

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 25th day of October, 2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 365/2010**

Ram Kishore son of Shri Brij Bhusan, aged about 29 years, resident of Quarter No. 238-F, Railway Colony, Kota Junction, Kota and presently working as Junior Clerk, under CPWI, Vikramgarh, A lot, West Central Railway, Kota Division, Kota.

.....Applicant

(By Advocate: Mr. P.V. Calla)

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.

.....Respondents

(By Advocate: -----)

2. **ORIGINAL APPLICATION NO. 366/2010**

Padam Singh Verma son of Shri Atar Singh Verma, aged about 32 years, resident of 76, Poonam Colony, Gall No. 5, In front of Deep Drycleaners, Ladpura, Kota and presently working as Junior Clerk, Office of Divisional Railway Manager, West Central Railway, Kota Division, Kota.

.....Applicant

(By Advocate: Mr. P.V. Calla)

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Personnel Officer, West Central Railway, Kota Division, Kota.

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

By this common order, we propose to dispose of both these OAs as common question of facts and law is involved.

2. Briefly stated, facts of the case are that both the applicants were initially appointed as Group 'D' employee. Pursuant to the selection conducted for the post of Clerks cum typists, the applicants appeared in the written examination, which they qualified and result of which was declared vide office order dated 23.07.2007 (Annexure A/2) wherein names of both the applicants find mentioned at sr. no. 14 & 18. Subsequently, vide office order dated 01.08.2007 (Annexure A/3), both the applicants were placed in the panel. One of the conditions, which was incorporated while placing the applicants and other selected candidates on panel, was to the effect that the persons who have been empanelled were required to clear the typing test of Hindi or English within a period of two years and the names of the selected candidate have been placed on panel on provisional basis. It was further mentioned that in case any of the candidates failed to pass the typing test, they will have to be reverted to their substantive post i.e. Group



'D' category. It is further case of the applicants that they were also declared eligible for promotion to the post of Senior Clerk (Annexure A/5) and they also appeared in the written examination and declared successful. However, the respondents vide order dated 03.03.2010 (Annexure A/7 In OA No. 366/2010, Padam Singh Verma) issued a show cause notice as why he should not be reverted to his substantive post of Group 'D' since he has failed to pass the typing examination despite giving three opportunities and one special opportunity. The respondents have further issued the impugned show cause notice dated 06.07.2010 (Annexure A/1 in both the OAs) whereby the applicants were given opportunity to explain as to why they should not be reverted to their substantive post of Group 'D' since they have failed to pass the departmental typing test within the prescribed period of two years despite the fact that three general and one special opportunity was granted to them to ~~qualifying~~ the typing test. The applicants were granted 14 days time to submit their explanation. The applicants have also placed on record the explanation so given by them against the show cause. It is on the basis of these facts the applicants have filed this OA thereby praying for quashing the impugned show cause notice dated 06.07.2010 (Annexure A/1 In both the OAs) alongwith letter dated 03.03.2010 (Annexure A/7 In OA No. 366/2010) with further prayer that respondents may be directed to allow further promotion on the post of Senior Clerk consequent upon their qualifying the written examination with further chance to clear the typing test.

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3. Heard the learned counsel for the applicants at admission stage. We are of the view that the applicants are not entitled to any relief for more than one reasons. Firstly, the applicants have challenged the validity of show cause notice dated 06.07.2010 (Annexure A/1). Admittedly, the applicant have filed representation against the so called show cause notice whereby the respondents prima facie came to the conclusion that the applicants are required to be reverted to their substantive Group 'D' post as they were provisionally put in the panel with clear stipulation that they will have to qualify the typing test within a period of two years. Since admittedly, the applicants have failed to qualify the typing test within the prescribed period despite the fact that four chances were given to them, it cannot be said that the respondents have acted arbitrarily in issuing the show cause notice or in other words no mandamus can be issued to the respondents not to revert the applicant from the post of ~~Senior~~ Clerk as the applicants have not shown any legal right whereby they could not be reverted to the substantive post of Group 'D' on account of failure of the examination more particularly when matter is at the stage of consideration and no final order has been passed. Be that as it may, since the applicants came against the show cause notice, according to us, the present OA is premature and cannot be entertained in view of the law laid down by the Apex Court in the case of Union of India & Another vs. Kunisetty Satyanarayana, 2007(2) SCC (L&S) 304, where the Apex Court in Para nos. 13 & 14 has given categorical finding, which thus reads as under:-

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"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh* [JT (1995) 8 SC 331], *Special Director v. Mohd. Ghulam Ghouse* [AIR 2004 SC 1467], *Ulagappa vs. Divisional Commr., Mysore* [(2001) 10 SCC 639], *State of U.P. v. Brahm Datt Sharma* [AIR 1987 SC 943] etc.

14. The ratio why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

4. The ratio as laid down by the Apex Court in the aforesaid cases^u is squarely applicable in the facts & circumstances of these cases. However, it is not the case of such nature where show cause notice is found to be wholly without jurisdiction or illegal warranting our interference even if no final order is passed. As already stated above, the names of the applicants were placed on the panel provisionally subject to their passing the departmental examination within a period of two years. Admittedly, the applicants had failed to qualify the typing test within the prescribed period despite granting as many as four opportunities. Since the eligibility of the applicants for the post of Junior Clerk is still in dispute and were not substantive holder of the said post, as such in case they have been permitted to appear against^u

the higher post of Senior Clerk(s) and qualify the selection test, this fact according to us is of no consequence as no mandamus can be issued to the respondents thereby directing them to promote the applicants on the higher post of Senior Clerk. During the course of arguments, it was brought to our notice that pursuant to the Impugned show cause notice issued by the respondents (Annexure A/1), final order has been passed thereby reverting the applicant to the substantive Group 'D' post. Even on this count, these OAs cannot be entertained at this stage so long as validity of the reversion order is not challenged.

5. For the foregoing reasons, both these OAs are bereft of merit and are dismissed at admission stage itself with no order as to costs.

(ANIL KUMAR)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ

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Ms. 1011

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दिनांक..... के आदेशानुसार मेरी
उपास्थिति में दिनांक.....
को भाग-II व III नष्ट किए गए।

Section Officer (Judicial)
Administrative Tribunal
Central Bench, JAIPUR