

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 27 August, 2001

OA No.303/97

Gordhan Jashnani s/o Shri Leela Ram, Non Matric Clerk scale Rs. 800-1200 in the office of Deputy Controller of Stores r/o Q.No.38, UIT Colony, Ajay Nagar, Ajmer.

..Applicant

Versus -

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager (Estt.), Western Railway, Ajmer.
3. The Deputy Controller of Stores, Western Railway, Office of D.R.M., Western Railway, Ajmer.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

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

Hon'ble Mr.S.A.T.Rizvi, Administrative Member

ORDER

Per Hon'ble Mr. S.A.T.Rizvi, Administrative Member

The Railway Board by their letter of 3.2.1997 had modified certain provisions made in the rules with regard to promotion of Group-D employees to the post of Clerk under the 33 1/3 % quota. Before the aforesaid modification was made, the respondents had initiated the process for promotion ~~of~~ ^{to their} Group-D employees by letter of 9.1.1997, by which the scheme of examination was notified, and it was also made clear that a total of 8 vacancies were to be filled by promotion. By a subsequent letter of 18.1.1997, the number of vacancies notified were increased to 12 including 9 in respect of the General category. The scheme of the examination included a written

test followed by a type writing test followed further by a viva-voce. The applicant in the present OA participated in the above examination and succeeded in clearing the written test. He could not, however, clear the type writing test and was accordingly not called for interview. The matter was taken up by the staff union, in so far as the non-application of the modified procedure dated 3rd February, 1997 is concerned. By their letter of 7th July, 1997 (Ann.A1), the respondents have replied to the aforesaid staff union stating that the modified procedure introduced by the Railways by the letter of 3rd February, 1997 could not be applied during the above said examination for want of information about the same, and holding out that the aforesaid modified procedure will be applied in future. Aggrieved by the aforesaid letter dated 7.7.1997, the applicant has filed the present OA.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The main contention raised on behalf of the respondents is that having participated in the aforesaid examination, it is no longer open to the applicant to question the procedure followed by the respondents based on the rules in existence prior to 3rd February, 1997. The applicant had admittedly failed to clear the type writing test and had ^{raised} ~~made~~ his grievance thereafter. If the applicant did not agree with the procedure followed by the respondents, which, according to him, was not consistent with the Railway Board's circular of 3rd February, 1997, he should have ^{quite} ~~very~~ appropriately refused to participate in the said examination and should ^{have} ~~be~~ instead represented in the matter in writing before the appropriate authority. The applicant did not proceed to do any such thing and has instead, as already stated, chosen to question the procedure followed by the

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respondents only after he failed to clear the type writing test.

4. The learned counsel appearing in support of the respondents has ^{also} submitted that the Railway Board's circular dated 3rd February, 1997 which was circulated by the Mumbai Head Office on 21.4.1997 first came to the respondents' notice on 4.7.1997 (Ann.A10), i.e. only after the final result in respect of the aforesaid examination had been declared on 12/25th June, 1997 (Ann.A7). Accordingly, the respondents were just not in a position to take into account the modified procedure introduced by the ^{Rly. Board's} circular of 3rd February, 1997. The intention, according to the learned counsel, never was to defy the orders of the Railway Boards nor did the respondents deliberately plan to eliminate the applicant. The respondents have also undertaken in their letter of 7.7.1997 (Ann.A1) to apply the modified procedure in the future.

5. The learned counsel for the respondents further submitted ^{that} that the applicant's reliance on Railway Board's letter dated 4.4.97 (Ann.A6) is entirely misplaced, in-as-much as, the same relates to only those who had been working in the Railway Board's office. On the other hand, according to him, the Railway Board's letter in question of 3rd February, 1997 (Ann.A8) will undoubtedly find applicant ^{-tion?} in the matter of promotion of Group 'D' employees to the post of Clerk under the 33 1/3% quota. However, as already stated, this would be possible only in future. The respondents will readily apply the aforesaid modified procedure as and when they initiate the process to promote Group 'D' employees in future.

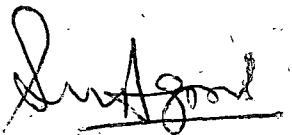
6. We have considered the matter carefully in the light of the submissions made by the learned counsel for the applicant ^{and the respondents.} We are given to understand that during the aforesaid examination only 4 out

of 12 vacancies notified could be filled. The remaining 8 vacancies in the post of Clerk are yet to be filled. For this, the ^{modified} procedure laid down by the respondents will ^{be} set in motion expeditiously. In this view of the matter and keeping in view the respondents commitment to follow the modified procedure dated 3rd February, 1997 (Ann.A8), we will be content to dispose of this OA by a direction to the respondents to consider the candidature of the applicant alongwith ^{the} others ~~and~~ subject to the applicant passing the prescribed tests and fulfilling all the other relevant conditions, for promotion to the post of Clerk against the aforesaid 8 vacancies together with such vacancies as might, in the meanwhile, arise. Since the respondents will, undoubtedly, be keen to fill the aforesaid vacancies as expeditiously as possible in the interest of efficiency and good performance, we further direct the respondents to take steps and complete the exercise for promoting Group 'D' employees to the post of Clerk against the aforesaid vacancies in any event within a period of 3 months from the date of receipt of a copy of this order. We consider it necessary to clarify that the applicant's failure on past occasions to clear the typing test will not be held against him at the time of considering his promotion in accordance with the modified procedure of 3rd February, 1997. No order as to costs.



(S.A.T.RIZVI)

Adm. Member



(S.K.AGARWAL)

Judl. Member