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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 785 & 915/2001

THIS THE 26TH DAY OF MARCH, 2002

CORAM:

HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

O.A. NO. 785/2001

1. Smt. Margaret Abraham,
Sahyadri nagar,
Plot No.23, Igatpuri,
Dist: Nasik.
2. Anant Dadasaheb Shirole,
At: Shivaji Nagar,
Tal & PO Igatpuri,
Dist: Nasik.
3. Ms. Sunita Nagarkar,
Railway Quarter No.TYC-3,
S.N. Colony, At & Post: Lonavala,
Tal. Maval, Dist: Pune.
4. Prakash More,
C/o Sandeep Marne,
402, Omkar Appts,
Mahim, Mumbai-400 016.
5. P.N. Patil,
B/7, 2nd Floor, Ratnesh Appts,
CO-Operative Housing Society Limited,
Shivaji Road, Panvel,
Dist: Raigad.
6. Vishwas Kumbhar,
Railway Quarter No. TY-27
S.N. Colony, At & Post Lonavala,
Tal. Maval, Dist: Pune.
7. Ms. Mariaqmma Joseph,
A-203, "Sita" "A" Appts,
Michael Sizu Nagar,
Vasai (W) Dist: Thane,
8. Sudhakar Thavati,
527/20A, Chapsi Dharsi Chawl,
Sayani Road,
Mumbai-400 025.
9. Ms. Usha A. Redekar,
Gauri nandan Apartment
Room No.304, 3rd Floor,
Gupte Chowk, Juna Naka,
Kalyan (W).

10. Velangini Abraham,
Railway Quarter No.TY/JS/1/26
Central Railway Colony,
Dombivli (W) 421 202.
11. Ms. Rosy Thomas, Room No.17,
Building No.2 "A" Wing,
Neel Kanth Park,
Dombivli (W) 421 202.
12. Ms. Thilaga Sundaram,
A8/1:4, Sector 8-B,
CBD Belapur,
Navi Mumbai 400 614.
13. Vilas Shankar Jadhav,
Railway Quarter No. TY-68
S.N. Colony AT & Post: Lonavla,
Tal: Maval, Dist: Pune.
14. Shantaram Murlidhar,
Room No.3, Laximan Pavshe Chawl
Haribhau Pavshe Pada,
Kalyan (E), Dist: Thane. ... Applicants

All applicants are working as Junior Clerks
under Respondents.

By Advocate Shri S.V. Marne.

Versus.

1. General manager,
Central Railway,
Headquarters office,
Mumbai CST,
Mumbai-400 001.
2. Divisional Railway Manager,
Mumbai Division,
Central Railway, Mumbai CST,
Mumbai-400 001. .. Respondents

By Advocate Shri Suresh Kumar.

O.A. NO. 915/2001

Shri Radhakrishnan P. Pillai
working as Junior Clerk
in the office of Add. Divisional Engineer,
Central Railway, Panvel. ... Applicants

By Advocate Shri S.V. Marne.

Versus

1. The Union of India, through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST, Mumbai-400 001. ...3.

2. The Divisional Railway Manager,
Mumbai Division, Central Railway,
DRM's Office, Mumbai CST,
Mumbai-400 001. .. Respondents

By Advocate Shri Suresh Kumar.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

The applicants in OA No.785 and the applicant in OA No.915/2001 are similarly placed and are seeking the same relief and the issue involved is also common. The advocates are also same. Hence, we are proceeding to dispose of both the OAs by a common order.

2. The applicants are aggrieved by the order dated 29/30th October, 2001 whereby adhoc junior clerks including the applicants in the grade of Rs. 3050-4590 in engineering department of the Mumbai division of the Central Railway have been reverted to the post of Khalasi.

3. According to the applicants, they are working as Junior Clerks in the ministerial cadre of the engineering department under Respondent No.2 on adhoc basis. Applicants had appeared for selection for promotion to the post of Junior Clerk vide Notification dated 05.4.2001 and also got through the written test held on 26.5.2001 in pursuance of the aforesaid notification. They were waiting for the results of the

written test held, however, instead of declaring the result, by the impugned order dated 29.10.2001 it has been sought to revert the applicants. The applicants submit that the applicants had also passed written test earlier also, but could not be empanelled for want of vacancy.

4. The applicants have sought interim relief to restrain the respondents from operating and implementing the impugned orders pending final disposal of the OA and if required, to maintain statusquo ante and not to revert the applicants from the post of Junior Clerk i.e. Group-C to Group-D. It was not granted. However, applicants have obtained stay from the High Court. This interim order was not effective in respect of applicants No.5 and 10 as they had not appeared in the written test vide order dated 05.12.2001.

5. According to the applicants, there is no need to revert the applicants, because vacancies did exist otherwise the respondents would not have notified 16 vacancies of Junior Clerk as on 05.4.2001. They submit that the cadre strength of Chief Office Superintendent shows there are three vacancies plus four vacancies for the post of Office Superintendent Grade-II. 15 vacancies for the post of Head Clerk and 21 vacancies for the post of Senior Clerk. According to them the cadre strength of Junior Clerk is 100, out of which 50%

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is reserved for departmental promotee and 50% o be filled on the basis of recommendation of the Railway Recruitment Board through direct recruitment. 50 vacancies earmarked for direct recruit have not been filled in. similarly orders have been issued for promotion to the posts of Senior Clerk, Head Clerk, Office Superintendent Grade-II and Chief Office Superintendent besides 16 vacancies existed as per the notification dated 05.4.2001 for promotion to the post of Junior Clerk. The applicants have appeared in the written test held on 26.5.2001. Once the result of the written test are declared the applicants would get promoted as Junior Clerk. Therefore, as on date, there was no need to revert the applicants at all as 43 vacancies exist as indicated by the applicants. Further, 50 vacancies reserved for direct recruitment are lying vacant as no candidates have reported since past 10 years. Applicants submit that they have been working as Junior Clerks on adhoc basis since about last seven to 10 years and more, there is, therefore, no question of excess strength of Junior Clerks and the question of reverting the applicants is to be ruled out.

6. The applicants further submit that till now they have appeared for the written test on three occasions and have passed on all the occasions, whereas, some Junior Clerks, who have either failed in all the written test or passed only twice or less than twice,

have been continued as Junior Clerks as compared to the applicants. This is contrary to law. If at all there is anybody to be reverted, then it is junior employees to applicants who need to be reverted and not the applicants. The applicants also submit that as per the extant orders, an employee cannot be reverted from a post if he has worked on that post continuously for 18 months. Thus, their reversion is contrary to the extant orders. It is not that the applicants are being reverted because they have failed in the interview. But because according to the Railway administration, they are working in excess of the cadre strength. The applicants have also cited the judgment of the Supreme Court in the case of R.C. Srivastava Vs. Union of India in SLP No.9866/93 decided on 03.11.95 that the candidates should not be failed in viva voce test, if they have passed the written test they should not be made to face reversion. The applicants have also referred to the case of State of Haryana Vs. Piyara Singh & Ors. (1992 (3) SLJ 34 (SC) (3 JJ) wherein the Supreme Court held that until the regularly selected candidate is available, an adhoc employee should not be reverted. The applicants have given the details and names of those junior clerks who have failed thrice or less than thrice in the written test. The applicants have therefore, prayed that the impugned order 29/30.10.2001 be quashed and set aside. They have also sought a direction to declare the result of the written

test held on 26.5.2001 and implement the said result by promoting the applicants as Junior Clerks on regular basis.

7. The respondents have filed their written statement. The respondents submit that the total cadre strength of the ministerial cadre is 202 and at present 217 employees are working there, 15 employees have become surplus in the cadre. Therefore, the administration has taken a decision to revert the junior-most 15 Junior Clerks. The seniority for reversion is reckoned on the basis of service rendered in Group-D Employees who were junior in the lower grade were reverted. The respondents submit that the judgment and rules cited by the applicants do not deal with reversion when the employees are surplus in a cadre.

8. It is further submitted that there are about 85 Junior Clerks working in the department including 62 adhoc Junior Clerks. Out of 202 cadre strength, 15 junior clerks had been found to be in excess of the cadre strength including higher grades and general vacancy. The total cadre strength of the junior clerks is only 35.

9. The respondents submit that all though selection was processed for the post of junior clerk against 66 2/3rd% LDCE quota introduced by the Railway

Board, for the first time written test was held on 26.5.2001. It was felt necessary to obtain certain clarification in regard to the processing of the written test, passing percentage and any other norms to be followed during the viva voce/ entire selection process. Hence, reference was made to the Headquarters, CPO on 09.8.2001 and thereafter, a written test held on 26.5.2001 has been cancelled vide office letter dated 20.11.2001. Since 15 adhoc junior clerks were working in excess of the entire cadre the payment was not passed and it became necessary to revert the excess adhoc junior clerks. Merely passing in the written examination, does not make them eligible to continue to work as junior clerk on adhoc basis. Even though the applicants might have passed in the written test earlier that is irrelevant when ever reversion orders are issued.

10. While respondents maintained that the applicants being in excess of the cadre strength have to be reverted, the applicant kept urging that the respondents had not come out with a clear picture, in fact there is enough work and as already pointed out the applicants are not in excess of the cadre strength. The learned counsel for the applicants referred to the notification dated 05.4.2001 and a statement attached along with the notification showing the position of the ministerial cadre in engineering department of Mumbai

division as on 25.7.2001. According to this statement, the vacancy position is as follows: Chief Office Superintendent - 3, Office Superintendent Grade-I - 0, Office Superintendent Grade-II - 4, Head Clerk - 15, Senior Clerk - 21, Junior Clerk - 35. if these vacancies are totalled up, at least seven of the applicants can be adjusted even if total cadre strength were to be treated as 202 as claimed by the respondents. The respondents, in their written statement have given details of the cadre strength and the number of people on the roll and the number of vacancies. According to this, the position is as follows:

	Sanctioned strength	Men on Roll
Chief OS	4	1
OS-I	13	13
OS-II	25	22
Hd. Clerk	59	48
Sr. Clerk	66	48
Jr. Clerk	35	85
Total	202	217

The respondents contend that even though 16 posts of junior clerk were notified for selection that would be

adjusted against regularisation of junior clerk already working on adhoc basis, so as to keep it within the sanctioned strength of 35.

11. Learned counsel for the applicant again pleaded that the total sanctioned strength of junior clerk is 42 and not 35 as claimed by the respondents. Although it was decided to surrender seven posts of junior clerk vide letter dated 16.12.1998 even as on 29.11.99 when the seniority list was published the sanctioned strength of the junior clerk was taken as 42.

12. The respondents reiterated that the sanctioned strength is only of 35. As both the sides were making claim and counter claim regarding sanctioned strength and number of vacancies available, the respondents were directed to produce the original record relating to the notification issued on 05.4.2001 for selection to the post of junior clerk showing the vacancies of 16 junior clerk as well as the sanctioned strength. Accordingly the record was produced.

13. We have heard the learned counsel for both sides and have also perused the records. The respondents have repeatedly stated that total cadre strength is 202 only and seven posts of junior clerks were surrendered in 1998 bringing cadre strength of junior clerks to 35. On perusal of the record, we find

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that in addition to the seniority list of 29.11.1999 which is published every three years, it shows the cadre strength of junior clerks upto 42 even as late as in October, 2000, which means, that though the respondents took a decision to surrender seven posts of junior clerks in 1998, the same had not been given effect to even in 2000. Thus, there appears to be substance in the contention of the applicants that at least seven applicants could not be considered to be in excess of sanctioned strength if not all the fifteen.

14. The respondents were asked to produce the records showing the reason for cancellation of the written test held on 26.5.2001. Unfortunately the respondents could not produce any record to that effect nor could they explain the reasons for cancellation of the selection satisfactorily. It is seen from the written reply submitted by the respondents that after holding the written test the respondents were seeking clarification from higher authorities regarding the processing of the written test, passing percentage, norms to be followed during viva voce and the entire selection process etc., and therefore cancelled it, but no specific reasons have been stated for such cancellation. In any case, the cancellation was not on the ground that there were no vacancies. Sixteen vacancies had been notified and they do not appear to be disputed. The learned counsel for the respondents

submit that even though sixteen vacancies were notified, they were against regular quota of 35 junior clerk and therefore, that would not have made any difference and the applicants would still be in excess of the cadre strength.

15. The respondents were also unable to explain how again 66 2/3rd % for LDCE 16 posts were worked out. It is seen from the letter dated 26th March, 2001, it has been recorded as follows: "In terms of Board's letter No.E(NG)I/96/CFP/27 dated 10.10.2000 circulated by Division letter dated 18.01.2001 the department quota has been enhanced to 50% of which 66 and 2/3rd% of the vacancies of junior clerk grade Rs.3050-4590 (RSRP) are to be filled in from amongst the Matriculate Group-D employee with a minimum of two years regular service in the concerned seniority unit and that the selection against enhanced quota may be entirely competitive and on the basis of merit. As against 33 1/3rd% 31 posts were assessed viz. 18 general, seven SC and 6 ST. Thus, against 66 2/3rd assessment of vacancies against LDCE quota will be 16. Category-wise break up will be general-9, SC-4, ST-3 total - 16. This assessment of the vacancies was approved and the notification dated 05.4.2001 was issued accordingly. There is no reason therefore, while having notified the vacancies, the result of the written test was not declared. Had it been declared at least some of the applicants would have

got it even if the respondents consider them as excess and there would have been no need to revert the applicants. Learned counsel for the applicants also contended that since the quota was enhanced, it would mean that the sanctioned strength of the junior clerk is 100 and not 50 or 35 as claimed by the respondents. Therefore, also the applicants could not be in excess of the sanctioned cadre strength.

16. We find that the entire picture is confusing and the respondents have been unable to throw proper light or to enlighten us on the existing position. This is however, clear from their own record that there were at least 42 sanctioned posts of junior clerk even as late as in 2000. Therefore, at least some applicants could certainly have a case, in that seven of the applicants could be adjusted against seven posts of junior clerk and they need not be reverted. This could be according to their interse seniority with the senior-most amongst the applicant being adjusted against the seven posts of junior clerk not surrendered by the respondents. Coming to the written test, the respondents have not come out with any satisfactory explanation or given good reason for cancellation of the written test. Though it is entirely for the respondents to decide about the holding of the written test, having held the same and without giving any good reason, the respondents cannot back out from declaring the result.

In our considered view therefore, the result of the written test held need to be declared.

16. In view of the reasons recorded above and the discussion we hold that at least seven of the senior most applicants who have already appeared in the written test deserve to be continued as junior clerk on adhoc basis. We also hold that respondents ought to have declared the result of the written test and if any of the applicants are selected, they would be adjusted against the vacancies without reverting them. Accordingly, we direct the respondents to declare the result of the written test held on 26.5.2001 within a period of one month from the date of receipt of a copy of this order and hold further viva voce of successful candidates, finalise the selection and make the further promotion on that basis. In the meantime the respondents shall not revert the applicants who have appeared in the written test until regular incumbents are appointed as junior clerk. Accordingly, the OAs *is are* allowed. No costs.

(SMT. SHANTA SHASTRY)
MEMBER (A)

(BIRENDRA DIKSHIT)
VICE CHAIRMAN.

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