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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.07.2000

OA No.105/94

Satish Kumar S/o Shri Bal Mukand aged about 30 years at present employed on the post of Store Clerk (Officiating) under FWI Bhawani Mandi, Western Railway, Kota Division, Kota.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Sr. Divisional Personnel Officer, Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, Proxy counsel to Mr. J.K. Kaushik, counsel for the applicant.

Mr. Hemant Gupta, Proxy counsel to Mr. M. Rafiq, counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

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

ORDER

Per Hon'ble Mr. N.P. NAWANI, Administrative Member

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, the applicant prays that the respondents be directed to reconsider the candidature of the applicant for the post of Clerk in the scale of Rs. 950-1500 in terms of record note 2.2 incorporated in the Railway Board's circular and include the name of the applicant in the panel dated 14.2.1994 (Ann.A1). In the alternative, it is prayed that respondents be restrained from reverting him from the post of Store Clerk and give him three chances to clear selection in accordance with Jethanand's case.

2. We feel it is unnecessary to go into the details of rival contentions as this is yet another case where the benefits of the record note 2.2 incorporated in the Railway Board's circular is being claimed on the strength of similar benefits having been extended to applicants in a number of

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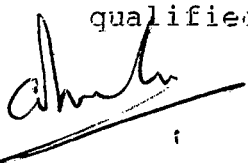
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cases decided by various Benches of this Tribunal as also the judgment of Hon'ble the Supreme Court in the case of E.C.Srivastava in SLP (C) No. 9866 of 1993, upholding the record note 2.2 incorporated in the said circular.

3. We have heard the learned counsel for the parties and have perused the material on record.

4. It is quite clear that the applicant passed the written test vide order dated 14.3.1993 (Ann.A3). He was called for viva-voce test vide letter dated 17.12.1993 (Ann.A4). His name does not appear in the panel notified vide order dated 14.2.1994. He could not succeed in the viva-voce and, therefore, could not find a place in the said panel. However, in terms of the circular dated 19.3.1976 he could not have been declared unsuccessful if he was working fairly satisfactory on the post of Clerk on ad-hoc basis and did not belong to a safety category post. This case is, therefore, squarely covered by the decision of this Bench rendered in OA No.246/1993, Tao Mal v. Union of India and ors. on 2.5.2000. We, therefore, hold that the applicant herein could not have been declared unsuccessful in the viva-voce after he had cleared the written examination. We note that the applicant was promoted to the post of Store Clerk, albeit on ad-hoc basis, vide order dated 26.3.1991 (Ann.A2). The respondents in their reply have stated that "Now that the vacancy has been filled up by a selected incumbent vide office order dated 15.2.1994, the applicant has to go back to his post of Gangman." This statement indicates that the applicant has, at least worked on the post of Store Clerk for almost three years between 26.3.1991 and 15.2.1994. There is nothing on record to show to the effect that his work on ad-hoc basis was not satisfactory. The post of Clerk is a non-safety post. The said circular of the Railway Board dated 19.3.1976 containing record note no. 2.2, is, therefore, fully applicable in the case of the applicant also. The case is, therefore, squarely covered by the orders of various Benches of this Tribunal as also the judgment of the Apex Court in the case of R.C.Srivastava (supra).

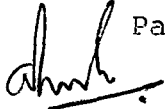
5. The Original Application is, therefore, allowed and the respondents are directed to treat the applicant as having qualified in the entire selection process and include his name



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in the panel dated 14.2.1994 (Ann.A1) at the appropriate place and extend to him all the benefits that may have been or are likely to be given to his immediate junior in the said panel.

6.  Parties to bear their own costs.

(N.P.NAWANI)

Adm. Member


(B.S.RAIKOTE)

Vice Chairman