

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 131 of 1998

Jabalpur, this the 16<sup>th</sup> day of February, 2004.

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. G.Santhappa, Judicial Member

1. Vinod Kumar Shrivastava  
S/o Shri Jagan Nath Prasad Ji  
Aged 45 years. Chief Clerk  
Scale Rs. 5500-9000, Office  
of the Executive Engineer,  
(Survey & Construction)  
Western Railway, Ujjain  
R/o- Ratlam(M.P.)
2. Smt. Renu W/o Shri John Mical,  
Masih, Aged 42 years,  
Chief Clerk Scale 5500-9000  
Office of the Divisional Rly.  
Manager, Works & Accounts &  
Budget Section, Western Rly.  
Ratlam(M.P.)
3. Smt Laxmi Devi Yadav  
Wd./o Late Shri Ramdyal  
Yadav, aged 56 years,  
Chief clerk scale 5500-9000  
Office of the Divisional Rly.  
Manager, Electrical Section  
Western Railway, Ratlam(M.P.)

APPLICANTS

(By Advocate - Shri G.L. Gupta)

VERSUS

1. The Union of India,  
Through General Manager,  
Western Rly.  
Churchgate-Mumbai.
2. The Senior Divisional Engineer  
(Headquarters)(Establishment)  
Divisional Rly. Manager's office,  
Western Railwy, Ratlam.
3. The Divisional Railway Manager,  
(Establishment), Western Railway,  
Do-Batti, Ratlam(M.P.)
4. Shri Om Prakash Joshi  
S/o Uma Shankar Joshi, Chief  
clerk Divisional Rail Manager's  
Office Western Railwy, Ratlam  
R/o 55 New Road, Ratlam.
5. Shri Devendra Kumar Vyas  
S/o Shri Ramesh Chandra Vyas  
Chief Clerk, Divisional Office  
Western Railway Ratlam  
R/o Palace Road, Ratlam

RESPONDENTS

(By Advocate - Sh. Y.I. Mehta, Sr. Advocate with Sh. H.Y.  
Mehta).

*G.S.*

ORDER

By G.Shanthappa, Judicial Member -

The above OA has been filed by the applicants seeking following reliefs :-

8.1 The office order No. ED 1025/4 Part 4 Annexure A-1 dated 05.02.1998 issued by respondent No. 3 may kindly be declared illegal and to be quashed.

8.2 The order No. ED 1025/4 Part 4-4 dated 26.8.97 issued by the Respondent No. 3 by which result of Written Examination for the post of Chief Clerks scale Rs. 1600-2600 - conducted on 12.07.97 has been cancelled may kindly be quashed and direct the Respondents to declare the result of Written Examination held on 12.07.1997(Annexure-A-2).

8.3 Declare that the applicants No.2 and 3 are working as Chief Clerks scale Rs. 1600-2660 by an order dated 02.11.93 and regularised on 22.03.95 and hence they cannot be reverted Annexures-A-9, A-10 and A-11.

8.4 Further declares that the Applicant No. 1 has been promoted on regular basis by order dated 03.08.1995 as Chief Clerk scale Rs. 1600-2660 and further posted on promotion at Assistant Engineer, Nimach's office, and now he cannot be reverted Annexures-A-12 and A-13.

8.5. Respondents may also be directed to give all benefits of further promotions etc. as per Rule and law according to the seniority from the date of working on the post of Chief Clerk.

2. Through MA No. 1600/02 which was allowed on 12.5.03 the applicants have claimed following reliefs :-

8.4(A) To set-aside the order passed in OA No. 116/95 dated 10.07.1996 Om Prakash Joshi Vs Union of India on the basis of principles laid down by the Hon'ble Supreme Court of India and the Madhya Pradesh High Court.

8.4(B) Also to set-aside the order dated 01.01.97 passed by this Hon'ble Tribunal in R.A. No.109/96 Union of India v/s Omprakash Joshi etc. after re-calling the above two orders passed by this Hon'ble Tribunal behind the back of applicants who were in the Selected list and without making parties in the OA No. 116/95 and RA No.109/96 and passed without hearing, who are affected parties.

8.4(C) To re-call the order dated 3.7.1998 passed in OA No. 502/98 Smt. Renu Masiha and others Vs Union of India and others passed by this Hon'ble Tribunal at circuit sitting at Indore without show cause and without hearing at the circulating stage and kindly hear on merits as per judgment of the Hon'ble Supreme Court.

3. The brief facts of the case are that the first applicant was called for selection as Chief Clerk in the pay scale of Rs. 1600-2660/- to be held on 6.2.1995 and 7.2.1995. He was declared successful in the selection process vide order dated 22.2.1995. The applicants nos. 2 and 3 were also declared successful in the above selection process and all of them were posted on adhoc basis. The said selection process has been challenged by one Shri Om Prakash Joshi and Shri Devendra Kumar Vyas, who were declared fail in the said selection process. The O.A. No. 116/95 has been filed by the private respondents and the same was allowed on 10.7.1996 with the following observations:

"We are therefore constrained to hold that General Manager, Western Railway is not the competent authority to dispense with written test in terms of para 215 of the IREM and order dated 30.12.1994/4.1.1995 (Annexure A-4) is without authority and therefore quash the select list of Chief Clerks dated 22.2.1995 prepared by the Divisional Railway Manager, Ratlam (Respondent No. 3). The respondents are directed to prepare a fresh select list of Chief Clerks within a period of three months holding written test and viva-voce test. The applicants and similarly placed persons shall be allowed to ~~remove~~ take part in the fresh selection. The application is accordingly allowed."

4. Being aggrieved by the said order, R.A. No. 109/96 has been filed by the respondents, which was dismissed on 1.1.1997. As per the direction of this Tribunal, a fresh select list was prepared after holding fresh selection in which the applicants have been declared unsuccessful.

5. The issues in this application are that whether the employees, who are holding the post on adhoc basis, shall continue? Whether the order passed by this Tribunal on 10.7.1996 in OA No. 116/95 is applicable to the applicants? Whether the judgement of the Hon'ble Supreme Court reported in AIR 1997 (SC) 3277 is applicable to the facts of the present case?

*ef.*

6. This Tribunal has decided OA No. 502/98 in the matter of Renu Masih & Ors. vs. U.O.I. & Ors, referring the judgement of the Hon'ble Supreme Court in the matter of K. Ajit Bau & Ors. vs. Union of India & Ors., reported in AIR 1997, SC 3277 with the directions that the petitioner has already challenged his reversion and the matter is pending. Question of filing a separate OA challenging the order in this petition does not arise. As the petitioner has challenged only the order passed in OA 116/95 and the second petition challenging the relief already challenged in earlier petition, cannot be filed. Accordingly, the petition is disposed of. It is relevant to mention here that the issue regarding selection process has been decided by this Tribunal and directed the respondents to hold a fresh selection.

7. In the present OA, the applicants have sought the relief to quash the order dated 10.7.1996 passed in OA No. 116/95.

8. The applicants have referred the judgement of Hon'ble High Court of Madhya Pradesh in W.P. No. 2167/01 which was dismissed on 7.11.2001. In the said W.P., orders of this Tribunal passed on 13.3.2001 was challenged. The issue in the said W.P. was that the respondents no. 1 to 10 had been working on the post of Diesel Assistant, they were promoted on adhoc basis. Since they were not regularised for a long number of years, they moved an application for their regularisation on the said post and for payment of differential salary. The said W.P. filed by the General Manager, All India Railways, was dismissed confirming the order of this Tribunal passed on 13.3.2001.

*— J.R.*

The issue in the said W.P. was that the applicant in the O.A. was appointed as Khalasi and he was promoted on adhoc basis in 1979 and continued upto 1991. He was reverted which he challenged in OA No. 679/91. The said O.A. was dismissed, as he accepted the fresh appointment as Typist on adhoc basis on 10.01.1992. The applicant no. 2 was appointed on adhoc basis as Diesel Cleaner since 10.10.1990. Later on he was appointed as the speed test as such reverted to the substantive post. With the above directions, the said W.P. was dismissed on 27.8.2001.

9. In all the said cases, the issue was regarding promotion on adhoc basis.

10. The applicants in this O.A. have not challenged the orders of this Tribunal passed in RA No. 109/96 on 1.1.1997 before the competent court. In compliance of the directions of this Tribunal, the respondents have held a fresh selection in which the applicants were declared unsuccessful. In the judgement reported in AIR 1997(SC) 3277, the Hon'ble Supreme Court held that aggrieved persons can file a review application. Admittedly, the applicants have filed a review application and the same has been dismissed. It is pertinent to mention here that the applicants had filed a W.P. No. 1203/98 challenging the order dated 3.3.1998 passed in OA No. 502/98. The said W.P. was dismissed as withdrawn on 29.08.2002 on the ground that they have already filed OA No. 131/98(present OA) before the Central Administrative Tribunal challenging their reversion.

*gj.*

11. We have heard the learned counsel for the parties and carefully perused the pleading and other material available on record including the judgements cited on either side.

12. After observing that the respondents have committed a mistake in the selection process, this Tribunal allowed OA No. 116/95 and directed the official respondents to prepare a fresh select list of Chief Clerks within a period of three months holding written test and *viva-voce* test. The applicants and similarly placed persons shall be allowed to take part in the fresh selection. In the fresh selection, opportunities were allowed to the applicants and similarly placed persons including respondents nos. 4 & 5 in this O.A. and the select list has been prepared. It is pertinent to mention here that the applicants have failed in the fresh selection. Since they have not challenged the said selection process, they have no locus standi to question the orders of this Tribunal passed in OA No. 116/95. Since they have already filed RA No. 109/96 which was dismissed on 1.1.1997, the relief in this O.A. is hit by the principle of *res-judicata*. Hence, this O.A. is not maintainable in respect of challenging the order of this Tribunal passed on 10.7.1996 in OA No. 116/95.

13. When the official respondents have complied with the directions of this Tribunal and held the fresh <sup>was made</sup> selection in which applicants have been declared unsuccessful, the relief for their continuation as Chief Clerks on adhoc basis is not sustainable in the eye of law. The applicants have no legal right for continuation as Chief Clerk and Assistant Engineer, as prayed for in this O.A.

*— G.P. —*

14. The learned counsel for the applicant has cited one judgement of the Hon'ble Supreme Court rendered in the case of Arun Tiwari vs. Mansavi Shikshak Sangh, reported in 1998 MPLSR 195 regarding the delegation of powers - excessive delegation. He has also cited another judgement in the case of Union of India vs. Shanti Swarup, AIR 1999 SCC 1548 which relates to interpretation of para 157, Railway Establishment Code Vo.I providing that the Railway Board is empowered to make rules of general application and not rules applicable to individual cases. The learned counsel for the applicants has also referred another judgement rendered in the case of Munna Roy vs. UOI & ors., 2001 MPLSR 23 which relates to "Appointment- Railway Recruitment Board cancelling select list for reasons which were erroneous and not genuine. The facts of the said judgements are not relevant to the facts of the case in hand.

15. We are of the considered view that the Tribunal has rightly held in OA No. 116/95 dated 10.07.1996 and RA No. 109/96 dated 1.1.1997 that when the respondents have complied with the directions of this Tribunal, the question of setting aside the order dated 10.07.1996 passed in OA No. 116/95 does not arise. The applicants have no locus standi to continue on adhoc basis as Chief Clerk and Assistant Engineer, as prayed for in the O.A.

16. In view of the facts and circumstances of the case and of various judgements of the Hon'ble Supreme Court and High Courts cited on either side, the applicants are not entitled for the reliefs, as prayed for. Accordingly, the O.A. being devoid of merit is dismissed. No costs.

  
(G. Shanthappa)  
Judicial Member

skm

  
(M.P. Singh)  
Vice Chairman