

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 62/2000

Date of Decision : 21.8.2003

Mrs.Prema K.Joseph _____ Applicant

Shri R.C.Kotiankar _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri V.S.Masurkar _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri Justice S.R.Singh, Vice Chairman

The Hon'ble Shri S.K.Agrawal, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other NO. Benches of the Tribunal ?
- (iii) Library

(S.R.SINGH)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.62/2000

Thursday this the 21st day of August, 2003.

CORAM : Hon'ble Shri Justice S.R.Singh, Vice Chairman

Hon'ble Shri S.K.Agrawal, Member (A)

Mrs.Prema K.Joseph,
Enquiry-cum-Reservation Clerk,
Western Railway,
Andheri Station,
Mumbai.

...Applicant

By Advocate Shri R.C.Kotiankar

vs.

1. Union of India
through Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.

2. Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.

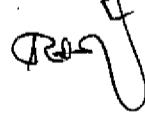
3. General Manager,
Western Railway,
Churchgate,
Mumbai.

4. Divisional Railway Manager,
Western Railway,
Mumbai Central,
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-



O R D E R

{Per : Shri Justice S.R.Singh, Vice Chairman}

Heard counsel for the parties and perused the pleadings.

2. The applicant herein was initially engaged as Sub-Leave Booking Reservation Clerk on daily wages during the year 1982-83. She was subsequently granted temporary status on completion of 120 days work from 1.5.1983. It appears that on the basis of screening an order was issued for appointment of the applicant and other Substitute Enquiry-cum-Reservation Clerks as Assistant Commercial Clerks in the scale of Rs.975-1540 from 1.7.1992 (Ex.R-1). Original Application No.757/88 was filed by such Assistant Commercial Clerks and it was directed that Substitute Enquiry-cum-Reservation Clerk who had worked as ECRC would get pay of ECRC scale Rs.1200-2040 till they worked as Enquiry-cum-Reservation Clerks. The Tribunal rejected the other claim holding that the applicants therein had no right to claim regularisation as Enquiry-cum-Reservation Clerk by counting their substitute service. It appears that pursuant to direction given by the Tribunal in OA.No.247/93 Ms.Geeta V.Balige & Ors. vs. Western Railway and 3 Ors. decided on 9.7.1993, a test was held for judging the suitability of such employees for the post of Enquiry -cum-Reservation Clerk. The operative portion of the order passed by the Tribunal in the aforesaid case is quoted below for ready reference :-

Ques

"In the light of the above and in the facts and circumstances of the case, since the applicants are made to work as ECRCs though they are getting the salary of ACC, considering their past service in the post of ECRC and the length of service rendered by them, we hereby direct the respondents to consider the applicants for selection by promotion for the posts of ECRCs from the date they complete 3 years service after 1.7.1992 subject to their having passed the test and on this footing they may be appointed to the post of ECRCs. This process may be done within a period of three months from the date of receipt of a copy of this order."

3. Pursuant to the above direction, a test was held on 28.9.1993 in which the applicant also participated. She succeeded in the written test but failed in the interview. Those Sub. ECRC who succeeded in the written test were called for Viva-voce test which was held on 3/24.10.1994. On completion of written test and viva-voce test, a provisional panel of ECRC in scale Rs.1200-2040 was declared and notified vide letter No.E/C/1025/191/A dated 5.9.1995. The applicant's name did not find place in the notified panel since she failed in the viva-voce test. It may be pertinent to observe that appointment to the post of Enquiry-cum-Reservation Clerk is governed by Rule 129 of the Indian Railway Establishment Manual Vol.I Revised Edition 1989 which reads as under :-

"129. (1) The vacancies in the category of Enquiry-cum-Reservation Clerks (ECRC) in scale Rs.1200-2040 will be filled as under : -
(i) 25% by direct recruitment through Railway Recruitment Board : and
(ii) 75% by promotion by selection from amongst Commercial Clerks, Ticket Collectors who have completed three years service and are suitable in respects for posting as ECRC involving direct contact with general public."

4. It is clear that the applicant was considered for regular appointment against 75% quota reserved for promotion by selection from amongst Commercial Clerks, Ticket Collectors who had completed three years service. Mere passing of written test was not sufficient to entitle the applicant to be empanelled as Enquiry-cum-Reservation Clerk.

5. The learned counsel for the applicant has, however, placed reliance on Railway Board Circular dated 7.2.1976, a copy of which has been annexed to the Original Application which contains the following decision taken by the Railway Board in their meeting held on 27.11.1975 :-

"2.2. Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

6. It has been submitted by the learned counsel appearing for the applicant that since the applicant had worked satisfactorily as a substitute Enquiry-cum-Reservation Clerk for quite some time, she ought not to have been declared unsuitable in the viva-voce test. The Govt. of India, Ministry of Railways vide their letter dated 9.8.1992, a copy of which has been filed along with Original Application at page 53, have clarified that the above instructions contained in the Board's letter dated 25.1.1976 was not meant to by-pass or supersede the normal rules contained in the Indian Railway Establishment Manual. Paragraph 2 of the said letter dated 9.8.1992 is quoted for ready reference as under :-

(Signature)

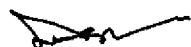
"2. It would appear that the instructions referred to above have led to the normal rules and procedure of selection as contained in the Indian Railway Establishment Manual and other cognate orders issued from time to time not being followed in some cases. With a view to ensuring that such departures do not take place, it is hereby clarified that the intention of the instructions conveyed in the Board's letter dated 25.1.1976 referred to above was not to by-pass or supersede in any manner the normal rules of selection contained in the Indian Railway Establishment Manual and other orders issued from time to time but only to serve as a broad guideline for the Departmental Promotion Committees and the authorities who are required to consider and approve employees for promotion. In any case, there was no intention to confer any right on employee officiating on adhoc basis in higher posts to be selected and included in the panels for these posts. You are requested to issue instructions to all concerned accordingly."

7. It is thus evident that the applicant was not entitled to claim any right on the basis of the Circular dated 7.2.1976. The applicant was given an opportunity to appear in the test and she did participate in the test but ultimately could not succeed in the viva voce test. In Paragraph 5 (13) the applicant herself has stated that she appeared for written test again on 2.11.1995 but this time she failed in the written test itself, and, therefore, the question of her calling for interview did not arise. In the circumstances, therefore, it is not possible to issue any directions to the respondents to appoint the applicant on the post of Enquiry-cum-Reservation Clerk, appointment to the post governed by the Rule 129 of the Indian Railway Establishment Manual.

(RJ)

8. Learned counsel for the applicant then placed reliance on certain judgements of the Supreme Court particularly the judgement in the case of Wali Ahmad vs. State of Bihar & Ors. - 1999 SCC (L&S) 734, none of which is directly on the point. Directions therein for regularisations were given in different context and not in the post of Enquiry-cum-Reservation Clerk, appointment to which is made in the manner prescribed in para 129 of the Indian Railway Establishment Manual.

9. In the result, the petition is dismissed. No order as to costs.



(S.K.AGRAWAL)

MEMBER (A)



(S.R.SINGH)

VICE CHAIRMAN

mrj.