

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER: 24.05.2001

OA 16/95

Halkashi Ram Meena son of Shri Bhagwati Lal Meena aged around 34 years resident of Railway Quarter No. 551 A, New Railway Colony, Kota. Presently posted as Head Clerk in the Office of Divisional Security Commissioner, Western Railway, Kota.

Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Security Commissioner, Western Railway, Head Quarter, Churchgate, Mumbai.
3. Shri Narendra Kumar, Chief Clerk, through Divisional Security Commissioner, Western Railway, RPF, Ajmer.
4. Smt. Kanta Kumari Sharma, Chief Clerk, through Divisional Security Commissioner, Railway Protection Force, Western Railway, Kota.
5. Shri M.K. Kadri, Chief clerk, through Divisional Security force, RPF, Western Railway, Baroda (Gujrat).
6. Shri Girdhar Lal, Chief clerk, through Divisional Security Commissioner, RPF, Western Railway, Jaipur.
7. Smt. R. Athoid, Chief Clerk, through Chief Security Commissioner, Western Railway, Churchgate, Mumbai.
8. Shri Shishupal Singh, Law Assistant, through Divisional Railway Manager, Western Railway, Mumbai Central.
9. Shri A.B. Nayar, Chief Clerk, through Chief Security Commissioner, Western Railway, Mumbai Central.
10. Smt. Sharda Boite, Chief Clerk, through Chief Security Commissioner, Western Railway, Mumbai Central.
11. Shri H.G. Mehta, Head Clerk, through Divisional Security Commissioner, RPF, Western Railway, Bhawnagar para.

..... Respondents.

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Mr. P.P. Mathur, Proxy counsel for
Mr. R.N. Mathur, Counsel for the applicant.

Mr. Vinod Goyal, Proxy counsel for
Mr. Virendra Lodha, Counsel for respondents no. 1 & 2.

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HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)
HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

ORDER

PER HON'BLE MR. A.P. NAGRATH, MEMBER (ADMINISTRATIVE)

This application has been filed u/s 19 of the Administrative Tribunal's Act, 1985 wherein the applicant has prayed for the following reliefs:

- "(i) That the official respondents may be directed to give promotion to the applicant on the post of Chief Clerk on the basis of his general seniority and the seniority assigned to him on the post of Head Clerk; and
- (ii) That the official respondents may be directed to give promotion to the applicant on the post of Chief Clerk in preference and prior to the private Respondents; and
- (iii) That the official respondents may be directed to place the name of applicant above the private respondents in the list of employees given promotion on the post of Chief Clerk, consequently the name of applicant placed above the private respondents in the seniority list of Chief clerk; and
- (iv) That the official respondents may be directed to suitably amended the list of eligible candidates for promotion on the post of Chief Clerk and thereafter to convene a special test for applicant; and



(v) That the official respondents may be directed to give salary and amount of duel charge, which the applicant is entitled to get for discharging the duties of Chief Clerk w.e.f. 1.12.1992

(vi) Any other appropriate order or direction which is in the interest of the applicant and Hon'ble Court thinks fit in the facts and circumstances of the case may kindly be issued to secure ends of justice."

2. The case of the applicant is that he was initially appointed as Sr. Clerk, scale Rs. 1200-2040 vide order dated 16.7.1987 and was promoted as Head Clerk, scale Rs. 1400-2300 vide order dated 19.10.1989. In the seniority list of Head Clerks, issued on 11/20.5.1989, private respondents 3 to 11 did not find a place as at that point of time, they were only Sr. Clerks. In the seniority list, issued on 17.2.1992, the applicant was placed above the private respondents. Consequent to cadre restructuring, the order of promotion dated 24.9.93 was issued promoting Head clerks to Chief Clerks. The private respondents were promoted to the post of Chief Clerks, scale Rs. 1600-2660/- but the applicant did not find any place in that panel. He is stated to have submitted a representation dated 27.10.93 against this order on the ground that his juniors have been promoted but there was no response from the respondents. On the contrary, the respondents issued a notification dated 4.5.1994 for conducting further selection to the post of Chief Clerk. In the eligibility list, the applicant was shown junior to Smt. Sharda Boite and Shri H.G. Mehta though the applicant claimed that he was senior to both of them. He submitted a representation but the respondents went ahead with the selection. The applicant could not appear as he had sustained serious injuries and fracture in his right leg. He requested for supplementary test, which was fixed on 12.8.94. Since the applicant was still under sick list till 17.8.1994, he could not appear in this supplementary selection. He, therefore, submitted an

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application for

another date but his request was not accepted and the panel was declared on 24.11.1994. The applicant submits that he made a representation requesting respondents to consider his case for promotion on the basis of general seniority but the respondents rejected his representation vide letter dated 28.6.1994 (Annexure A1) on the ground that in accordance with base grade seniority, he is junior to private respondents. The applicant is aggrieved with this order and has challenged Annexure A1 before us primarily on the ground that seniority of a post or in grade is determined on the basis of date of appointment. In support, the applicant has referred to the case of Karam Chand Vs. Haryana State Electricity Board decided by the Hon'ble Supreme court.

3. Respondents, in reply, have stated that the applicant was not considered for promotion to the post of Chief Clerk in restructuring scheme as he was junior to the private respondents, considering the base grade seniority in terms of General Manager, Western Railway's letter dated 10.9.1991. The applicant had been promoted as Head Clerk against the reserved quota on 3.10.1989. In the base grade seniority, the applicant is junior to the private respondents. In regard to the selection held on 16.4.1994, it has been stated that the applicant reported sick just before the written test about which he was fully informed. The supplementary test was held on 12.8.1994 and the applicant was duly intimated but he did not participate. He did not even send any Medical Certificate to indicate his inability to attend.

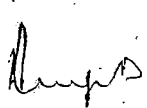
4. The controversy involved in this case stand resolved after the decision of Hon'ble the Supreme Court in the cases of S/Shri R.K. Sabharwal, J.C. Malik and Ajit Singh Januja I & II wherein reservation policy has been discussed in all its aspects and the Apex Court has laid down the law. The principle established consequent to the order passed in these cases by the Hon'ble Supreme Court is that the employees belonging to SC/ST community may get promoted to higher grade against reserved vacancies over the heads of general candidates but when such senior general candidates in due course also reach the next grade when SC/ST was already there because of the benefit of reservation, inter se seniority shall be readjusted so as to bring the general candidates in the position vizviz

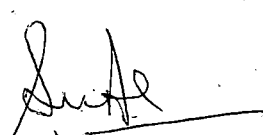
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SC/ST candidates as per their seniority in the base grade unless of course. SC/ST candidates in the meanwhile have gone to still higher level grade. In the instant case, the applicant was promoted on 3.10.89 as Head Clerk against the reserved vacancy. Private respondents were promoted as Head Clerks on later dates. Before the restructuring Scheme came into effect, the private respondents and the applicant were all Head Clerks. Their seniority were required to be recast as per their seniority in the grade of Sr. Clerks. The applicant could not claim to be senior in the grade of Head Clerk to his erstwhile seniors in the grade of Sr. Clerk. In this view, there is no infirmity in the panel dated 24.9.93. In the subsequent selection held in 1994, the applicant was called to appear but he did not participate. Even the supplementary test was held in which he did not appear. Action of the respondents in declaring the final panel is in order and cannot be faulted.

5. While the learned counsel for the applicant conceded that the applicant cannot claim to be placed in the panel at the time of restructuring but he, however, submitted that the applicant could be given yet another opportunity for appearing in the selection held in the year 1994. We do not find any merit in this prayer as rules do not permit for further supplementary examination. Selections have to attain finality and they cannot be open ended. In view of the law established, we find that the applicant has failed to make any case in his favour and this application is liable to be rejected.

6. We, therefore, dismiss this application as devoid of any merits. No order as to costs.


(A.P. NAGRATH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)

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