

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00072/2016**

Date of order: 30.01.2020

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Vimal Kumar Rai, Son of Sri Deo Nandan Rai, Senior Goods Guard, East Central Railway, Barauni, District- Begusarai, Resident of Village- Manpur, PS- Sonpur, District- Saran (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Chief Operating Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
4. The Divisional Railway Manager, East Central Railway, Sonpur, P.O.- Sonpur, District- Saran (Bihar).
5. The Senior Divisional Operating Manager, East Central Railway, Sonpur, P.O.- Sonpur, District- Saran (Bihar).
6. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, P.O.- Sonpur, District- Saran (Bihar).
7. The Senior Divisional Financial Manager, East Central Railway, Sonpur, P.O.- Sonpur, District- Saran (Bihar).

.... Respondents.

By Advocate: - Mr. Mukundjee, Sr. Panel Counsel for Railways
Mr. S.K. Ravi, Standing Counsel for Railways.

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for quashing the order dated 5/7.01.2016 together with order dated 19.06.2015 passed by respondent no. 6 (Annexure A/7 and A/6)

whereby the name of the applicant has been deleted from the select panel of Goods Guards dated 04.10.2011 and on the basis of which he has been ordered to be reverted to the post of Cabin Master. The applicant has also prayed for declaring the reversion of the applicant from the post of Sr. Goods Guard to the post of Cabin Master as null and void and ab initio wrong. The applicant had also prayed for interim relief to stay the impugned order. The Tribunal granted the interim relief of not taking any coercive action against the applicant by its order dated 25.02.2016. This interim relief has been extended till now.



2. The case of the applicant is that he was promoted from the post of Cabin Master to the post of Goods Guard through a select panel dated 04.10.2011. He has been further promoted to the post of Senior Goods Guard on completion of 2 years in that grade, w.e.f. 01.12.2013 by the office order No. 982/14 of East Central Railway dated 10.11.2014 (Annexure A/3). Following the judgment of this Tribunal in a case, OA 871/2011 dated 26.02.2014, in which this applicant was not a party, the respondents have revised the earlier select list by their order dated 19.06.2015 (Annexure A/6) in which his name has been dropped. This list was issued after issuing a notice to the applicant for showing cause against proposed amendment in the panel of Goods Guard and the applicant had given a detailed reply giving reasons why it should not be done as there was no fault on their part (Annexure-A/5). The applicant had approached this Tribunal through OA 461/2015 which was disposed

of by this Tribunal by directing the respondents to consider the case of the applicant after giving him proper opportunity of hearing and to pass a reasoned and speaking order taking into account the earlier direction as well as submission made by the applicant. The applicant has now challenged the speaking order which (at Annexure A/7) gives reasons why the claim of the applicant cannot be accepted. The applicant has challenged this reasoned and speaking order on ground that his deletion from the select list of Goods Guard is wrong since he was promoted on the basis of having 60% marks in the written examination and there were enough vacancies available to include him in the panel even if the consideration of seniority was ignored. The applicant has been further promoted to the post of Sr. Goods Guard, unconditionally by order dated 10.11.2014. Not only that, the respondents have conducted more than 3 selections for promotion to the post of Goods Guard amongst the employees of lower post/grades and more than 100 juniors of lower categories have been promoted to the post of Goods Guard as well as Sr. Goods Guards. In this situation, reversion of the applicant to the post of Cabin Master, for reasons of administrative lapses, is not at all justified and hence, the OA.

3. A written statement has been filed by the respondents in which they have justified the impugned speaking order which was passed taking into account the direction issued by this Tribunal dated 26.02.2014 in OA 871/2011 and order dated 09.05.2014 in OA 872/2011.



It is stated that the respondents have no other option but to pass the impugned order in the present OA as per the direction given by the Hon'ble Apex Court in SLP 16774/2008 since any illegality cannot be allowed to perpetuate for good. The impugned order has been passed after issuing show cause notice and there has been no procedural violation or denial of natural justice.



4. A rejoinder has been filed in which the averments made in the written statement are denied.
5. We have gone through the pleadings and heard the arguments of the parties. It is clear from the perusal of records that, though there is no clear order of reversion, the deletion of name of the applicant from the select list of Goods Guard would have resulted in his getting reverted to the position of Cabin Master, which is admittedly two stages below his present position. This was, admittedly, done following the direction of this Tribunal in OA 871/2011. It is also an admitted fact that the applicant was not a party to that OA. However, the order by which he was put in the select list of Goods Guard (Annexure A/2) itself mentioned that the selection was fully provisional and will be subject to the final decision of the pending OAs (Nos. 589/11 and OA 871/11). We quote the operative portion of this decision hereinbelow: -

“ In the light of the foregoing discussion, we remit this matter back to the respondent no. 2 [Chief Personnel Officer, E.C. Railway, Hajipur] to have a re-look into the final result of 2nd selection with a view to verify whether adding of marks of

seniority is in accordance with rules and why the discrepancies are there in two tabulations at Annexure- R/2 and R/5 of the supplementary written statement. The specific cases cited by the applicant, as mentioned in the order, be also checked. In case there is variation in result, the affected persons shall be given opportunity to represent and thereafter, the respondent no. 2 shall pass a reasoned and speaking order. The entire exercise be completed within a period of six months from the date of receipt/production of a copy of this order. No costs.”



6. It is also undisputed that a show cause notice was issued to the persons who are affected by the decision to revise the select list following the direction of this Tribunal and the speaking order also briefly mentions the points raised by the applicant in his reply to the show cause notice. However, the speaking order sticks to the earlier position taken by the Department according to which selection of persons, due to weightage of marks given to seniority, was erroneous. The speaking order mentions that there were four such employees whose name had to be struck off from the list for this reason. We also noticed that the applicant had mentioned, in his reply to the show cause notice, that besides him the other three are no longer in service as two of them have retired and one died. It is also mentioned in his reply that there have been four selection tests in the years following his selection and if he was informed about the error at an earlier time he could have participated in those tests and got qualified. Reverting him now is definitely unjustified and will cause irreparable loss. We find that the speaking order is totally silent about these issues raised by the applicant



and is in effect a literal compliance of this Tribunal's earlier orders in which the applicant was not even a party. Since the applicant had raised issues such as the conduct of three or four more tests in the following years, in which he happened to be denied an opportunity to appear, only because he was already holding the higher post, the respondents should have given due consideration to this fact. Instead of deleting his name from the earlier list, he could have been given a position where he could have logically reached even if the marks given for seniority were to be ignored. The applicant has alleged that he did have the qualifying marks and there were enough vacancies too. However, since the respondents have deleted four names out of the earlier select list, this could have happened only on account of there not being enough posts in that year's selection panel. In that situation, while seeking to correct an error, the Department should have ensured that the persons affected due to such correction did not suffer unreasonably for no fault of theirs. If there were no vacancies in that particular year and if the persons (whose names were deleted) had achieved the qualifying marks, they should have been considered against the next available vacancy, so that those who qualified in the examinations held later, did not become senior to them.

7. In the aforesaid circumstances, we find that the impugned order, though in technical compliance of this Tribunal's directions, fails to render justice to the applicant, who was an affected person. Though he was heard by the respondents his objections were not correctly addressed. It was argued by the learned counsel for the respondents that

there is no order of reversion and the applicant is still working at his promotional post. Under these circumstances, the impugned order, so far as it results in deletion of the name of the applicant in the Select List, is quashed and the interim order issued on 25.02.2016 is hereby made absolute. If the respondents still feel the need for making any correction, following this Tribunal's earlier direction, it should be done after taking into account the observations made hereinabove. The OA is disposed of accordingly. No order as to costs.



[Dinesh Sharma]
Administrative Member
Sr. K.

[Jayesh V. Bhairavia]
Judicial Member