

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.340/2001

Date of order: 4/6/2002

Mukesh Kusumakar, S/o Sh.H.L.Kusumakar, working on the post of Senior Clerk, O/o ACOS, Vadodara, W.Rly. Headquarters Office at Dahod.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly, Churchgate, Bombay.
2. Divisional Railway Manager (Estt) W.Rly, Jaipur Division, Jaipur.

...Respondents.

Mr.P.V.Calla : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents.

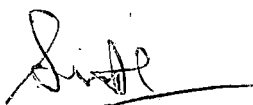
CORAM:

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

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

In this O.A filed under Sec.19 of the ATs Act, 1985, the relief sought by the applicant is to direct the respondents to provide him posting at Jaipur Division against the vacancy for graduate direct recruitment quota in view of the offer of appointment dated 19.7.99 with all consequential benefits.

2. Facts of the case as stated by the applicant are that the applicant was appointed as Sr.Clerk in pursuance of Railway Recruitment Board's notification No.4/98 issued on 1.8.98 and Headquarters office vide letter dated 8.6.99 had allotted the applicant alongwith 3 others Jaipur Division for offering them appointment. Thereafter, respondent No.2 issued offer of appointment to the applicant vide letter dated 19.7.99 and after medical examination by the Medical



Board, the applicant was declared medically fit as per Medical Certificate No.393428 dated 16.11.99. However, no appointment order was issued by respondent No.2. Respondent No.2 returned the Panel to Headquarters office vide letter Annx.A1 on the ground that no vacancy is available in Jaipur Division. It is stated that thereafter the applicant was given offer of appointment on the post of Sr.Clerk by Deputy Controller of Stores, Dahod vide letter dated 9.2.2001 and in pursuance to the said letter the applicant was appointed as Sr.Clerk vide order dated 13.3.2001. It is also stated that the Headquarters office directed respondent No.2 to fill up the vacancies earmarked for direct recruitment quota only through Railway Recruitment Board and not even on ad hoc basis. Even then, 4 persons were promoted on ad hoc basis on the post of Sr.Clerk vide order dated 24.5.99. It is further stated that the applicant filed representation dated 4.6.2000 with copies to General Manager and Railway Recruitment Board for posting the applicant in Jaipur Division with seniority and consequential benefits but with no avail. Therefore, the applicant filed this O.A for the relief as above.

3. No reply was filed in spite of repeated opportunities given to the respondents. On the request of the learned counsel for the respondents, the counsel for the respondents was allowed to file written submission which is on record.

4. Heard the learned counsel for the parties and also perused the written submissions filed by the learned counsel for the respondents.

5. Recruitment to the post of Sr.Clerk is made - (i) 66.67% by promotion from amongst the Clerks (Rankers quota),



(ii) 13½% through limited departmental competitive examination from amongst serving graduates and (iii) 20% to be filled in by direct recruitment of graduates through the RRB.

6. The learned counsel for the applicant vehemently argued that the applicant was not given appointment in spite of the fact that vacancies were available. This argument has been objected by the learned counsel for the respondents.

7. Regarding availability of vacancies, the applicant has averred in the O.A that respondent No.2 informed the Headquarters office that at Jaipur Division, at present 6 vacancies are available (4 Gen.+ 2 SC) to be filled in from amongst graduates through direct recruitment vide letter dated 3.12.98. On a perusal of this letter dated 3.12.98, it appears that this averment is regarding 13½% quota meant for serving graduates LDCs and not in respect of 20% direct recruitment quota. The applicant has also averred that five officials had been given ad hoc promotion ignoring the claim of the applicant for appointment as Sr.Clerk in Jaipur Division. But this averment is also not true as five officials were given ad hoc promotion against the posts earmarked for serving graduates quota. Therefore, returning the panel for want of vacancy available in Jaipur Division appears to be valid.

8. The learned counsel for the respondents argued that this O.A is barred by limitation. On the other hand, the learned counsel for the applicant argued that in view of the letter dated 16.2.2000 this O.A is within limitation.

9. It appears that this O.A was filed on 7.8.2001. On a perusal of the relief clause, it appears that the prayer for giving posting to the applicant at Jaipur Division in

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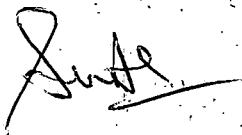
pursuance to the offer of appointment dated 19.7.99. Therefore, this O.A is barred by limitation as the O.A has been filed after the stipulated period of limitation as provided under Sec.21 of the ATs Act, 1985. Not only this, but the applicant filed representation dated 4.6.2001, after 1½ years from the date of offer of appointment dated 19.7.99.

10. The learned counsel for the respondents argued that the applicant was offered appointment on the post of Senior Clerk at Dahod vide letter dated 9.2.2001, after the panel was returned, thereafter order of appointment was given vide letter dated 13.3.2001 which was accepted by the applicant without any protest or reservation thereby the applicant has relinquished his right of appointment at Jaipur in pursuance of the offer of appointment dated 19.7.99. The learned counsel for the applicant objected this argument on the ground that by mere acceptance of appointment on the post of Senior Clerk at Dahod does not extinguish the right of the applicant in Jaipur Division.

11. I have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

12. It is settled law that mere selection of a candidate on a post does not give him any indefeaceable right to claim appointment on the post. In State of Haryana Vs. Subhash Chandra Marwaha & Ors, 1973 SC 2216, the Apex Court held that after selection list, it is open to the to decide how many appointment shall be made. The mere fact that the candidate name appears in the list does not entitled him to be appointed.

13. In Surendra Singh & Ors Vs. State of Punjab & Ors,

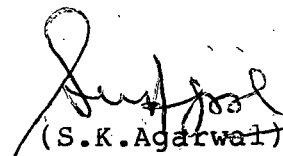


JT 1997(7) SC 537, it was held that the candidates in the waiting list has no vested right to be appointed except when a candidate selected does not join and the waiting list is still operative.

14. In N.Mohanan Vs. State of Kerala & Ors, 1997(1) SLR 522, the Apex Court held that mere inclusion of name in the waiting list does not create any indefeasible right to be appointed.

15. In the instant case, the applicant was given appointment on the post of Sr.Clerk against direct recruitment quota at Dahod vide order dated 13.3.2001 and he joined on this post without any protest and reservation. It is also clear that no appointment could be given to the applicant in pursuance of the offer of appointment dated 19.7.99 for want of vacancy. Therefore, the applicant does not have any right for his appointment on the post of Senior Clerk at Jaipur Division in pursuance of the offer of appointment dated 19.7.99. However, the applicant will be at liberty to submit his representation to this effect and on his representation the competent authority will be at liberty to post the applicant in Jaipur Division on the availability of vacancy in Jaipur Division.

16. I, therefore, dismiss this O.A having no merits with no order as to costs. However, the applicant may file representation to the competent authority and the competent authority will be at liberty to pass appropriate orders posting the applicant at Jaipur subject to the availability of vacancy in Jaipur Division.


(S.K. Agarwal)

Member (J).