

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.192/97

Dated this Tuesday the 16th Day of October, 2001.

Coram : Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman
Hon'ble Smt.Shanta Shastry, Member (A).

Venilal Dayaram Chasia,
Chief Clerk (ad-hoc),
Court Cell Section/P.L.
Western Railway, Lower Parel,
Mumbai-400013. Applicant.

[Applicant by Shri S.P. Saxena, Advocate]

Vs.

1. The Union of India,
through the General Manager,
Western Railway, Churchgate,
Mumbai-400020.
2. The General Manager,
Western Railway, Churchgate,
Mumbai - 400020.
3. The Chief Works Manager,
Carriage Workshop,
Lower Parel,
Mumbai - 400013. Respondents.

[Respondents by Shri V.S. Masurkar, Advocate].

ORDER (Oral)
[Per : Smt.Shanta Shastry, Member (A)]

.....The selection for the post of Chief Clerk was announced vide Circular dated 14.6.1996. The selection consisted of written examination and viva-voce. The applicant was one of the eligible candidates and appeared for the written test along with other eligible candidates. The examination was held in September/October, 1996. Thereafter viva-voce test was conducted. The applicant was called for the same but he

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did not succeed and his name was not included in the selection panel for the post of Chief Clerk. Being aggrieved by this, the applicant has approached this Tribunal seeking a direction to the respondents to reconsider his case and to select him for promotion on the basis of his performance in the selection held in September/October, 1996 taking into account the Judgment of the Hon'ble Supreme Court in the case of R.C. Srivastava Vs. Union of India decided on 3.11.1995 and to pay all consequential benefits.

2. The applicant submits that he was promoted to work as Chief Clerk on ad-hoc basis on 22.1.1994. He was quite senior and he continues to work in the said post. His ad-hoc promotion was due to delay in holding regular selection. According to the applicant since he was called for the viva-voce test, he should have been included in the selection panel. In this connection he is relying on the Railway Board's Notification dated 25.1.1976. Para 2.2 of this ~~letter~~ notification reads as follows:-

"panel should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on ad-hoc basis quite unsatisfactorily are not declared unsuitable in the interview. In particular any employee approaching the field of consideration should be saved from harrassment".

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3. Learned Counsel for the respondents states that the applicant has now been promoted in 2000 and nothing survives and he cannot be granted the promotion with retrospective effect from the date his junior was promoted in pursuance of the selection of 1996. The Learned Counsel further submits that the letter dated 25.1.1976 of the Railway Board which has been upheld in the Judgment of R.C. Srivastava Vs. Union of India and another by the Hon'ble Supreme Court is not applicable in the applicant's case as the facts are different. In the case of R.C. Srivastava (Supra) the applicant therein had passed the written test. This is not the position in the present case, as the applicant had failed in the written test. Even then the respondents had granted him notional seniority marks based on the Railway Board's instructions to enable him to appear in the viva-voce test. Thus the very basis for granting the benefit of the letter dated 25.1.1976 does not exist in the case of the applicant and therefore the question of being considered for passing in the viva-voce held in 1996 selection does not arise. He cannot therefore be granted retrospective promotion from the date of the earlier selection.

4. We have given careful consideration to the rival contentions. We do ^{not} note that the Railway Board's letter dated 25.1.1976 provided for consideration of

not candidates and declaring them unsuitable in the interview if the candidates had worked on ad-hoc basis satisfactorily and had reached to the level of consideration depending upon the fact that the candidates atleast pass the written test. The applicant certainly has not passed the written test has been stated by the respondents. Only the applicant had been called for the interview that too because of the instructions of the Railway Board to add the notional seniority marks as the applicant's junior Shri Parvatia also a SC candidate had been called for the interview, giving due consideration to the applicant's seniority. But the fact remains that the applicant had failed in the written test. We, are, therefore, unable to accept that the Railway Board's letter dated 25.1.1976 could apply in the applicant's case. Be that as it may, applicant has been finally promoted, we are not inclined to grant him any notional promotion from the date of 1996 selection or from the date his junior Shri Parvatia was promoted as prayed for the by the applicant considering that he had not passed the written test then.

5. In the facts and circumstances of the case, the O.A. is disposed of as having become infructuous with no order as to costs.

Shanta

(Smt. Shanta Shastry)
Member (A).

Lakshmi

(Smt. Lakshmi Swaminathan)
Vice Chairman (J).