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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.20/91

NEW DELHI THIS THE 3rd DAY OF JANUARY, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri S.K. Srivastava,
S/o Shri M.L. Srivastava
Bridge Inspector Gr.II
Senior BRI(C)'s Office,
Central Bombay,
JHANSI

...Applicant

(By advocate : Shri N.R. Pillai)

VERSUS

1 Union of India, through
the General Manager
Central Railway,
Bombay VI

2. Shri J.N. Kolarkar,
Sr. Personnel Officer (Engg)
Central Railway,
Bombay VI.

3. Shri CM Bisre
Bridge Inspector Grade I
C/o Executive Engineer (Construction
Bridges) Central Railway
Manmad.

....Respondents

(By Advocate : None)

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The grievance of the applicant is non-selection to the post of Grade-I scale of Rs.700-900 (Revised to) Rs.2000-3200 (RPS) which was notified by the respondents for selection of 10 posts by the notification dated 2.12.1988. 7 persons were empanelled in that selection having qualified in the written test and viva voce, including one Scheduled Caste candidate Shri C.M. Bisre, Respondent No.3. The

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name of the applicant does not figure in the panel issued by the Chief Personnel Officer, Central Railway, Bombay by the order dated 22.5.89 (Annexure A-IV). The other grievance of the applicant is that he has been reverted by the Order dated 7.7.1989 passed by the Executive Engineer (Construction Bridges) Manmad. Though the applicant has officiated for about 2 years & 8 months, having been promoted to Grade I on ad hoc basis w.e.f. 2nd November, 1986.

2. The applicant has prayed for the grant of the relief that the panel notified by the Order dated 22.5.89 be quashed with the direction to the respondents to hold a review DPC and consider the applicant for promotion to the post of Gr.I. The other relief claimed by the applicant is that the order of reversion dated 7.7.89 reverting the applicant to the substantive post of Grade-II to which he was appointed by promotion from Gr.III in 1984 be quashed as the applicant's junior are still working on Grade-I post and further it is also prayed that the action of the respondents in downgrading the post of Bridge Inspector Gr.I is illegal and arbitrary as the applicant continued to discharge the same function and work to which he was earlier doing while posted on adhoc basis

to Grade-I of the services.

3. The respondents in their reply contested this application and opposed the grant of the reliefs stating that the applicant could not come out successful in the selection test and could not be graded to be listed in the panel declared in May, 1989. The applicant has been reverted because he could not come out successful in the selection aforesaid.

4. There are 3 grades of Bridge Inspectors. Grade III Rs. 425-700, Grade-II Rs. 550-750 and Grade-I Rs. 700-900. These scales have been revised and Gr. II scale has been revised to Rs. 1600-2660 and that of Grade-I to Rs. 2000-3200. We are concerned with the scales of Gr. I & Gr. II of Bridge Inspectors.

5. The contention of the learned counsel is that respondent No. 2 Senior Personnel Officer, out of malice and with malafide intention omitted the applicant from the panel in as much as he was in the selection body and the applicant has not been evaluated on the basis of merit as projected in the Seniority service record and personality test. The contention of learned counsel is that Respondent No. 2 has done this to accommodate Respondent No. 3 a Scheduled Caste candidate Shri C.M. Bisre, who was given irregular promotion

to Grade II on 22.5.1986. His promotion according to the learned counsel is de hors the judgement and ratio given in case of J.C. Mallik Vs Union of India & Others. The Union of India has gone against the judgement of the Allahabad High Court in the Hon'ble Supreme Court by filing a Civil Appeal No.2017/76 and the Hon'ble Supreme Court had passed certain interim directions while admitting appeal in October, 1978, February, 1984 and in Sept., 84. The contention of the learned counsel is that the promotion of Respondent No.3 a Scheduled Caste candidate is beyond the prescribed reservation quota of 15% as equal number of Scheduled Castes candidates had already been promoted and working in Grade II of the service. It is highlighted that if that promotion is ignored to Grade II of the Respondent No.3 then he was not eligible to appear in Grade I of the Project Inspector as he had no substantive appointment to Grade-II of the post. Though we are not discussing this on merit as the matter is pending before the Hon'ble Supreme Court but we find that even if we accept the contention of the learned counsel for the applicant that Respondent No.3 has been inducted irregularly in Grade II, even then the applicant has no case for empanelment. It is because of this fact that there were 10 vacancies in Grade I for which 30 persons were eligible being three times the number

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of vacancies and equal number of persons were not available in Grade II, so only 12 persons including Respondents No.3 were called to take examination /written test and those who have qualified in the said test they are 8 in number, and applicant's name is one of them who were called for the interview. Thus even if the Respondent No.3 has been allowed to take the selection irregularly, though not considered by us, the applicant cannot allege any malafide against the Respondent No.2. Had the applicant been ignored in the selection or the applicant was not coming in the zone of consideration or he had not passed the written test then the question would have been relevant. After the applicant has passed written test, he was along with others called for an interview. But the contention of the learned counsel is that the respondents have not fully complied with Para 216 (g) of the IREM Vol.I. In fact, the applicant has not challenged in this Original Application that he has not been evaluated rightly on the basis of service record or in the interview. The contention of the applicant's counsel is that a number of vacancies from 1984 to 1989 have accumulated and there has been delay in selection which has prejudiced

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the case of the applicant as he has been senior-most ,and whatever the number of vacancies of 1984, 1985 and 1987 is not projected in the counter. If the respondents have not projected the same the applicant at that relevant point of time ^{could} ~~raised~~ _h this question when he was officiating in Grade-I post w.e.f. 20.11.86. The non-holding of the selection will not by itself be a ground to direct the respondents for empanelment of the applicant in the panel of May, 1989. It is not alleged that the Selection Body was in any way prejudiced or had any motive factually to damage the applicant in his career. In view of this, the contention of the learned counsel that Respondent No.3 has been wrongly inducted for the selection held by the Circular of December, 1988 cannot be taken as a ground to quash selection.

6. The next contention of the learned counsel has been that the reversion order has been wrongly passed in as much as one junior to the applicant Shri P.K. Goucher though Scheduled Castes candidate has been working, though he failed in the written test. We have considered this aspect but the respondents in their reply have categorically stated that

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/said junior has since been reverted and the applicant has himself filed order (Annexure A-7) No. 154/90 dated 1.6.90 whereby Shri Gocher officiating Project Inspector Grade-I has been reverted as Project Inspector Grade-II in the scale of Rs.1600-2660 was also transferred and posted under Project Inspector, Nagpur against the Work-charged post of BRI/II sanctioned for Machens Bridge on MGP/Division. The contention of the learned Counsel is that the order is only on the paper and has not been actually effected. When the respondents on oath verifying the counter filed by a competent authority Shri V.S. Saxena, Senior Personnel Officer, the plea taken in the counter cannot be said to be a wrong statement of facts. We also feel that when an order has been passed of reversion that Officer will not fall in line with any of the Officer who wanted or is desirous of keeping aforesaid order shelved. In any case, the respondents are free to judge the situation themselves that does not mean any further probe into the matter.

7. The learned counsel for the applicant has also argued that the applicant has worked for 2 years and 10 months and he should have been allowed to continue but in the light of

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the Full Bench decision of Jethanand reported in full Bench Judgement 1988-89 (Vol.I) P-353 - a person who has failed in the selection can be reverted if he has offitiated for more than 18 months. The learned counsel relying on the aforesaid decision also stated that more than one opportunity should have been given before reversion. But it is too late for the applicant to aspire for the same as he has already been reverted and there is no interim order passed restricting the reversion of the applicant.

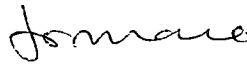
8. The learned counsel for the applicant also argued that the respondents are not holding any selection though it has become due and the applicant is still working on Grade-II post since the reversion by the Order of July, 89. It is expected that the respondents shall follow their own Circular issued by the Railway Board and resort to selection in the vacancies of the year, because if the vacancies are allowed to accumulate the zone of consideration is enlarged because of the number of vacancies accumulated. It is well settled law as laid down in the decision of Hyderabad Bench in case of Ranghaya that the number of vacancies

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should not be allowed to accumulate and selection be held in the same year unless there are certain compelling circumstances which prevented the process of selection to be held and which was beyond the control of the administration. This fact has no relevance in this regard as claimed by the applicant.

9. In view of the above facts and circumstances of the case, we find no merit in this application and dismiss the application as being devoid of merit, leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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