included due to over age as on 30.11.1983.

8. The matter was challenged by some of the over age candidates, namely, Shri S.L. Guria and Shri Naba Kumar Ghosh and the Hon'ble Tribunal held that the cut off date 30.11.1983 cannot be allowed to stand and on the contrary observed that the cut off date should be calculated from 1.10.1980.

9. Since Shri Guria's age was below 30 years as on 1.10.1980, the Tribunal had directed his name to be included in the panel of serving graduate grade-II clerks for promotion to grade-I clerical post and deemed to have been promoted as grade-I clerk from the date when other grade-II clerks next junior to him were promoted. Accordingly, the said judgment was implemented vide order dated 29.6.1988. In the case of Naba Kumar Ghosh, the Tribunal observed that the benefit of judgment in OA 177/87




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should be given not only to the applicant but to all other similarly placed candidates.

10. However, even if the said benefit was extended to the applicants, they still ^{could not be} have ~~not~~ been included in the panel because the date of birth of S/Shri Lodh, Pathak and Bondopadhyaya is 1.9.48, 2.2.48 and 2.12.48, respectively and even if their age is calculated with reference to the cut off date, as directed by the Tribunal, namely, 1.10.1980, they are still age bar because their age comes to be 32 years 1 month, 32 years 8 months and 31 years 10 months, respectively as on 1.10.1980. Respondents have thus submitted that no case has been made out by the applicants in the present O.As. The same may accordingly be dismissed.

11. We have heard both the counsel and perused the pleadings as well. Applicants' whole case is based on the judgments given by this Tribunal in the cases of S.L. Guria and Naba Kumar Ghosh wherein Tribunal was pleased to hold that cut off date should be 1.10.1980 for computing the age of serving candidates. Respondents have admitted that benefit of those judgments could be extended to all similarly situated persons but they have explained that even if they are given the benefits of those judgments, applicants still do not come within the purview nor can they be included in the panel because they are still over age as their ages turn out to be 32 years and 31 years, respectively even after calculating their age by giving them the benefit of cut off date 1.10.1980.

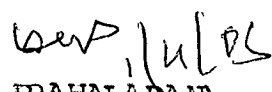


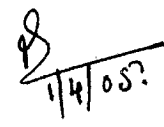
We are, therefore, satisfied that applicants in these two cases cannot state that they are entitled to include their names in the panel as declared by the respondents on 13.4.1986 on this account.

12. Counsel for the applicants/^{had}suggested that subsequently even the Railway Board vide its letter dated 29.1.1986, circulated on 7.2.1986, decided to do away with the clause of age bar for serving employees but persual of the letter dated 29.1.1986 shows that the condition regarding age was decided to be removed by the said letter in respect of future vacancies to be filled against the quota of 13-1/3% laid down in their letter dated 18.6.1981 and 31.7.1981 whereas in the instant case the panel dated 13.4.1986 was issued on the basis of notification dated 31.7.1981. Therefore, naturally it related to vacancies of an earlier period from 29.1.1986. Hence, even this Railway Board's circular cannot advance the case of applicants in any way. Of course, they would be entitled to the benefit of Railway Board's Circular dated 29.1.1986 in case they had appeared in subsequent selection in respect of vacancies against the quota of 13-1/3%, as laid down in the letter dated 31.7.1981.

13. In view of the above discussion, both these O.As are accordingly dismissed. No order as to costs.

14. Let a copy of this order be kept in both the files.


(K.V. PRAHALADAN)
Member (A)


(MRS. MEERA CHHIBBER)
Member (J)

'SRD'