

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
O.A. No. 275/2006

Dated of order : 26th March, 2010.

C O R A M

Hon'ble Mrs. Rekha Kumari, Member [Judicial]
Hon'ble Shri Sudhir Kumar, Member [Administrative]

1. Bijay Kumar Sharma son of Sri Baldeo Sharma, Clerk Gr. - II, Crane-Shop under C.W.M. Eastern Railway, Jamalpur, District – Munger [Bihar]
2. Arbind Kumar Singh, son of sri K.S. Singh, Clerk Grade II, B.F.S./ Yantrik Niwas, under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
3. Saranjit Singh, son of Sri Kartar Singh, C.G. II, Crane-Shopt under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
4. Jai Kumar Panjiyara, son of late Bodh Nirayan Panjiara, C.G. II, Wheelshop, under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
5. Mahraj Ashok Kumar, son of Anandi Maharaj, C.G. II, B.S.S. [Erimin], under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
6. Bijoy Chandra Das, son of Sri Sona Das, C.G. II D.S.S. Under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
7. Sanjay Kumar Sharma, son of late Sidheshwar Prasad, C.G. II, T.S.S., under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
8. Anthony Francis, son of alte Cycle Francis, C.G.II, Time Office, under C.W.M., Eastern Railway, Jamalpur, District – Munger [Bihar].
9. Uma Shankar, son of late Lakhan Lal Prasad, C.G. II, Central Typing Section, Eastern Railway, Jamalpur, District – Munger.
10. Arun Kumar Gupta, son of late Ram Prasad, c.G. II, I.R. Under RM.

C.W.M., Eastern Railway, Jamalpur, District -Munger.

11. Sunil Kumar son of Sri Mahendra Ministry, C.G. II, I.M., under C.W.M., Eastern Railway, Jamalpur, District – Munger.

12. Shiv Shankar Singh, son of late Jichhan Singh, C.G. II under Works Manager, Dhalai, O/o C.W.M., Eastern Railway, Jamalpur, District – Munger.

13. Gopal Tiwari son of late Indradeo Tiwari, C.G. II, Time Office, under C.W.M., Eastern Railway, Jamalpur, District – Munger.

14. Uma Kant Mandal, son of Shjri Bhuneshwar Mandal, C.G. II, Time Office, C.W.M., Eastern Railway, Jamalpur, District Munger.

15. Raj Kishore Chaurasia, son of late Dwarika Mandal, C.G. II, Time Office under C.W.M., Eastern Railway, Kolkata.

16. Ram Sewak Rai, son of late Bhola Roy, C.G. II, Time Office under C.W.M., Eastern Railway, Jamalpur, District – Munger.

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Applicants.

Vrs.

1. The Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.

2. The General Manager, Eastern Railway, 17, N.S.Road, Kolkata.

3. The G.M. [P], Eastern Railway, 17, N.S. Road, Kolkata.

4. The Chief Works Manager, Eastern Railway, Workshop, Jamalpur.

5. The Workshop Personnel Officer, Eastern Railway, Jamalpur.

6. The Dy. Chief Personnel Officer [W], Eastern Railway, Workship, Jamalpur.

7. The Assistant Workshop Officer, Eastern Railway Workshop, Jamalpur.

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Respondents. 81.

Counsel for the applicant : Shri M.P.Dixit.

Counsel for the respondents. : Shri Mukundjee, Id. SC

ORDER

Sudhir Kumar, Member [Administrative] :-

The sixteen applicants of this O.A. have come before this Tribunal along with a petition for joining together under Rule 4[5][a] of CAT [Procedure] Rules, 1987, and their prayer was allowed.

2. The grievance of the applicants is against the order dated 2.1.2006 read with the order dated 30.9.2004 withholding the publication of the final results by the respondents of the Examination held for selection to the posts of Senior Clerk/Clerk Grade – I. The applicants have stated that they had appeared in the Continuation Suitability test on 11.12.2003, but it appears that the respondents have considered them to be not eligible for such posts.

3. The respondents no. 5 to 7 had issued a notification for filling up 39 vacancies of Head Clerks and 48 vacancies of Clerks Grade I from among the respective feeder cadres of Clerks Gr. I and Clerks Grade II through the process of Trade Test. Such Trade Test was held and the final result was published on 17.5.2003 in which 18 Clerks Grade – I, and 27 Clerks Grade – II were found suitable for promotion. As the notified vacancies of Clerks Grade I were 48 in number, and 27 persons were found suitable, the claim of the applicants is that they were as on today concerned with and requested to be considered against the SL.

remaining 21 vacancies of Clerks Grade I which remained to be filled up from their feeder cadre of Clerks Grade II. On the request of the applicants, the Respondents No. 5 to 7 issued a fresh notification for holding the Repeat/Continuation Suitability Test on 14.11.2003, calling 21 Clerks/Grade-II

~~u.~~ including the applicant for considering their cases for promotion to Clerks Grade

-I. The applicants had hopes that after such Repeat/Continuation Trade Test

~~u.~~ conducted on 11.12.2003, they would be declared selected, and due to delay in

publication of results, they submitted their representations on 29.12.2003 and

30.12.2003 [Annexure-A/5 and Annexure-A/6 of the O.A.]. The applicants also

represented to the Hon'ble Railway Minister, who is not an appropriate authority

for the purpose. In response to this, they have received the impugned letter dated

2.1.2006 [Annexure-A/10], enclosing therewith a copy of the internal

correspondence of the Railways dated 30.9.2004 [Annexure-A/11]. The contention

of the applicant is that the respondents have erred in closing their case for

promotion through Annexure-A/11 dated 30.9.2004. The applicants, therefore,

prayed for setting aside the impugned order/letter dated 2.1.2006 [Annexure-

A/10] together with its enclosure dated 30.9.2004 [Annexure-A/11], and sought

directions to be given to the respondents to publish the result of the

Repeat/Continuation Suitability Test held on 11.12.2003.

4. In their reply the respondents admitted that when the initial written

examination was conducted on 17.5.2003 for 39 posts of Head Clerks and 48 ~~u.~~

posts of Clerk Grade -I, and only 18 persons were declared selected for the posts of Head Clerks and 27 for the posts of Clerks Grade I, a Continuation Suitability Test was held for the remaining unfilled vacancies. However, the respondents submitted that in the interregnum, due to restructuring brought out w.e.f. 1.11.2003, the sanctioned strength of the higher posts ~~was~~ enhanced while the ~~the~~ sanctioned strength of the lower grade of Clerks Grade I ~~was~~ reduced. There was ~~the~~ a reduction in the total sanctioned strength of Clerks Grade – I from 139 posts to 87 posts, and thereafter 10 posts ~~posts~~ of Clerk Grade-I were further surrendered under the man-power planning exercise, and as such only 177 posts of Clerks Grade – I survived, and there was no vacancy in the cadre of Clerks Grade – I as on the date the Continuation Suitability Test was conducted on 11.12.2003. This problem had not arisen in the case of first written examination conducted on 17.5.2003, which was before the restructuring as on 1.11.2003, and the surrender of the posts under man-power planning exercise thereafter. The respondents, therefore, prayed that since on the date of Continuation Suitability Test held mistakenly on 11.12.2003, the posts of Clerks Grade -I themselves stood surrendered, the applicants could not be considered for appointment against the balance remaining 21 posts of Clerks Grade – I. It was submitted by the respondents that as per Railway Board's circular dated 14.4.1971 circulated under CPO's Sl. No. 8056, in all such cases of Continuation Suitability Tests, the entire process has to be completed within six months from the date of the original test, ~~the~~.

and such Continuation Suitability Tests can be conducted till the requisite number of candidates were found suitable for filling the vacancies. Since the first test was held on 17.5.2003, the contention of the respondents is that on 17.11.2003, the time period allowed by the Railway Board had expired, and the Continuation Suitability Test held under mistaken notion on 11.12.2003 ought not to have been conducted. Hence, the result of the Continuation Suitability Test was not published. In the result, the respondents prayed that in the absence of any sanctioned post being available on the date of conduct of such Repeat/Continuation Suitability Test, the respondents were not obliged to declare the result of the Repeat/Continuation ~~Suitability~~ ^{Suitability} Eligibility Test.

5. In their rejoinder, the applicants stated that the contentions of the respondents are against the principles of promissory estoppel. The applicants also stated that as per settled law as laid down by the Constitution Bench of Hon'ble Supreme Court in M.S. Gill's case, reasons once assigned in the impugned order cannot be supplemented by filing affidavit/counter affidavit, and since in the entire impugned order dated 13.9.2004 [Annexure-11] not a single word has been mentioned about re-structuring, the respondents cannot now be allowed to take shelter behind such a new plea. They have also mentioned that in Jamalpur the restructuring was implemented on 29.3.2004, and since the Continuation Suitability Test was taken before that date, the application of the result of restructuring to their Continuation Suitability Test was incorrect. They also

pointed out that in the case of the COS and OS II, the original written test for the posts was conducted before affecting the restructuring, and the result of the same was not finalized by 1.11.2003, but the respondents subsequently published the final result on 20.11.2003, and the persons were promoted. They wanted to draw the analogy of that original written test to their cases of Repeat/Continuation Suitability Test. The applicants also prayed for the contentions raised by the respondents in the written statement to be rejected and for their result of the Repeat/Continuation Suitability Test to be declared.

6. In this case, it is necessary to first meet the very relevant argument raised by the applicants in their rejoinder. They have sought to compare their case of Repeat/Continuation Suitability Test with the original test conducted by the Railways in the case of Chief Office Superintendents and Office Superintendents Gr. II, in whose case the original written test was held on 20.5.2003 and 30.7.2003 [Supplementary] for Chief Office Superintendents, and on 25.5.2003 and 23.7.2003 [Supplementary] in the case of Office Superintendents Gr. II, in respect of both of which viva-voce test was held on 14.11.2003, and the result was declared on 20.11.2003 [Annexure-A/12]. Obviously the case of the applicants stands on a different footing from the case of the people covered under Annexure-A/12, who are not party to this proceedings, and whose case has been cited by the applicants only by way of example. In the case of COS and OS Gr. II, the main test and the supplementary test were conducted in May and July, 2003, and the SL.

results were declared through Annexure- A/12 on 20.11.2003 within six months of the process of selection having been started. Therefore, no irregularity can be found with Annexure-A/12 on the ground that the order was issued on 20.11.2003, since the restructuring ordered to be effected from 1.11.2003 had not been carried out till 29.3.2004, as submitted by the applicants themselves. Therefore, no benefit accrues to the applicants by citing Annexure-A/12 to support their case.

7. The applicants have cited the case of M.S. Gill to further buttress their argument that an additional plea cannot be taken later, which traverses beyond the reasons assigned in the impugned original order. They have cited M.S. Gill's case to assail the contentions of the respondents while writing the letter at Annexure-A/11 dated 30.9.2004. But it is observed that Annexure-A/11 dated 30.9.2004 is not an order communicated to the applicants. This is only an internal departmental correspondence addressed by the Chief Works Manager, Eastern Railway, Jamalpur, to the Chief Personnel Officer, Eastern Railway, Kolkata. In the internal departmental correspondence, it is quite natural for the contents of the correspondence to be limited only to the subject matter at hand, and such internal departmental correspondence cannot be and should not be expected to traverse and cover the whole legal gamut of the case. Hence the benefit of citing M.S. Gill's case by the applicants cannot be made available to them against internal departmental correspondence dated 30.9.2004 [Annexure-A/11]. Further, a letter from one official to another cannot be a complete history of all the facts and .

circumstances of the case, which is otherwise a requirement in the case of a reasoned and speaking order communicated by an authority to the applicants. Thus, the contention of the applicants that due to operation of M.S. Gill's case, internal official correspondence dated 30.9.2004 at Annexure-A/11 should be set aside, is not at all acceptable, and is rejected. Had this letter dated 30.9.2004 been a communication by way of reply to a request of the applicants, and if in that some facts of the case or some legal grounds had been left out, the Supreme Court's ruling in M.S. Gill's case would have hit the vires of that order. But that is not so in the instant case. The letter dated 30.9.2004 [Annexure-A/11] clearly states that a Continuation Suitability Test was conducted but the panel could not be approved as the Ministerial Staff Association started agitating against it. And, since the panel could not be approved within the stipulated period of six months, therefore, the entire process of the Continuation Suitability Test became null and void. This statement being made by the Chief Works Manager, Eastern Railway, Jamalpur, is only a statement of fact in an internal official correspondence, and cannot be assailed by the applicants through this O.A. What Annexure-A/10 has done is to communicate a copy of that letter to one of the applicants on 2.1.2006. By that date of 2.1.2006, further 15 months had elapsed, and, by virtue of operation of the Railway Board Circular dated 7.11.1972 serial No.8056, the panel formed after such Continuation Suitability Test had become completely non functional. Q

8. The applicants cannot also be allowed to assail the restructuring ordered to be effected w.e.f. 1.11.2003, which could actually be given effect to at Jamalpur w.e.f. 29.3.2004. The Hon'ble Supreme Court of India has in the Reserve Bank of India vs. N. C. Paliwal and others, [1976]4 Supreme Court Cases 838 held - as follows regarding integration of services :- "Article 16 and Article 14 of the Constitution of India do not forbid the creation of different cadres for government service. And if that be so, equally these two articles cannot stand in the way of the State integrating different cadres into one cadre". The Hon'ble Supreme Court further held that such matters are the matters of policy, which do not attract the applicability of the equality clause under Articles 14 and 16 of the Constitution of India. Citing this, the Hon'ble Supreme Court had relied upon its own judgment in Kishori Mohanlal Bakshi vs. Union of India, AIR 1962 SC 1139; 44 ITR 532.

M The Hon'ble Supreme Court had further laid down that only enquiry which the court can make is as to whether the rule laid down by the State is arbitrary and irrational, so that it results in inequality of opportunity amongst employees belonging to the same class. The Hon'ble Supreme Court had further mentioned that it is not competent to the court to strike down such rule on the ground that in its opinion another rule would have been better or more appropriate. The Hon'ble Supreme Court had further held in the same case that "whenever services are integrated, some hardship is bound to result. Reasonable anticipations may be belied". M

9. The above observations of the Hon'ble Supreme Court are quite apt to the facts and circumstances of this case also. In this case firstly the process of repeat or Continuation Suitability Test could not actually be completed within the prescribed time limit of six months, for one reason or the other. Annexure-A/11 mentions that it was due to protest by the Ministerial Staff Association against the process that had been undertaken. Be that as it may, the prescribed time limit of six months was crossed due to unavoidable reasons, and therefore, the respondent authorities are not prohibited from sticking ^{to} ~~to~~ their general operating ru. rules in this regard, and, as observed by the Hon'ble Supreme Court in the above cited judgment, it is not open to this Tribunal to strike down such a contention of the applicant by holding that another rule should have been framed or applied, whereby the time already taken due to delay on account of protest from the Ministerial Staff Association etc. should be excluded. That is not within the competence of this Tribunal in view of the clear cut findings of the Hon'ble Supreme Court cited above.

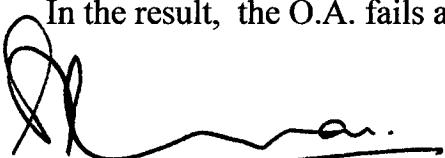
10. Also, in this case, the applicants had a chance to compete and to go ahead in the month of May, 2003, itself at the time of the first Suitability Test. They failed to qualify in the first Suitability Test, and later appeared at the Repeat/Continuation Suitability Test, which was conducted by the department, but the result thereof could not be declared within the stipulated six months' time period. This does not appear to be a case hit by the Articles 14 and 16 of the ru.

Constitution of India, as the applicants did not have a good case for pleading equality in the month of May , 2003, when they failed to qualify, and would not have had a good case even against those who had, in the meanwhile, become ~~eligible~~ eligible for similarly competing for similar fresh suitability test, by time the Repeat/Continuation Suitability Test was undertaken in November, 2003, in respect of the failed candidates alone.

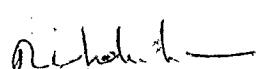
11. Also, as clearly laid down by the Hon'ble Supreme Court in the above cited judgment, it is open to the authorities to restructure their cadres , merge them, and divide them, as per administrative exigencies of work. In view of this, any decision taken by the respondent authorities pursuant to a conscious decision of restructuring, and subsequently for surrender of 10 per cent of the total posts, which resulted in reduction of number of eligible posts, cannot be set aside on any ground whatsoever.

12. Further, since posts were not at all available for the applicants to be promoted due to restructuring and surrender of 10 per cent of the posts, if the respondents have taken a conscious decision not to approve the result of the Repeat/Continuation Suitability Test, within the time limit of six months as prescribed, the action of the respondents cannot be faulted on that count also.

13. In the result, the O.A. fails and is rejected. No order as to costs.



[Sudhir Kumar]M[A]



[Rekha Kumari]M[J]

mps.