

(2017) 11 AHC CK 0004
In the Allahabad High Court
Case No : 56927 of 2008

Jogendra Kumar Bali

APPELLANT

Vs

Union Of India, & Ors.

RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

Citation : (2017) 11 AHC CK 0004

Hon'ble Judges : Bharati Sapru, Siddharth

Bench : Division Bench

Advocate : Vikas Budhwar, Ankit Gaur, C. Dwivedi, Prashant Mathur

Final Decision : Allowed

Judgement

1. Heard Sri Ankit Gaur, learned Counsel for the petitioner and Sri Prashant Mathur, learned Counsel for the respondent Nos. 1 and 2.
2. The above noted writ petition has been filed by the petitioner challenging the order dated 23.8.2007 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad dismissing the Original Application No. 1546 of 2007 and the order dated 19.11.2007 dismissed the Review Application No. 82 of 2007 filed in the aforesaid Original Application.
3. The brief facts of the case are that the petitioner was appointed as casual labourer in the year 1985 and thereafter, he became Mason in the year 1986. Subsequently, he was absorbed as Special Messenger under Loco Foreman, Moradabad in the year 1987. The job of the petitioner as Special Messenger was to clear the cases of Local Purchase, which was clerical in nature. After repeated representations for promotion on the post of clerk, the petitioner was permitted to appear in the written examination, which he qualified in August, 2002 but no interview was held and the selections could not be finalized.
4. When the petitioner was not considered for promotion, he filed Original Application No. 149 of 2003 before the Central Administrative Tribunal, Allahabad

Bench, Allahabad, which was disposed of vide order dated 25.02.2003 directing the respondents to consider the promotion of the petitioner on clerical post in accordance with the law. Vide order dated 06.6.2003, the claim of the petitioner was rejected by the respondents and he challenged the same by way of another Original Application No. 1246 of 2003.

5. The aforesaid Original Application was allowed vide order dated 25.02.2003 directing the respondents to consider the appointment of petitioner on the post of Clerk within a period of three months.

6. On 20.5.2005, the interview of the petitioner for appointment on the post of Clerk was held but by the order dated 28.9.2005, his candidature was not accepted and the petitioner again filed Original Application No. 1546 of 2005 challenging the same, praying for a direction to absorb him in the clerical cadre and to grant all consequential benefits of the post. The aforesaid Original Application No. 1546 of 2005 was dismissed vide order dated 23.8.2007 and the Review Application filed therein was also rejected vide order dated 19.11.2007 and both are the subject matters of challenge before us in this writ petition.

7. The respondent Nos. 1 and 2 have filed their counter affidavit stating therein that the petitioner was not eligible for promotion to the clerical cadre and his claim was repeatedly considered and rejected by the respondents. It has been further stated that the employment of the petitioner was not on the feeder post of Clerk and therefore, he was not entitled to be promoted to the clerical cadre.

8. The learned counsel for the petitioner has relied upon the judgment of Supreme Court in the case of "Pritpal Singh Vs. Union of India, AIR 2005 2408 SC" in support of case:-

"5. In this Special Leave Petition, after service of notices, Union of India and the Railways represented by their authorities have filed counter affidavits. In rejoinder affidavit filed in response to the counter, the petitioner states that while he was working on the post of material checking clerk in group ""C", he competed in the year 1996 with others for regular selection to the post of clerk. He appeared in the written examination for regular appointment to the post of clerk in ""open line". He successfully cleared the written examination but was not selected for appointment because less marks were given to him in interview. Learned counsel has placed reliance on Railway Board's circular dated 08.12.1975, which was considered and applied in favour of similarly placed employees by this Court in the case of R. C. Srivastava v. Union of India & Ors. in Civil Appeal No. 9998 of 1995 (arising out of SLP (C) No. 9899 of 1993) decided on 3rd November, 1995. The relevant part of the Railway Board circular which was relied by this Court in the case R. C. Srivastava (supra) reads thus :-

"2.2. Panel should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad-hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the

field of consideration should be saved from harassment."

6. Applying the above said Railway Board circular in the case of R. C. Srivastava (supra), this Court came to the conclusion that the appellant was wrongly denied selection on the basis of marks given to him in the viva-voce test. Consequently, this Court directed that R. C. Srivastava should be considered to have been selected for the post of law assistant in the selection for the said post as per the panel prepared on 29th November, 1992.

7. The learned counsel appearing for the Railways made some efforts to justify the action of the railways in repatriating the present appellant from group ""C" post on construction organization to group ""D" post in ""open line". It is contended that the substantive appointment of petitioner was on group ""D" post in the ""open line".

8. The learned counsel for the Railways could not dispute the fact that in regular selection for the post of clerk held in the year 1996, the petitioner appeared and passed in the writing examination but declared fail due to less marks awarded in interview. The petitioner admittedly served for a long period of six years as material checking clerk. His work and performance was within the knowledge of the railway authorities. He successfully cleared the written examination. In such circumstances, only on less marks given to him in interview, he could not have been found unfit in breach of the Railway Board's circular (supra). The circular directs that employees working for a long period on promotion post satisfactorily are not to be declared unsuitable only on the basis of interview.

9. Based on the decision of this Court in the case of R. C. Srivastava (supra), in our considered opinion, the claim of the petitioner for appointment to the post of clerk in ""open line", with due regard to his work and performance on group ""C" post in the project and successfully passing the written examination, deserves to be considered.

10. Without, therefore, going into the correctness of the orders of the Central Administrative Tribunal and High Court rejecting the claim of the petitioner for regularization of his service on group ""C" post, we allow this appeal on a different ground.

11. On the basis of his position in the selection panel for the post of clerk in group ""C" prepared on the basis of the written examination of the year 1996, the respondents are directed to consider the petitioner for selection to the post of clerk in the ""open line" and on his selection and appointment grant him due seniority on that post."

9. The learned counsel for the respondent Nos. 1 and 2 has not disputed the legal position set out in the judgment of the Apex Court cited by the petitioner. Therefore, this writ petition is allowed and respondent Nos. 1 and 2 are directed to consider the petitioner for selection to the post of Clerk and on his selection and appointment grant due seniority on that post.

10. The writ petition stands allowed but without any order as to costs.