

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 1/6/2001

OA No.581/95

1. T.K.Gautam s/o Shri T.C.Gautam r/o 201-B/III, W.R.C colony, Tuglakabad, presently working as Chief Clerk/ Officiating Office Superintendent, Western Railway, Tuglakabad.
2. Dinesh Srivastava s/o Shri S.C.Srivastava r/o E-90 D, Old Railway Colony, Kota Junction, presently working as Chief Clerk in W-4 Section, D.P.M. Office, Western Railway, Kota.

..Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota.
3. Shri I.P.Pandey, Head Clerk, P.W.I., Western Railway, Hindaun City (Raj.)
4. Smt. Saleem Begam, Chief Clerk (Adhoc) in Stores Section, D.P.M. Office, Western Railway, Kota.

.. Respondents

Mr. S.K.Jain, counsel for the applicants

Mr. Anupam Agarwal proxy counsel to Mr. Manish Bhendari, counsel for the respondents Nos. 1 and 2.

None present for respondents Nos. 3 and 4

CORAM:

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

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The respondents Department conducted a modified selection to fill up 38 posts of Chief Clerks Grade Rs. 1600-2660



consequent to implementation of restructuring scheme w.e.f. 1.3.1993. As per order dated 7th May, 1993 (Ann.A3) 35 persons were placed on the panel which included the two applicants in this OA at Sl.No.34 and 35. 3 posts were left unfilled because of the reasons given in the note to that letter i.e. in the case of Shri Ratan Lal Narolia, his suitability had to be adjudged after his service record becomes available and in the case of two others S/Shri Laxmi Narain and E.S.Chopra, disciplinary proceedings were in progress. Both the applicants were given a show-cause notice vide letter dated 19.6.1995 (Ann.A7) informing them that the name of Shri I.P.Pandey and Smt. Saleem Begam were not kept in the panel on account of their having not been found suitable. On investigation, it was found that their names should have been empanelled. Applicants being juniormost were informed that their names were being deleted from the panel and they could represent against this show-cause notice within 7 days. The applicants replied to the show-cause notice and in response the decision was communicated vide letter dated 5.12.1995 (Ann.A1). Both the applicants are aggrieved with this letter and have filed this OA to set-aside and quash the impugned order dated 5.12.1995 (Ann.A1) and to direct the respondents not to delete the names of the applicants from the panel dated 7.5.1993.

2. The applicants' case is that the post of Chief Clerk is a selection post and that they were promoted as their service record was better than respondents Nos. 3 and 4 whose inclusion in the panel has resulted into deletion of applicants' names. Their grievance is that the respondents have modified the panel after a period of 2 years and 6 months while ~~as~~ the vacancies are available, it should have been possible for the respondents to include names of the applicants in the panel as one Shri E.S.Chopra has retired on 31.5.1993 and disciplinary inquiry against Shri Laxmi Narain was pending.

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3. By an interim order passed on 13.12.1995, the respondents were directed not to revert the applicants to the lower post after including names of respondents Nos. 3 and 4, till next date. This interim order has been continuing since then.

4. The respondents in the written reply have admitted that initially in the panel names of two applicants were included, but later on representation from respondents Nos. 3 and 4 the matter was examined, and it was found that there was a merit in the claims made by respondents Nos. 3 and 4. After necessary scrutiny, it was decided to include their names in the panel dated 7.5.1993 and as a consequence of their being included in the panel, names of two juniormost persons have been deleted. The applicants being juniormost were served with show-cause notices and after receiving their reply only the orders were passed. The respondents contend that if some mistake is made that cannot cause injury to the rights of the rightful claimants and such a mistake has to be corrected. They followed the appropriate procedure required and served a show-cause notice and only after hearing the applicants the impugned order has been passed and applicants should have thus no grievance against the order.

5. Heard the learned counsel for the parties and perused the written submissions on either sides.

6. The main thrust of the arguments of the learned counsel for the applicants was along the lines taken in the written averments. The learned counsel also drew our attention to the order dated 7.5.1997 filed as Ann.10 alongwith the additional affidavit by the applicants. It appears that a further selection was held in 1997 for filling up vacancies of Chief Clerks. Shri T.N.Gautam appeared and was



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successful in this selection having found his name in the panel issued on 7.5.1997. No mention has been made about the second applicant Shri Dinesh Srivastava. The learned counsel for the applicants has also stated that he has no further communication about the second applicant Shri Dinesh Srivastava.

7. We find from the facts that applicants were served with a show-cause notice and appropriate steps were taken by the Department to inform them as to why their names were being deleted from the panel dated 7.5.1993. When it is discovered that because of some error on the part of the Department having adverse repercussions on the rights of the senior employees, it was only just and proper that rights of such seniors should be protected and hence the error was rectified. The Department has taken such steps by including names of respondents Nos. 3 and 4 in the panel and these cannot be interfered with. In a selection, panel can only be up to the number of vacancies advertised. We find from Ann.R1 that only 38 vacancies were advertised to be filled up. The final panel cannot exceed this number. The names of the applicants only got included because of two senior persons having been left out erroneously. Both the applicants have continued to work under the interim orders of the Tribunal. Applicant, T.P.Gautam, has been found successful in the next selection and as a consequence he still continue to work as Chief Clerk even after the stay order is vacated, which we do hereby vacate. Applicant No.2 will find his own position consequent to vacation of the stay order against his reversion. He shall have to appear in the selection for the post of Chief Clerk and come out successful in order to be promoted to the post of Chief Clerk.

8. In the facts and circumstances of this case, we do not find any merit in this Original Application. However, T.P.Gautam, applicant No.1, shall be considered to have been continued as Chief

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Clerk as he has successfully been empanelled in 1997. He will find his place in the seniority as per his seniority in the cadre of Head Clerks. The respondents are at liberty to post Shri Dinesh Srivastava, applicant No.2, as per his seniority in a suitable post consequent to vacation of stay order against his reversion. No order as to costs.

Ans
(A.P.NAGRATH)

Adm. Member

S.K.A
(S.K.AGARWAL)

Judl. Member