

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 05.01.2005

OA No.431/2001

S.M.J.Rao s/o Shri Devadanam r/o Infront of Emanuel School,
Dadwada, Kota, now a days working on the post of P.A. to
Senior D.P.O., Western Railway, Kota.

.. Applicant

Versus

1. Union of india through the General Manager, Western
Railway, Churchgate, Mumbai.
2. The General Manager, Western Railway, Churchgate,
Mumbai.

.. Respondents

None present for the applicant
Mr. U.D.Sharma, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER (ORAL)

The applicant has filed this OA thereby, inter alia,
praying for the following reliefs:-

- "(i) that by an appropriate order or direction, the
impugned notice for holding selection along with
attached eligibility list dated 30.8.2001 Annexure
A/1 be quashed and set aside and the respondents be
directed to re-caste the eligibility list on the
basis of the base grade seniority as directed by the
Hon'ble Supreme Court as well as this Hon'ble CAT in
various cases, after preparing the seniority list
accordingly.
- (ii) That the respondents be further directed to hold the
selection thereafter.
- (iii)"

2. Facts of the case are that the respondents vide letter dated 30.8.2001 (Ann.A1) notified 27 vacancies of Group-B post of Private Secretary (PS) Grade-I in the pay scale of Rs. 7400-12000, which was proposed to be filled in by promotion from eligible candidates on the basis of written test and interview. The name of the applicant also find mention in the list annexed with this order being eligible for promotion to the post of PS Grade-I. The said eligibility list was prepared on the basis of seniority list as published by the respondents vide order dated 5.8.98. The grievance of the applicant in this OA is that the respondents be directed to re-cast the seniority list on the basis of base grade seniority and thereafter to hold fresh selection.

3. When the matter was listed for admission on 25.9.01, this Tribunal did not grant any ex-parte stay in favour of the applicant. However, it was observed that any promotion made in pursuance of the notification dated 30.8.2001 shall be subject to the result of this OA. However, subsequently, on 17.10.2001, this Tribunal granted stay thereby directing the respondents not to make selection in pursuance of notification dated 30.8.2001 till the next date, as the learned counsel for the respondents who has put in appearance could not plead the case as he was not briefed in the matter by the respondents. However, vide order dated 7.12.2001 when the parties were heard on the interim relief, this Tribunal vacated the interim order issued on 17.10.2001 restraining the department from making selection in pursuance to the notification dated 30.8.2001 and it was made clear that the department can go ahead with the selection as already notified but the result of the selection shall be subject to the final outcome of this



OA. The precise grievance of the applicant in this OA is that the applicant has not been placed correctly in the order of seniority as indicated in the eligibility list and if the selection is allowed to be conducted, the applicant's right would be adversely affected.

4. The respondents have filed reply. In the reply, it has been stated that consequent on de-centralisation of the cadre of Personal Assistant and Confidential Assistant w.e.f. 21.9.98, the applicant came to be allotted to Kota Division, and as such his seniority in the cadre of Confidential Assistant has been determined in the said cadre in Kota Division. It is further stated that the name of the applicant figured at Sl.No.61 in the eligibility list appended in the impugned notification dated 30.8.2001. It is further stated that the said post of PS was required to be filled up through selection amongst the Stenographers with minimum 3 years non-fortuitous service in the grade of Rs. 5000-8000 and above. It is, therefore, stated that entry in the said grade was essential criteria for determination of the eligibility of Stenographers for the said post and as such the said eligibility list was prepared from the Stenographers working in various departments having the said eligibility. Thus, according to the respondents, the date of initial appointment in the railway service has no relevance for the purpose of preparing the eligibility list. Thus, according to the respondents, there was no requirement for preparing the eligibility list on the basis of base grade seniority. It was further stated that though the official belonging to SC/ST category have been placed above the applicant in the said eligibility list on the basis of their respective dates of entry into the grades, the said officials have been called

12

against the reservation only as has been specifically mentioned in the said eligibility list against their respective names. It was thus submitted that the applicant cannot have any grievance about placement of reserved category candidates over and above him in the eligibility list.

4.1 The respondents have also filed additional reply thereby placing on record, the subsequent development which has happened after filing of the OA. In additional reply, it has been stated that consequent upon vacation of stay by this Tribunal, the written test for the post of PS Grade-I was held on 18.5.2002. The applicant had appeared in the said written test, result whereof has been declared vide Headquarters Office letter dated 6.8.2002 wherein the name of the applicant did not figure, meaning thereby that he had not qualified in the said written test. Copy of the said letter dated 6.8.2002 has been annexed with the additional reply as Ann.R/4. It is further stated in the additional reply affidavit that thereafter viva-voce test of the employees who have qualified the written test was held and consequently provisional panel for promotion to the Group-B post of PS Grade-I was notified vide headquarter office letter dated 23.10.02 (Ann.R5). It is further stated that thereafter posting order of the said empanelled official was also issued vide headquarter office letter dated 26.11.2002 (Ann.R6). Thus, according to the respondents, selection process for promotion to the post of PS Grade-I initiated vide notification dated 30.8.2001 has been completed by issuance of the panel and the issuance of posting of the empanelled officers. Since the applicant has failed to clear the written test which was the first stage for qualifying for the second stage of viva-voce forming part of the entire selection process, the question of his empanelment and consequential promotion does not arise and as such the

162

relief sought by the applicant do not survive any longer and the OA has become infructuous and as such deserves to be dismissed. This additional affidavit was filed on 13.12.2004.

5. The applicant has not filed rejoinder to the original reply nor to the additional reply.

6. We have heard the learned counsel for the respondents and gone through the material placed on record.

6.1 We agree with the contention raised by the learned counsel for the respondents that in view of the subsequent development, no relief can be granted to the applicant in this OA which has become infructuous. As can be seen from the pleadings made in the OA and prayer clause, the grievance of the applicant is that the eligibility list prepared for the purpose of selection for promotion to Group-B post of PS Grade-I in the scale Rs. 7500-12000 as initiated vide notification dated 30.8.2001 (Ann.A1) has not been prepared correctly which ought to have been prepared on the basis of base grade seniority and junior person belonging to reserved category has been placed above the applicant in the said eligibility list. As such, the entire process is vitiated and the eligibility list should be recast based on base grade seniority and thereafter the respondents be directed to hold fresh selection process. At this stage, we may notice that even if the prayer of the applicant has to be accepted that the name in the eligibility list for the purpose of promotion to Group-B post of PS Grade-I in the scale Rs. 7500-12000 should be based on recast seniority and the name of the applicant should be shown above the SC/ST category candidates in the impugned eligibility list, even then the applicant is not entitled to any relief because he has failed in the

62

written test, the result of which was declared vide Headquarter office letter dated 6.8.02 (Ann.R4). It is also borne out from the material on record that the name of the applicant also does not find mention in the provisional panel for promotion to the Group-B post of PS Grade-I as notified vide letter dated 23.10.02 which was prepared on the basis of viva-voce test of the employees which has qualified the written test (Ann.R5). Thus, once the applicant has not qualified the written test which is pre-requisite for promotion to Group-B post of PS Grade-I, placement of the applicant in the eligibility list at appropriate place loses its significance. Thus, without entering into merit of the case, whether the eligibility list for promotion to the post of PS Grade-I is to be prepared on the basis of base grade entry i.e. the date of initial appointment in railway service or it should be based on the basis of seniority in the grade of Rs. 5000-8000 ^{Rs. and above} which constitute feeder grade for promotion to PS Grade-I (as the post of PS Grade-I was required to be filled up by promotion through the selection from amongst the Stenographers with minimum three years non-fortuitous service in the grade of Rs. 5000-8000 and above), the present OA is liable to be dismissed solely on the ground that the applicant has failed to qualify the written test which was pre-requisite for promotion to Group-B post of PS grade-I in the scale Rs. 7500-12000.

6.2 For the reasons stated above, we are of the view that the applicant is not entitled to any relief and the present OA has become infructuous. It may be clarified here that in case the applicant is still aggrieved that he has been wrongly declared unsuccessful in the written test vide order dated 6.8.2002 (Ann.R4) and wants to challenge the same on any permissible grounds, this order will not come in his way to

Wef

challenge the same on the permissible available grounds. Further, it will also be permissible for the respondents to resist such claim of the applicant on permissible grounds including the question of limitation.

7. With these observations, the OA is disposed of with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)