

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 6-9-2001

OA 78/97

Mahesh Chand, Head Clerk O/o Station Supdt., Western Railway, Phulera, Jaipur Division.

... Applicant

Versus

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

... Respondents

CORAM

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.S.A.T.RIZVI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.V. Calla

For the Respondents ... Mr.Hemant Gupta, proxy
counsel for Mr.M.Rafiq

O R D E R

PER HON'BLE MR.S.A.T.RIZVI, ADMINISTRATIVE MEMBER

Aggrieved by non-allocation of proper seniority in the post of Office Clerk carrying the pay scale of Rs.950-1500, the applicant prays for a direction to the respondents to allocate proper seniority to him in the aforesaid post/grade. He also seeks a direction for the grant of consequential benefits in terms of promotions to the next higher scales of Rs.1200-2040, Rs.1400-2300 and Rs.1600-2660 respectively from the dates when the persons next junior to the applicant stood promoted to the aforesaid grades. Hence ths OA.

2. Briefly stated the facts of the case are that the applicant was, in the first instance, appointed as Waterman in November, 1978, which is a Group-D post. In the same

group, the applicant rose to become Pointsman in the pay scale of Rs.800-1150. At this stage, in July, 1983, the respondents issued a notice for making recruitment in the Commercial as well as in the Traffic Department. Accordingly, 26 posts of Commercial Clerk and 11 posts of Office Clerk were notified alongwith certain posts of T.C. & Telegraph Signaller. A Written test was thereafter held on 25.9.83, in which 149 candidates, including the applicant, were declared successful. The viva-voce test was next held in November/December, 1983. With the sanction/approval of the competent authority, a panel was, thus, prepared and issued on 19.12.83. In all 32 candidates were placed on the aforesaid panel. The panel included 26 candidates who were to be appointed as Commercial Clerks. The applicant was included in this category. Subsequently, those empanelled were sent on training. The applicant, who was also deputed for training, was declared passed in the very first attempt and a certificate dated 24.4.84 was issued to him. Unfortunately, at this point of time, instead of issuing appointment letters and orders for joining working posts, the railway administration issued orders dated 26.4.84, by which the applicant as well as others, who had been empanelled as Commercial Clerks and had successfully completed the training as well, were directed to revert to their old stations and posts. The applicant was accordingly posted back as Pointsman at Phulera. Sometime later, on 9.7.84, the aforesaid panel was cancelled and the cancellation was notified vide respondents' order dated 26.7.84. This gave rise to a spate of writ petitions filed in the High Court of Rajasthan. The applicant also filed a writ petition, being CWP No.1007/84. All the writ petitions, thus, filed were disposed of by the High Court by a common order dated 27.1.86, passed in the following terms :-

"In the result, the writ petitions are allowed. The order dated 26.7.84 cancelling the selection panel notified vide letter dated 19.12.83 is quashed. It will, however, be open to the railway administration to take suitable action against the individual candidates selected in the said selection panel in relation to whom irregularities have been found to have been committed in the procedure of the selection board. In the facts and circumstances of the case, the parties are left to bear their own costs in these writ petitions."

The panel was to be revived accordingly with this stipulation that action was to be taken against those candidates in respect of whose selection irregularities had been made. The matter was, however, taken back to the High Court by a review petition filed by the Union of India on the ground that the High Court had passed the aforesaid order on 27.1.86 without having jurisdiction in the matter. The review petition was allowed and consequently the writ petitions filed by the applicant as well as others were transferred to the Central Administrative Tribunal, Jodhpur Bench, for adjudication. The Jodhpur Bench of this Tribunal finally decided the matter by its order dated 10.2.87 by allowing the applications filed by the present applicant as well as the others. The respondents' order dated 26.7.84, by which the aforesaid select panel was cancelled, was quashed and set aside. Thus, the Tribunal passed virtually the same order which had been passed by the High Court on 27.1.86. In pursuance of the aforesaid order passed by the Tribunal on 10.2.87, and after modifying the aforesaid select panel, the respondents issued appointment orders dated 26.10.87 (Ann.A/7), by which the applicant was appointed as Office Clerk and placed at S.No.24 of the list attached to the aforesaid order dated 26.10.87.

3. Applicant's case is that while he had qualified for appointment as Commercial Clerk and his name also figured in the select panel notified by the respondents on 19.12.83, he was incorrectly included in the category of Office Clerk and appointed as such by the aforesaid order of 26.10.87. It is also his case that if he had been allowed to be appointed as Commercial Clerk, he would have been accorded due seniority in the Commercial Branch. However, since that did not happen, the applicant's seniority ^{is} ~~was~~ to be determined under the MOCG Group.

4. It appears that some of the employees who joined as Commercial Clerk, in accordance with the revised panel, made a representation through the recognised trade unions by contending that since they had undergone training for appointment as Commercial Clerk in the year 1983, they should be assigned seniority from that very year i.e. from 1983 over those Commercial Clerks who have been appointed after 1983. The aforesaid demand was conceded by the railway administration, Thus, allowing Commercial Clerks to regain their seniority w.e.f 1983. The applicant, or, for that matter, the Office Clerks in general, were also included in the select panel of 1983, did not agitate the matter through the trade unions or by themselves. Thus, they have been considered for allocation of seniority w.e.f. 26.10.87 as shown in the letter of the same date (Ann.R/1).

5. In so far as the Commercial Clerks and the other categories are concerned, the requisite orders refixing their seniority w.e.f. 1983 were issued by the respondents vide their letter dated 26.6.96 (Ann.R/2).

6. The contention raised by the applicant is that having been recruited and trained with the Commercial Clerks etc. on the basis of the same panel of December, 1983, and being

similarly placed to them in all respects, the respondents should have proceeded to accord the same treatment to them (Office Clerks) as well by letting them regain seniority w.e.f. 1983. By placing the seniority list issued by the respondents on 12.6.84 (Ann.A/8), 16.7.90 (Ann.A/9) and 1.1.96 (Ann.A/10) in respect of Office Clerks, Senior Clerks and Head/Chief Clerks on record, the applicant has, in-so-far as he alone is concerned, pointed out the positions in the aforesaid seniority lists which should have been allocated in his favour on the basis of the very same conditions which had weighed with the respondents when they considered the claim for seniority filed by the Commercial Clerks etc. The aforestated seniority positions, in respect of himself, have bee pinpointed by the applicant in paragraph 4(x) of the OA.

7. We have carefully considered the submissions made by the parties and the pleadings placed on record. We do not have the slightest doubt that the Office Clerks, to which category the applicant belongs, are, in the circumstances of this case, placed exactly similar to the Commercial Clerks and other categories of staff recruited in 1983 and whose names figured in the select panel prepared by the respondents initially on 19.12.83. Indeed, as pointed out by the learned counsel appearing in support of the OA, it will amount to hostile discrimination if the Office Clerks including the applicant are treated differently from the way the Commercial Clerks etc. have been treated on intervention being made by the recognised trade unions on their behalf. In other words, the treatment meted out to the applicant is patently violative of Articles 14 and 16 of the Constitution. We are inclined to agree.

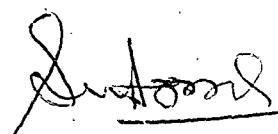
8. In the aforesaid circumstances, and taking note of the submission made by the learned counsel for the applicant that the applicant is not averse to his appointment as Office Clerk, we allow the OA with a direction to the respondents to fix up the seniority of the applicant w.e.f.

by following the same principle which they had followed in the case of Commercial Clerks etc. While doing so, the respondents will take into account the details supplied by the applicant himself in paragraph 4(x) of the OA. Applicant's seniority will, therefore, be refixed in the posts of Office Clerk, Senior Clerk and Head/Chief Clerk after granting all the consequential benefits to the applicant by way of promotion, fixation of pay and seniority. The respondents are further directed to complete the aforesaid exercise as expeditiously as possible and in any event within a period of two months from the date of receipt of a copy of this order.

9. The OA is disposed of in the aforesated terms.


(S.A.T.RIZVI)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)