

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 125/2001

DATE OF ORDER: 02-7-2002

P.P. Choudhary son of Shri Gur Dayal Singh aged about 45 years, at present working on the post of chief Clerk/Office Superintendent Grade II in the pay scale of Rs. 5500-9000 in the office of Statistical and Analysis Officer, Western Railway, Ajmer, resident of Tanaji Nagar, Gali No. 16, Bhajan Ganj, Ajmer.

....Applicant.

VERSUS

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Financial Advisor & Chief Accounts Officer, headquarter of Accounts, Western Railway, Churchgate, Mumbai.
3. Statistical & Analysis Officer, Western Railway, Ajmer.
4. Shri Bal Kishan Bhati, Chief Clerk in the office of Statistical & Analysis Officer, Western Railway, Ajmer.

....Respondents.

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

Mr. U.D. Sharma, Counsel for respondents No. 1 to 3.

None present for respondent No. 4.

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

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

This application has been filed by one Shri P.P. Choudhary u/s 19 of the Administrative Tribunal's Act praying therein the following reliefs:-

It is therefore, prayed that the Hon'ble Tribunal may kindly call for and examine the entire records relating to this case and by an appropriate order or



direction direct the respondents to include the name of the applicant in the panel dated 13.3.2001 (Annexure A/1) at an appropriate place treating him as having qualified in the entire selection process and further direct the respondents to accord regular promotion to the applicant to the post of chief Clerk/Office Superintendent Grade II scale Rs. 5500-9000, the post on which the applicant is working on adhoc basic since 11.6.1999.

Any other relief to which the applicant is found entitled in the facts & circumstances of the present case, may also be granted.

The Original Application may kindly be allowed with costs.

2. The factual matrix of the case is that the applicant was initially appointed as Clerk on 3.4.1976. He was granted further promotion to the post of Sr. clerk and Head Clerk. He was promoted to the post of Chief Clerk/OS Grade II on ad hoc basis vide order dated 11.6.99 on which he joined on the same date. A notification was issued on 25.6.99 for selection for preparing the panel for the post of Chief Clerk/OS Grade II, scale of Rs. 5500-9000. The applicant was within the consideration zone and was allowed to undertake the selection test. he passed in the written test vide order dated 13.9.99 and his name was placed at Sl. No. 3 of the list of candidates who have qualified in written test being called for viva-voce. The applicant belongs to SC category and he is senior to respondent No. 4, who is placed at Sl. No. 20 of eligibility list, who is also an SC candidate. Thereafter, the viva-voce test was conducted. The applicant appeared in the examination but he has not been empanneled and the panel was declared vide order dated 13.3.2001. Some of his juniors like Respondent No. 4, Shri Bal Kishan Bhati, finds place in the panel.

3. The applicant has further averred that applicant and one Shri Ram Swaroop are working on the post of Chief



Clerk/OS Grade II but they were not placed on the panel and ordered to be reverted despite there being two clear vacancies for the Chief Clerks even after giving posting to the selected and empanelled candidates. It is also submitted that applicant has been satisfactorily working on the promotional post and has passed the written test, he is entitled to be empanelled in view of Railway Board Circular dated 19.3.1976.

4. The OA has been filed on number of grounds; e.g. not declaring the applicant as selected on the post of chief Clerk/OS Grade II is arbitrary; as per Railway Board Circular dated 19.3.76 Record Note 2.2, one who is working satisfactorily on ad-hoc basis cannot be declared as not selected by failing him in the interview even though he passed in the written test. Railway Board Circular at Record Note 2.2 has been interpreted by the Hon'ble Supreme Court as also by various Benches of the Tribunal, and in view of the principle established by these pronouncements, the reversion of the applicant to the post of Head Clerk and non selection is not legally sustainable.

5. The respondents have filed counter reply and have controverted the facts and grounds mentioned in the OA. The preliminary objection has been taken that order dated 13.3.2001 by which applicant has been reverted has not been challenged in this OA and also there is an alternative remedy of preferring an appeal against the reversion under Rule 18 of the Railway Servant (Discipline & Appeal) Rules, 1968 and the OA deserves to be dismissed for violation of statutory/mandatory rules of Section 20 of Administrative Tribunal Act alone. Further it has been mentioned that ad hoc promotion of the applicant was subject to the condition that since the post of Chief Clerk/OS Grade II was a selection post, the applicant was required to clear the prescribed selection process for promotion to the said post and he had not acquired any right to continue on the said post until & unless he completes the selection process - written test &

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viva-voce test. On the other hand, Shri Bhanwar Singh, Respondent No. 4, junior to the applicant, has passed the selection without getting any benefit from relaxed standards. On the basis of merit, the panel has been prepared. Shri K.C. Chauhan, Bhanwar Singh and Bal Kishan Bhati have qualified the selection by applying the general standard on the basis of their merit against the three posts reserved for SC and thereafter came to be promoted w.e.f. 13.3.2001. It is the applicant who had failed to clear the said selection process for the post of Chief Clerk/OS Grade II, and having failed to qualify the selection process, his name could not be included in the panel. The applicant is not entitled to claim the benefit of the Railway Board Circular dated 19.3.1976 as in the facts of the present case, the said circular is not applicable in as much as as the said circular goes against the circular dated 9.8.92 as well as the circular dated 20.10.99 issued by the Railway Board. Further the said circular of the Railway Board containing Para 2.2 is also not applicable in the present case since the promotion to the applicant was given on 11.6.99 on ad hoc basis and immediately thereafter a notification for conducting regular selection was issued. A written test was held on 24.7.99 and 21.8.99 and final selection process had been completed on 13.3.2001. Thus the applicant had hardly worked on the said promotional post as Chief Clerk/OS Grade II for a year for a year or so. In this view of the matter, they have prayed that the OA may be dismissed with costs.

6. We have examined the rival contentions of the parties and have carefully gone through the records of the case.

7. The respondents have also submitted the selection proceedings of the case. However, the applicant has not filed any rejoinder to the reply filed on behalf of the respondents. The main issue for adjudication in this case is that the applicant, who had been working on the promotional post on ad hoc basis and who had failed in the viva voce test could claim the benefit of Railway Board's Circular

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(Record Note 2.2). In support of his contention the applicant has referred to the Apex Court's decision in R.C. Srivastava's case dated 13.3.95 wherein the provision of said Record Note of the Railway Board have been comprehensively discussed. The record Note only provides that the persons who are working satisfactorily for a long period could not be failed in the viva voce test but in the present case on perusal of the records, we find that applicant has been awarded nine marks out of 15 marks in viva voce test and minimum passing marks is 60%. In this way, the applicant has got 60% marks in the interview/viva voce. He has thus passed in viva voce. In other words he has not been failed in viva voce test. The Record Note is of no help to the applicant in instant case. Thus the applicant's incapability/capability or whether the applicant worked for a long time on the promotional post or his working was satisfactory etc. are not relevant in the present case. The applicant has secured only 58.5% as aggregate marks in the selection whereas three SC candidates including Respondent No. 4 had obtained more than 60% marks. Respondents No. 4 had secured 62% marks and thus has cleared the selection. Similar is the position of Shri Bhanwar Singh, who has got 61% marks. Since SC candidates with more than 60% marks became available, they were empanelled. The applicant could have been considered by following relaxed standards as a SC candidate only if no SC candidate with more than 60% marks was ~~available~~ available. This has not been the case. After the three SC candidates S/Shri K.C. Chauhan, Bhanwar Singh and Bal Kishan Bhati qualified by general standard, no deficiency of SC vacancy was left over, and there was no occasion for placing the applicant on the panel. Thus there is no infirmity in the selection panel, declared by the respondents. In this view of the matter, the applicant is not entitled for inclusion of his name in the panel for the post of Chief Clerk/OS Grade II and the question of giving any promotion on regular basis to the applicant to the post of Chief Clerk/OS Grade II does not arise.

8. Having regards to the discussions made and for the

reasons recorded above, we do not find any merit in this OA and the same is, therefore, dismissed with no order as to costs.

J. K. KAUSHIK
(J.K. KAUSHIK)

MEMBER (J)

A. P. NAGRATH
(A.P. NAGRATH)

MEMBER (A)

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