

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 14/7/2000

1. OA 202/99

Joy Kutty, Subhash Narain Thakur, Vijay Singh, Kishan Singh Mahawar, Mun Roop and Shiv Pal Singh, all working on the post of Clerk under Dy. Controller of Stores, DRM, Western Railway, Kota Division, Kota.

... Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Dy. Controller of Stores, Western Railway, Kota Division, Kota, c/o DRM, Western Railway, Kota Junction, Kota.
3. Shri Heera Lal Joshi, District Controller of Stores, O/o DRM, Western Railway, Kota.
4. Shri Subhash Chand Joshi, Khalasi in the O/o Dy. Controller of Stores, Western Railway Kota Division, Kota.
5. Shri Ram Chandra Sharma, Khalasi in the O/o Dy. Controller of Stores, Western Railway, Kota Division, Kota.

... Respondents

2. OA 369/99

Joy Kutty, Subodh Narain Thakur, Vijay Singh, Kishan Singh Mahawar, Mun Roop and Shiv Pal Singh, all working as Clerk under Dy. Controller of Stores, DRM, Western Railway, Kota Division, Kota.

... Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Dvl. Rly. Manager, Western Railway, Kota.
3. Dy. Controller of Stores, Western Railway, Kota Division, Kota c/o DRM, Western Railway, Kota Junction, Kota.

... Respondents

CORAM:

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

HON'BLE MR.S.BAPU, ADMINISTRATIVE MEMBER

For the Applicants

... Mr.P.V.Calla

for the Respondents

... Mr.S.S.Hasan

ORDER

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

This order will dispose of OA 202/99 and OA 369/99 as facts and legal question involved in these two cases is similar

2. In OA 202/99 the applicants have prayed to quash and set aside the impugned order dated 29.4.99 (Annexure A/1) and all such orders including the order dated 19.4.99, reference of which has been made in Annexure A/1, or in consequence or precedence of the impugned order Annexure A/1.

3. In OA 369/99 a prayer has been made to restrain the respondents from holding fresh selection for the post of Clerk in pursuance of the notification dated 22.7.99 (Annexure A/1).

4. The brief facts in these two cases are that applicants were initially appointed on Group-D post and they were eligible for promotion in Group-C post. Therefore, the respondents issued a notification dated 21.11.96, whereby names of all eligible persons working in Group-D post for appearing in the selection test were called for. Another notification was also issued, wherein names of persons who were eligible from amongst Group-D employees for promotion in Group-C, as Clerk, were called for the written test to be held on 19.7.97. It is stated that the applicants appeared in the written test alongwith others and were declared passed vide order dated 24.11.97. It is also stated that 52 candidates appeared in the written test for six posts of Clerk but only 16 candidates could pass the said written test and they were called for interview and type test to be held on 2.3.98 and 3.3.98 and thereafter the applicants were selected and their names were placed in the panel of selected candidates for promotion on the post of Clerk. It is also stated that applicants were given appointment vide order dated 16.3.98 and in pursuance of the order of appointment, the applicants were posted and they are working on the post of Clerk, as mentioned in the OA. The applicants were sent for training and after completion of training, a certificate to this effect was issued. It is further stated that passing of type test was a essential qualification besides other prescribed qualifications for selection of Clerks and the Railway Board issued various circulars from time to time clarifying the position. According to the circular No.E(NG)I-96/CFP/19 dated 3.2.97 it has been mentioned that henceforth promotions from Group-D to Group-C against 33-1/3% of quota in the Ministerial cadre and from Clerks to Senior Clerks against IDCL quota may be allowed on provisional basis and the concerned staff may be given two years time from the date of promotion to qualify the prescribed typewriting test and in case they fail to qualify the typewriting test within this period, they will be liable to be reverted. Thus, the applicants were appointed as Clerk on the condition that they would pass the type test within two years from the date of their promotion as per the circular dated 3.2.97. It is also stated that the applicants were promoted vide order

dated 16.3.98 and thereafter type test was held only on 12.1.99 and the result of which has not been declared so far. It is further stated that suddenly the respondents have issued the impugned order (Annexure A/1), whereby the applicants have been reverted from the post of Clerk (Group-C post) to that of Group-D post and there is no valid reason for cancelling the said selection and the applicants, who were promoted to Group-C post after a long and aspiring service under the respondents, have been thrown back to the zero without any reason and rhyme in an arbitrary manner. It is also stated that the respondents have issued a notification for selection on Group-C post, therefore, a prayer has also been made to quash the said notification and to restrain the respondents not to make any selection in pursuance of that notification. Thus, the applicants have filed these OAs for the relief as mentioned above.

5. Reply was filed. In the reply it has been stated that persons declared successful in the written test, none of them qualified the type test, therefore, they could not be called for interview. But selection letter dated 7.3.98 was issued, which was wholly illegal and without jurisdiction. As the letter dated 7.4.94 clearly requires passing of type test before the promotion and interview, no relaxation could be granted by amending the statutory rules by an administrative letter. Therefore, it is stated that promotion of the applicants was contrary to the rules and did not confer any right to the applicants. It is stated that the applicants were promoted vide order dated 16.3.98 without holding the type test, which clearly shows that promotion of the applicants was contrary to the rules and as such they did not become the members of the cadre. Simply because the applicants have worked for more than 13 months, as alleged by them, it does not confer any right upon the applicants to hold the post. Therefore, these OAs are without any merit and liable to be dismissed.

6. Rejoinder has also been filed, which is on record.

7. Heard the learned counsel for the parties and also perused the whole record.

8. It is not disputed that the applicants were selected for promotion on the post of LDC by a written examination held by the department and they were given appointment in pursuance of the panel/selection made by the department. It is also clear from the circular No.E(NG)I-96/CFP/19 dated 3.2.97 that promotion from Group-D to Group-C against 33-1/3% of quota in the Ministerial cadre and from Clerks to Senior Clerks against IDCL quota may be allowed on provisional basis and the concerned staff may be given two

years time from the date of promotion to qualify the prescribed typewriting test and if they fail to qualify the typewriting test within this period, they will be liable to be reverted. It is undisputed that on the basis of these instructions, issued by the Railway Board, the applicants were given promotion on Group-C post without passing the type test and thereafter the applicants were given an opportunity to appear in the type test but before the result was declared, the impugned order for reverting the applicants from Group-C to that of Group-D post was issued. It is also an admitted fact that no opportunity of hearing or show-cause was given to the applicants before passing the impugned order. It is a settled legal position that if an order includes civil consequences, before passing such an order principal of audi alteram partem must have been complied with. If the principle of audi alteram partem is not complied with before passing such an order, the order is in violation of the principles of natural justice and the same is liable to be quashed on this ground alone.

9. In the instant case, the applicants were promoted after following the due process of selection and after their selection a panel was prepared. Orders of appointment were given and the applicants have joined in pursuance of the orders of appointment and they were working on the post for the last 13 months before the impugned order of reversion was passed. No opportunity of hearing/show-cause was given to the applicants before issuance of the impugned order. Therefore, when the department itself has acted upon the panel, there was no basis or reason to cancel the panel by passing the impugned order. In case of individual selection, if it is not found in accordance with rules, even notice is required to be given and opportunity is also required to be given. Only in case of mass mal practice, no notice or opportunity of hearing is required before cancellation of selection. In 1999 (2) SLR 595 (S.Prakash & Another v. K.M.Kurian & Others), Hon'ble the Supreme Court held that a candidate has no vested right to get the process completed except that the government could be required to justify its action on the touchstone of Article 14.

10. After going through the facts and circumstances of the instant case, we are of the considered opinion that the impugned order (Annexure A/1) is arbitrary and is not at all sustainable in law, therefore, liable to be quashed. Since the order of cancellation of panel/reversion has been found as illegal and not sustainable in law, therefore, any notification for filling up the posts in question is also liable to be quashed.

11. It is also stated by the learned counsel for the respondents that so many complaints were made regarding the said selection alleging gross

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irregularities in the selection conducted by the division. We have perused the relevant record produced before us and we are of the opinion that there was no proper justification/ ground before the concerned authority to cancel the said selection specially when in pursuance of the said panel/selection the applicants have joined and they were working on the post for the last 13 months.

12. We, therefore, allow this OA and quash and set aside the impugned order dated 29.4.99 (Annexure A/1 in OA 202/99) and all such orders including the order dated 19.4.99, reference of which has been made in Annexure A/1. We also quash the notification dated 22.7.99 (Annexure A/1 in OA 369/99), issued by respondent No.3. No order as to costs.

Sd/-
(S.BAPU)

MEMBER (A)

Sd/-
(S.K.AGARWAL)

MEMBER (J)

TRUE COPY ATTESTED

[Signature]
Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR
14/7/2000

Copy has been supply to the both parties,
receipt of the ~~document~~ parties in the presence
of dt 202/98.

[Signature]
14/7/2000

TRUE COPY ATTESTED

[Signature]
Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR