

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 457/2001

Date of order 23. 4. 2022

Tejnath Ram S/o Shri Chothi Ram, aged about 50 years, at present working on the post of Record Sorter, Office of Divisional Security Commissioner (Railway Protection Force), Western Railway, Ajmer, R/o Railway Quarter No. 1460-B, Kasari Nadi, Ramganj, Ajmer.

...APPLICANT

V E R S U S

1. The Union of India through Chief Security Commissioner, (Railway Protection Force), Western Railway, Church Gate, Mumbai.
2. The Divisional Security Commissioner, Railway Protection Force, Western Railway, Ajmer

...RESPONDENTS

Mr. P.V. Calla, counsel for the applicant,
Mr. Hemant Gupta, brief holder for
Mr. M. Rafiq, counsel for the respondents.

C O R A M :

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

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

O R D E R

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

The applicant Shri Tejnath Ram is filed this Original Application under Section 19 of the Administrative

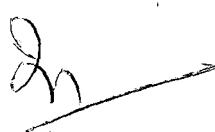
.. 2 ..



Tribunals Act, 1985, for setting aside the impugned order dated 11.01.2001 (Annexure A/1) ordering reversion of the applicant from the post of Junior Clerk to the lower post of Record Sorter and to seek a direction to the respondents to consider the candidature of applicant for promotion to the post of Senior Clerk with all consequential benefits.

2. The brief facts of the case are that applicant was initially ~~was~~ appointed as Constable in Railway Protection Force on 10.01.1969. He was medically declassified and was given alternative job of Record Sorter on the recommendation of the Screening Committee on 26.07.1993. The applicant in the normal course got an opportunity to undertake a selection held for the post of Junior Clerk against 33.33% quota. After positive act of selection he was empanelled for the post of Junior Clerk and was also promoted vide letter dated 13.05.1998 (Annex. A/5). He immediately joined on the same very date.

3. The applicant has further stated that he had also undergone the selection to the next higher post and passed the selection to the next higher grade post i.e. Senior Clerk in the scale of Rs 4500-7000 (RSRP) vide order dated 3rd June, 1999 (Annexure A/6). However, the promotion was not given to the said post for want of two years service and completion of the probation period on the feeder post of Junior Clerk. It has been stated in the order itself that the promotion would be given to the post of Senior Clerk on completion of their probation of two years.

A handwritten signature in black ink, appearing to read 'Dh' or 'Dhruv'.

4. The applicant was not given the due promotion to the post of Senior Clerk even though he completed above 2½ years on the feeder post. He was issued with a memorandum dated 11 January, 2001 (Annexure A/1) ordering reversion of the applicant to the post of Record Sorter for the reason that he has failed to qualify the typing test held on 7.4.2000, 18.5.2000 and 21.11.2000. The applicant submitted an appeal on 24.1.2001 and reminded the matter. He has stated therein that the applicant was deliberately failed in the typing test and he has not only qualified the selection for the post of Junior Clerk but also passed the selection for the next higher post i.e. Senior Clerk and Shri Laxmi Narain and Mukesh Narwal were also the similarly situated persons and they have also been further promoted to the post of Senior Clerk. They were never subjected to the any typing test and have also been promoted to the post of Senior Clerk but the applicant was given a differential treatment. Number of grounds have been taken in the O.A. challenging in the impugned order Annexure A/1. It has been stated that there has been no response to the various representations appeals filed by him.

5. Show-Cause notices were issued to the respondents on 9.10.2001 regarding admission of the case. The respondents have filed a detailed reply and have controverted the facts and grounds taken by the applicant in the O.A. They have placed on record a letter dated 7.4.1994 (Annexure R/1) wherein it has been mentioned that the Junior Clerk was required to pass the type test 30 W.P.M. in English and 25 W.P.M. in Hindi within a period of 2 years. No rejoinder has been filed in the matter.

6. We have heard the learned counsel for the parties and have perused the records of the case.

7. At the very outset, the learned counsel for the applicant has asserted that the applicant was ~~not~~ allowed the promotion to the post of Junior Clerk vide letter dated 13th May, 1998. This promotion was accorded to him ~~on~~ passing the requisite selection. The promotion order does not contain any rider whatsoever and the promotion was made on regular basis. No other ~~any~~ condition could be ~~trust~~ upon the applicant subsequently. On this the respondent learned counsel for the ~~pla~~ invited our attention to letter dated 7.4.1994 (Annexure R/1) and letter dated 13 February, 1998 (Annexure R/2). As per Annexure R/1, The Railway Board has laid down the Rule that in case of promotion to Group 'D' to Group 'C' in the ministerial cadre and promotion of Clerks as Senior Clerks against LDCE quota, will be required to acquire the typing skill within a period of 2 years. Further the perusal of the promotion order dated 13 February, 1998 (Annexure R/2) would reveal that the condition to pass the typing test of 30 W.P.M. in English or 25 W.P.M. in Hindi within a period of 2 years has been annotated on the said promotion order and it was got noted ~~on~~ ~~to~~ specifically to the applicant. Now the applicant cannot take different stand. However, the requirement of the law, the rules also cannot dispensed with.

8. The learned counsel for the applicant has drawn our attention towards the fact that number of persons who were similarly situated and issued the similar type of order of promotion, have been promoted to the post of Senior

Clerk without passing any typing test. These persons also passed the selection to the post of Senior Clerk but incidentally they completed two years service on the feeder post and the applicant did not complete the two years service on the feeder post at the relevant time. Had the applicant completed two years service on the feeder post, the applicant also would have been promoted to the higher post and the question of passing any reversion order would not have arisen and there has been hostile discrimination. There was no explanation from the respondent side on this and the position being factual as supported by the documents was not refuted.

9. Nextly, the learned counsel for the applicant have invited our attention towards para 222 of IREM Vol-I wherein it has been laid down that if a person has passed a higher grade selection then he shall be deemed to have been passed the selection for the intermediate grade selection post, if in the same avenue of promotion. The extract of the relevant rule is reproduced as under: -

"222. Automatic empanelment of staff in higher grade selection and non-selection posts:-

(a) Selection posts.-A railway servant selected for a higher grade selection post without having been selected for the intermediate grade selection post, if in the same avenue of promotion, should be treated as automatically selected for the latter post, provide that the original group 'c' post, the intermediate group 'c' selection post, and his/her present group 'c' selection post, are all the same avenue of promotion and none of them is a general post for which several categories of staff are eligible. If the Selection Board for the intermediate grade selection post have placed some persons as "outstanding", in that case, an employee selected for a higher grade group 'c' selection post or group 'c' post in the normal channel of promotion may be deemed to have been classif



as "outstanding" and given the place in accordance with the seniority amongst those ~~xxx~~ classified by the Selection Board as "outstanding" for the intermediate grade selection post, provided the Selection for that post is held after such an employee has already been selected for the higher grade selection post.

(b) Non-Selection post.- In the even of an intermediate grade being a non-selection post, the employee would get a proforma position in such intermediate grade only if such a position was due in accordance with seniority-suitability being accepted by virtue of fitness for the higher grade by a process of selection.

We are satisfied that the case of the applicant is squarely covered by the aforesaid rules and he has admittedly passed the selection to the higher post of Senior Clerk and he is deemed to have been empanelled for the lower post of Junior Clerk ~~xxxxxxxxxx~~ as per the aforesaid rule position and was entitled for promotion to the post of Senior Clerk as has been done in case of similarly situated persons.

10. It would be worthwhile to observe that the applicant has specifically asserted that he has been discharging his duties on the feeder post of Junior Clerk to the entire satisfaction of the authorities and there is no denial to this. In the facts and circumstances of the case, the efficiency in work is also not seems to be jeopardised in any way due to non- qualifying the type test. However, similar treatment is expected from the respondents atleast in the similar circumstances but the applicant has been singled out without any reasonable cause. The impugned order of reversion dated 11.1.2001 is uncalled for and is not sustainable in law. On the other hand, we have no hesitation in holding that the applicant is fully entitled for promotion to the post of Senior Clerk as per his selection vide Panel dated 3 June, 1999 (Annex.A/6)

11. In view of the aforesaid discussion, the O.A. deserves to be allowed and we pass the order as under:-

"The O.A. is allowed. The impugned order dated 11.01.2001 (Annexure A/1) is hereby quashed. The applicant shall be entitled to all consequential benefits. The respondents are further directed to consider the case of the applicant for promotion to the post of Senior Clerk as per Panel dated 3 June, 1999 (Annexure A/6) from the date he has completed two years service on the feeder post i.e. 13.5.2000, if he is otherwise eligible with all consequential benefits. This order shall be complied with within a period of 3 months from the date of receipt of this order. No Cost.

J.K. KAUSHIK

(J.K. KAUSHIK)
Judl. Member

A.P. NAGRATH

(A.P. NAGRATH)
Adm. Member

kumawat