

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 57/93

Date of decision: 16.8.93

NARESHPAL SINGH

: Applicant.

VERSUS

UNION OF INDIA

: Respondents.

Mr. R.N. Mathur

: Counsel for the applicant.

Mr. Manish Bhandari

: Counsel for the respondents.

CORAM:

Hon'ble Mr. B.B. Mahajan, Administrative Member

Hon'ble Mr. Gopal Krishna, Judicial Member

PER HON'BLE MR. B.B. MAHAJAN, ADMINISTRATIVE MEMBER:

The applicants, Nareshpal Singh, Ahmed Hussain Gauri, Ajmat Ali Khan and Radhey Shyam Sharma have filed this application U/S 19 of the Administrative Tribunals Act praying that the order dated 19.10.87 by which the list of eligible employees for appearing in the suitability test for the post of Guard Grade 'C' scale Rs. 330-530 was issued may be declared illegal and the applicants may be declared to be eligible for appearing in the suitability test and if they pass the test, the respondents may be directed to promote them as Guard Grade 'C' with all consequential benefits. Vide ad-interim order on 20.11.87, the respondents were directed to permit the applicants to take the suitability test on provisional basis. The learned counsel for the applicants states that the applicants had appeared in the suitability test in pursuance of this ad-interim direction. The respondents have filed the reply.

2. We have heard the learned counsel for the parties.

3. The applicants were initially appointed as Assistant Goods Clerks in the grade of Rs. 260-430. By order dated 1.10.84 (Annexure A-1) they were promoted to the upgraded posts of Goods Clerks in the scale of Rs. 330-560 w.e.f. 1.1.84. The respondents vide their notification dated 29.7.86 (Annexure A-2) invited applications for filling 93 posts of Guard Gde 'C' scale Rs. 330-530. Vide Circular dated 8.12.86

(Annexure A-3), a list of eligible candidates was circulated.

It was mentioned in that letter that written declaration to forgo the confirmation in the scale of Rs. 330-560 may be submitted from those TNCs who were officiating in scale Rs. 330-560. A modified list of eligible candidates was circulated by impugned order dated 19.10.87 (Annexure A-4).

4. The names of the applicants do not find place in either Annexure A-3 or Annexure A-4.

5. We have heard the learned counsel for the parties. The plea of the learned counsel for the applicants is that the vacancies that were notified on 29.7.86 contain the vacancies which existed in 1983 and also subsequent vacancies. His plea is that the applicants were eligible to appear in the examination for vacancies of Guard Gde 'C' before 1.1.84 and they should, therefore, be declared eligible to appear in the examination for filling those vacancies that existed in 1983 even though the examination was held subsequently. The respondents have explained in their reply that the requirements of Guard Gde 'C' go on fluctuating and it is not necessary that all the vacancies should be filled as soon as they occurred. They have referred to the order dated 22.2.85 (Annexure R-IV) by which 17 posts of Guard Gde 'C' scale Rs. 330-530 were surrendered. The year-wise break-up of vacancies of 93 Guard Gde 'C' notified vide Annexure A-2 is not available on the record. It is, therefore, not possible to determine whether all these vacancies arose after 1983 or some of them existed in 1983. The applicants obviously have no claim for vacancies that arise after 1.1.84, the date from which they have been promoted to the higher grade of Senior Goods Clerks. They were, however, eligible for competing for the vacancies that existed in 1983 and the mere delay on the part of the administration in conducting the examination for the purpose should not deprive them of their rights of consideration for those vacancies. It is settled law, that in respect of vacancies

in promotional cadre, the eligibility has to be considered with reference to the date on which the vacancy arose.

6. In view of the above, we direct the respondents to check up the position regarding the vacancies notified on 29.7.86 vide Annexure A-2. If any of those vacancies existed in 1983 and some vacancies out of those fell to the share of Commercial Clerks who have 20% quota in these vacancies filled from rankers' quota, the applicants' answer books placed in the sealed cover may be opened and got assessed, if not already done. In case ~~of~~ all or any of the applicants as a result of this assessment of their answer books and the vice-versa, if any required under the rules, find place in the merit list within the number of vacancies existing in 1983 which have been included in the notification dated 29.7.86 in the quota earmarked for Commercial Clerks, they shall be appointed against those vacancies as Guards Gde 'C' w.e.f. the date from which juniors in the panel from Commercial Clerks were appointed provided they give an undertaking that they will have no objection to their being de-confirmed as Senior Goods Clerks. The O.A. is disposed of with these directions. Parties to bear their own costs.

G.Krishna
(GOPAL KRISHNA)
Member (Judicial)

B.B. Mahajan
(B.B. MAHAJAN)
Administrative Member