

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 09.08.2000

OA No.654/93

Raj Kumar Tanwar S/o Shri Gopal Kishan presently employed on the post of Record Sorter, Production Office, Western Railway, Loco Ajmer

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Works Manager, Ajmer Division, Western Railway, Ajmer
3. Dy. Chief Electrical Engineer, Ajmer Division, Western Railway, Ajmer.

.. Respondents

Mr. J.K.Faushik, counsel for the applicant.

Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDERPer Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant prays that the impugned order dated 4/5.9.1992 (Ann.A1) be declared illegal and quashed and further that respondents be directed to finalise selection basing on result of the written test with all consequential benefits.

2. The applicant is employed on the post of Shop Messenger at Loco Workshop, Western Railway, Ajmer. He is ITI qualified (Ann.A3). He has been promoted to the post of Record Sorter in the scale of Rs. 825-1200 w.e.f. 20.10.1993 vide

letter dated 20.10.1993 of the Chief Works Manager, Ajmer (for short, CWM). The applicant is physically handicapped (Ann.A4). Vide Ann.A5, the respondents decided to implement the policy of reservation for physically handicapped persons. The CWM issued an employment notice for filling up 25% vacancies (i.e. a total of 77 vacancies in different trades plus 17 vacancies added later on) of direct quota of skilled category from qualified Class-IV employees vide order dated 3.2.1987. The applicant was fully eligible for such posts and applied. He was allowed to appear in the written test held on 18.12.1988. He submitted a representation dated 18.1.1989 to CWM for considering his case against 3% reservation for physically handicapped quota but was informed vide letter dated 1.4.1991 (Ann.A6) that for the job of Electrical Fitter (Diesel) and Fainter for which he had applied, he cannot be considered due to problems of mobility and security of the applicant himself and that he could apply for clerical category for which his case could be considered. The respondents finalised the selection vide letter dated 18.11.1989, keeping 42 persons on the panel with nobody from the category of physically handicapped. The applicant thereafter filed OA No.370/90, which was disposed of by an order dated 24.8.1990 with an order extracted below:-

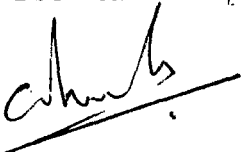
"The Application was listed today for admission, the question of providing reservation to the physically handicapped persons is a question of policy to be determined by the authorities concerned. During the course of arguments, the learned counsel for the applicant submitted that the applicant will feel rest content, if a direction is given to the respondents to decide the representation, union (sic) the applicant will file in this behalf, within

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a reasonable period. The aforesaid request seems to be reasonable. Consequently, respondents are hereby directed to decide the representation that may be filed by the applicant regarding the subject of three months from the date of receipt of the representation to be made by the applicant".

Following the order dated 24.8.1990, the applicant submitted a representation dated 7.9.1990 and filed a Contempt Petition No.24/91 when the representation was not replied to within time. However, during the pendency of the Contempt Petition, the respondents decided his representation vide order dated 1.4.1991 (Ann.A6) which has already been mentioned a little earlier. The applicant's grievance is that his case was not considered in the light of spirit of the policy of reservation for physically handicapped. However, since it was mentioned in the reply (Ann.A6) that "You can, however, apply for the clerical category for which your case can be considered on merits", the applicant submitted his willingness for appointment on the post of Clerk against handicapped quota on 3/4.6.1991 but there being no response, he filed another OA No. 29/92 which was disposed of on 14.10.1991 on the ground that the selection was in process and his case would be considered. However, the notification for written examination (Ann.A7) as well as written test conducted vide order dated 11.4.1992 was cancelled by order dated 4/5.9.1992 (Ann.A1). The applicant represented against this vide letter dated 19.10.1992 (Ann.A8) but it evoked no response. The respondents have now invited applications for the post of Clerk-cum-Typist in handicapped quota vide letter dated 11.10.1993 (Ann.A2), even though there is no such post in the list of posts meant for handicapped in Ann.A5 of 18.8.1980.



3. After perusing the averments made in the OA, we feel that the applicant is aggrieved essentially by the merger of the post of Office Clerk and Typist and notice dated 11.10.1992 (Ann.A2) inviting applications for 2 posts of Clerk-cum-Typist reserved for physically handicapped persons. Although not mentioned, the applicant is perhaps not fulfilling the eligibility condition No.2 i.e. typing speed prescribed and incorporated due to re-designation of the clerical post into Clerk-cum-Typist. Of course, he is also aggrieved by the cancellation of the process of selection vide Ann.A1.

4. The respondents have opposed the reliefs sought by the applicant. They have contended that the selection process initiated through the letters dated 20/21.3.1991 and 11.4.1992 (Ann.A7) was cancelled vide letter dated 4/5.9.1992 because of administrative reasons. The reasons are set out in the letter dated 20.8.1992 (Ann.R2). They have denied that the applicant had passed the written examination in 1992 since the examination itself was cancelled. It has also been submitted that the Railway Board vide its letter dated 17.7.1992 (Ann.F3) had, after discussions in the JCM/DC meeting, laid down the procedure for the merger of Typists with clerical cadre and the fresh notice for filling up of the posts of Typist-cum-Clerk was accordingly issued on 11.10.1992 (Ann.A2). They have strongly denied the allegation of the applicant that Ann.A2 was issued just to keep the applicant out of consideration.

5. We have perused the material on record and have heard the learned counsel for the parties. As far as the cancellation of the written examination to be held as per letter dated 11.4.1992 by the impugned letter dated 4/5.9.1992

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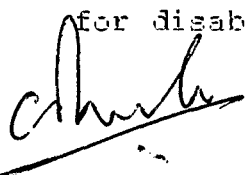
(Ann.A1) is concerned, we are constrained in the matter of interfering with the cancellation letter because firstly, it was done for administrative reasons and as per well settled principles of service jurisprudence, we cannot function as an appellate authority in matters which fall in the domain of administration/executive functions. Secondly, much time has lapsed since 1992 and we cannot revive the process of selection which had been cancelled way back in 1992. Thirdly, the applicant was in no way discriminated against as the examination was cancelled as a matter of general policy. We do, however, feel constrained that the administrative reasons given for cancellation of examination in the letter from the Headquarters, Western Railway (letter dated 20.8.1992 at Ann.R2) are not very convincing. That examination, even if delayed, could have gone on and another examination could have been held for new vacancies that had arisen. It has been mentioned that "a fresh chance would be denied to the candidates who would be eligible as on the date of holding the written test". It was, however, forgotten that there could be candidates who would become overage by the time the new examination is held after cancellation of the previous one ! We feel that the golden rule for good administration is to hold examinations every year for the vacancies that are available. Be that as may be, for the reasons, we have mentioned earlier, we do not find any justification for interfering with the order dated 4/5.9.1992 (Ann.A1) by which the process of selection started with issue of notice dated 11.4.1992 was cancelled.

6. As far as the question of merger of the posts of Typist and clerical cadre brought about by the Railway Board through their circular dated 17.7.1992 to all the General

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Managers, we note that the said decision has been taken in exercise of the executive powers of the Railway Board, whose circulars have statutory force. Moreover, the decision has been taken after the discussions in the JCM (Joint Consultative Machinery) which is the highest body for interaction between staff and management. It has to be accepted that the proposals brought before the JCM have the approval of the general mass of the staff and the decisions arrived at are for the good of staff as a whole. The circular issued by the Railway Board following such decisions is applicable on all the employees who were, before issue of the said circular, in separate cadres of Typists and Clerks. There was not only an agreement in the meeting of JCM/DC on the question of merger but these were perhaps required for improving the administrative efficiency and morale of the staff. The decisions will equally apply to all employees, including the physically handicapped persons. It is also a cardinal principle of administrative jurisprudence that it is for the employers to lay down qualifications and eligibility conditions for posts and simply because the applicant has a feeling, driven by his own individual interests, that the post of Typists and Clerks should not be merged and the merged post of Typist-cum-Clerk require certain typing speed, it cannot be held that the policy decision taken by the Railway Board vide their circular dated 17.2.1992 was bad in law. We, therefore, find no valid reasons to interfere with the notice dated 11.10.1993 (Ann.A2). We have our sympathies with the applicant, who is disabled person, but he has to acquire the eligibility requirements and then successfully compete the selection process to get the benefit of the reservation made for disabled persons in the government jobs.



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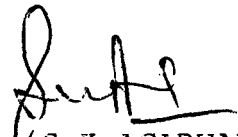
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7. In the circumstances, the Original Application does not succeed and is accordingly dismissed with no order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member

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