

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 230/89
~~KAxxNo.~~

199

DATE OF DECISION 17.7.1990

D. Raghoothaman Applicant (s)

M/s MP Krishnan Nair Advocate for the Applicant (s)
Ms Rajeswari Krishnan & PKSivadasan Nair
Versus

G.M., Southern Railway, Madras Respondent (s)
and 3 others

Mrs Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Shri AV Haridasan, Judicial Member)

The prayer in this application filed by the applicant who is a Class IV employee under the respondents is that a writ of mandamus or any other appropriate writ declaring that he is entitled to be promoted as Clerk with retrospective effect at least from 1973 may be issued. Shomof details which are not necessary for the disposal of the application, the material averments contained in the applicant can be ~~stated~~ stated as follows.

2. The applicant was appointed as Khalasi in the P.W.I. office, Quilon in the year 1969. As per order No.V/W/504/C1.IV dated 17.12.1979 he was transferred to the Divisional

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Office, Trivandrum. Though he was recruited as Khalasi, he has been doing clerical work all along and he is now working as Gangman. When more than 30 literate Gangman like the applicant who were juniors to him were doing Clerical work, the applicant was singled out and asked ^{and} to go/work in the line as Gangaman. Challenging this transfer, the applicant filed OA-575/86. This Tribunal allowed the application and quashed the above order of transfer. The applicant had submitted various other claims before the authorities but they did not consider them. The third respondent in order to harass and victimise the applicant, issued an order of transfer^{ing} the applicant from the present post where he is working to the PWI(TVC). So the applicant filed OA-251/88 against the above order dated 11.5.1988 on the ground that this order was in violation of the order of the Tribunal in OA-575/86. The main contention of the applicant was that he was transferred while his juniors were allowed to work in the Clerical post. But this application was dismissed by the Tribunal. This O.A. is filed without prejudice to the right of the applicant to ^{an appeal} file/against the above order. ~~XXXXXXXXXX~~ The applicant had filed OA-355/88 which was disposed of by this Tribunal with the following directions:

- "(a) based on the applicant's seniority with effect from September, 1982 if any Gangman under Respondents No.4 has been considered for promotion or promoted to higher post for which the applicant also was eligible, he should be considered for such promotion and if found fit, promoted notionally with effect from the date on which any of his juniors was so promoted;

- (b) If any of his juniors has been deployed while being under Respondent No.4 to higher post of Senior Gangman/Keyman/Gangmate without any trade test or selection process, the applicant also should be deployed on the same basis subject to his suitability and safety considerations. Even if he is not actually deployed to posts under Respondent No.4 carrying higher pay which any of his juniors has got without selection or without passing trade test, the applicant should with ~~no~~ prospective effect be paid the same salary as his juniors so long as any of his juniors continue to get such salary without test and selection. This is because the applicant should not suffer when as a literate Gangaman, he was being deployed by the respondents for discharging higher clerical duties without even payment of higher salary and other benefits"

In terms of the above order, the applicant submitted his joining report to the Divisional Railway Manager, Southern Railway, Trivandrum on 24.3.1989. The Senior Divisional Engineer directed the applicant to report to PWI, Trivandrum. The PWI, Trivandrum issued letter No.TVC/6/PWI dated 23.3.1989 addressed to Gangmate, TVC-II informing him to allow the applicant to work as a Gangman. The applicant had already passed the test conducted ^{promotion to the post of} for L.D.C. and he was called for a viva. Though the Viva was conducted on 26.9.1988, the respondent did not publish the result. It appears that the respondents deliberately withheld the result or has not given pass mark to him with malafide intention. The action of the respondents in not giving pass mark to the applicant in the viva is on account of the undue influence of the authorities. The scheme of the respondents is to send back the applicant to do the work of Gangman along with raw Gangmen even though he has been working ^{as a clerk} for the last 20 years. Since the applicant had been working for the last 20 years as a Clerk and as

he has passed the written test and has given proper answers to all the questions in the viva voce, the action of the respondents in not giving him a posting as Clerk is unsustainable. Therefore the applicant is entitled to be promoted as Clerk with retrospective effect atleast from 1973 onwards.

3. The application is resisted by the respondents. The averment in the application that the applicant has been doing Clerical work for the last 20 years is denied though it is admitted that he was assisting the Clerical staff in lifting heavy ~~ledgers~~ ^{outsized} registers etc. The claim of the applicant that he has passed the Clerical test and that he was not given pass mark in the viva voce with mala fide intention is absolutely false. It has been averred that the case of the applicant that the respondents have wantonly failed him in the viva voce is not true to fact. It is the case of the respondents that the ^{applicant} ~~he~~ was not promoted because he was not found qualified by the selection committee. The respondents have contended that the applicant has no legitimate grievance as he has not ^{made} ~~any~~ representation against his non-selection and since he has not challenged the selection of the other ^a qualified hands. Therefore the respondents pray that the application being devoid of any merit has to be dismissed.

arguments of the
4. We have heard the/learned counsel on either side and have also perused the documents carefully. As directed

us,
by/the learned counsel for the respondents produced for
our perusal the records relating to the selection from
Class-IV to Class-III in which the applicant took part,
including the tabulation sheet of marks awarded to the
candidates who appeared in the viva voce.

5. The case of the applicant that he is entitled to
be promoted as a Clerk with retrospective effect atleast
from the year 1973 onwards for the reason that he has been
doing Clerical work for the last 20 years has no basis.
This claim has been negatived by the Tribunal in the order
in OAK-251/88. In that application, the applicant had
sought for a declaration that he was entitled to get pay
and allowances of LDC with effect from 1979 onwards on
the ground that he has been working on clerical duties
from 1979 onwards. In the last paragraph of the order /
OA K-251/88 (Ext. R1)
been
it has/stated as follows:

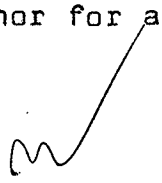
"As regards the claim of the applicant to be paid
as a clerk, he was not able to establish that he
had been actually performing only clerical duties
in the same manner as clerks in the regular esta-
blishment in the Divisional Office are performing.
Therefore we are not inclined to allow the second
prayer in the application."

While the claim of the applicant for pay and allowances
of L.D.C. on the ground that he has been working as a
Clerk from 1979 onwards has been rejected by the Tribunal
in OAK-251/88, the applicant cannot legitimately claim
that it should be declared that he is entitled to be
promoted as Clerk with retrospective effect from 1973

onwards. So for this reason alone the applicant is not entitled to the relief claimed in the application.

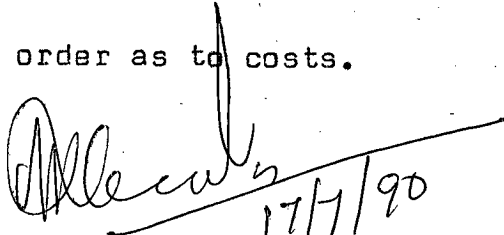
6. We have perused the file relating to the selection to Class III from Class IV employees in which the applicant also participated. As per the Departmental instructions in the matter, candidates have to secure $37\frac{1}{2}$ marks out of 75 in professional ability i.e. written test and viva voce put together and 50% marks in aggregate for being placed on the panel with a concession of 10% marks in the case of SC/ST candidates. From the tabulated sheet of the summary of marks, it is seen that the applicant has scored only 36 marks out of 75 in professional ability as against the qualifying marks of $37\frac{1}{2}$ and an aggregate of 51.66%. So though he got more than 50% marks in the aggregate, yet as he has failed to get $37\frac{1}{2}$ marks in professional ability he has to be treated as failed. The contention of the applicant that the respondents have wantonly failed him in the viva voce does not appear to be correct on a perusal of the selection proceedings. Therefore, on a careful scrutiny of the entire documents and pleadings, we are convinced that there is absolutely no basis for the claim of the applicant that he is entitled to be promoted as Clerk retrospectively from the year 1973 onwards nor for a promotion based on


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the 1988 examination.

7. In view of what is stated in the foregoing paragraph, we hold that the applicant has no legitimate grievance and therefore we dismiss the application without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

17.7.1990