

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 7/12/2001

OA No.150/1996

Narain Chand s/o Shri Sunder Ram r/o Khanpuria Ka Bass,
Shyalawas Kalan, via Bandikui, Distt. Jaipur, last
employed as Junior Clerk, Bandikui, Jaipur Division,
Western Railway.

..Applicant

Versus

1. Union of India through the General Manager,
Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western
Railway, Jaipur.

.. Respondents

Mr.P.P.Mathur, proxy counsel to Mr. R.N.Mathur, counsel
for the applicant

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

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 applicant was appointed on the post of
Cleaner in Group-D on 23.7.63. By order dated 28.12.81 he
was promoted on adhoc basis as a Junior Clerk in the grade
Rs. 260-400. By order dated 8.9.95 (Ann.A2) the applicant
was informed that since his name does not appear in the
panel of duly selected candidates for the post of Clerk,
he is being reverted to his substantive post of Group-D.
He represented against the said order and his
representation was decided by order dated 6.11/12.95




(Ann.A1) explaining the background of his reversion and informing him that it is not possible to continue him as a Junior Clerk even on adhoc basis. The applicant has challenged this order dated 6.11/12.95 and order dated 8.9.95 (Ann.A2) with a prayer that these orders be quashed and set-aside and respondents be directed to continue him on the post of Junior Clerk and to regularise him on the said post.

2. The grounds on which the applicant has based his relief are that he has continued on the post of Junior Clerk uninterruptedly w.e.f. 28.12.81 till the impugned order dated 8.9.95 i.e. for a period almost 14 years. According to him, he was never called to face any selection except that he was asked to appear for the selection in pursuance of the notification dated 15.10.80. While referring to Para 109 of the Indian Railway Establishment (IREM) Vol.I the applicant contended that necessary condition is that he should have 5 years of service to his credit before an employee in Group-D can be considered for promotion and the promotion to the post of Junior Clerk has to be on the basis of seniority-cum-suitability. Since, as stated by him, he had passed the written test as can be seen from letter dated 15.9.80. no interview was conducted by the respondents and therefore he was entitled to be treated as a regularly appointed Clerk. He also contests the position that any interview at all was required after he had qualified in the written examination. He claims that since he had continued to work for more than 18 months, he cannot be reverted without taking recourse to the disciplinary proceedings.




3. Heard the learned counsel for the parties and also considered the reply of the respondents. The learned counsel for the applicant has placed reliance on the decided case of this Bench of the Tribunal in OA No.268/88, Mohammed Salim v. Union of India, decided on 11.2.94 and another case by the Principal Bench in Shri Kamal Kumar v. Union of India and Ors., OA No.763 of 1998 decided on 11.11.98. We find that these cases are totally distinguishable on facts and do not support the case of the applicant. In the case of Mohammed Salim this Bench of the Tribunal had noted that the applicant had passed the requisite test. In the case before the Principal Bench the facts are that the applicant who was adhoc appointee as Material Checking Clerk was further promoted as Sr. Clerk and had continued as such for 18 years. It was observed by the Principal Bench that the applicant was not provided with one more opportunity by the respondents but in view of his long continuation on adhoc basis, the respondents were directed to convene a review DPC to examine his records and promote him at Material Checking Clerk from the date he was promoted as Senior Clerk. In this case, the Bench has also taken due note of the fact that there was a violation of the Department's own rules while making the said adhoc arrangement.

4. However, in the case before us, as stated by the learned counsel for the respondents, the applicant was afforded an opportunity to appear in the selection. The promotion to the post of Junior Clerk are on the basis of promotion from Group-D to the extent of 33 1/3%. The




process is by selection which comprises a written test followed by an interview. For this purpose all the Group-D staff in the division are considered eligible. The applicant, though did not belong to the eligible category was afforded an opportunity for appearing in the selection but he did not avail of the same. The respondents have stated in their reply that in the year 1985 applications were invited for selection to the post of Junior Clerk but the applicant did not avail of this opportunity. The respondents contend that while disposing of the applicant's representation vide letter dated 6.11/12.95 this position has been clarified that the post of Junior Clerk is to be filled up by a selection test and the applicant did not submit his application when such applications for selection were invited. For this reason, the respondents contend that applicant has no case.

5. We find that this assertion of the respondents that the applicant had not availed of the opportunity of appearing in the selection has not been rebutted by the applicant. His case is only that when the adhoc arrangement was made in 1980 he had passed the written test and there was no requirement to appear in the interview. His further contention is that the promotion to the post of Junior Clerk has to be on the basis of seniority-cum-suitability. These contentions are not acceptable, as it is not in dispute that the promotion to the post of Clerk against the promotee quota from Group-D is by a method of selection which includes written test followed by interview. Since the applicant has not availed of the opportunity when the selection was held in 1985, he

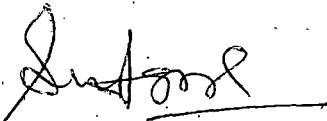


cannot make a claim for his regularisation. The cases relied upon by the learned counsel on the applicant's behalf are distinguishable on facts. However, we have also noted that the applicant was appointed as a Cleaner. It has not been stated before us by either side as to what would have been the position of the applicant in his own cadre. Once the applicant has been reverted from the post of Clerk it is incumbent on the respondents to assign him his correct position in his own cadre. Since no specific contention has been raised before us on this point, no specific direction can be given except that we express ourselves that after his reversion the applicant must be placed at the appropriate place in his own cadre with respect to his immediate junior. The present application has, however, no merit.

6. We, therefore, dismiss this OA as having no merits. No order as to costs.


(A.P.NAGRATH)

Adm. Member


(S.K.AGARWAL)

Judl.Member