

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 1439 OF 2001.

Tuesday THIS THE 18th DAY OF December 2007

Hon'ble Mr. G. George Paracken, J.M
Hon'ble Mr. K.S Menon, A.M

Om Prakash, aged about 45 years, son of Gobardhan Prasad, R/o Anand Nagar, C/o Anand Tent House, Distt. Maharajganj, presently working as Junior Engineer (Electrical), Grade-1, N.E. Railway, Gorakhpur.

.....Applicant

(By Advocates: Shri Shesh Kumar/Shri J.S Pandey)

Versus

1. Union of India, through General Manager, N. E. Rly. Gorakhpur.
2. Chief Engineer (Electrical), N.E. Railway, Gorakhpur.
3. General Manager, North Eastern Railway, (Personnel), Gorakhpur.

(By Advocate: Shri Anil Kumar)

ORDER

By K.S Menon, A.M

This O.A has been filed under section 19 of C.A.T Act, 1985 challenging the order dated 21.11.2001 directing him to appear in the selection being conducted for promotion to the post of Section Engineer (Electrical) on 14.12.2001 and 20.12.2001. Applicant's submission is that since he has already appeared in the selection conducted in 1997 and qualified in the written exam, in which seven of his juniors have already been promoted, he cannot be asked to appear again for selection for the same post. He has, therefore, prayed that the said impugned order dated 21.11.2001 be quashed and set aside and direction be given to the respondents to promote him w.e.f. 30.7.1997 i.e. the date on which persons junior to him were promoted.

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2. The facts of the case, in brief, are that the applicant was appointed as J.E. (Electrical) Chargeman in N.E. Rly on 2.6.1984 and was in due course promoted as Junior Engineer (Electrical) Grade 1. Junior Engineer (Electrical) Grade 1 are entitled to be considered for promotion to the post of Section Engineer in accordance with their seniority and on the basis of a selection conducted by the department. Applicant along with 39 others appeared in the written examination for promotion to the post of Section Engineer (Electrical) and was declared successful along with 21 candidates as per order-dated 24.4.1997 (Annexure A-3). Out of these 22 candidates only 14 were declared successful in the interview as per the results declared on 4.8.1997, the applicant's name was not amongst those who were declared successful in the interview. Being aggrieved he submitted a representation on 21.8.1997 (Annexure A-5). Applicant submits that based on a complaint by the applicant and others an inquiry was conducted by the Vigilance Department and on the basis of their report, the candidature of all the above 14 candidates was cancelled and they were reverted by an order dated 26.10.1998 (Annexure A-6). Out of the above 14 candidates some filed an O.A. NO. 701/98 in C.A.T Patna and while some others filed O.A. No. 1175/98 in this Tribunal which was subsequently transferred to CAT Patna (as T.A. NO. 4/2000) by an order of the C.A.T. Principal Bench, since both these cases related to a common order. C.A.T Patna vide its order dated 3.7.2001 quashed the order of the respondents dated 26.10.1998 as it was violative of principles of natural justice.

3. In para 9 of the supplementary written statement filed by the respondents in the O.A. NO. 1175/98 (T.A. NO. 4/2000), the respondents admitted that the name of the applicant in this O.A and two others were wrongly omitted from the panel, relevant extract of respondents submission is reproduced here:-

"9. That after making a thorough probe in the matter, it has been detected by the Vigilance Department that the names of the following candidates have been wrongly omitted from the panel.

1. Shri H.C. Lal
2. Shri Rakesh Mani Tripathi.
3. Shri Om Prakash".

4. Applicant says that the Shri Rakesh Mani Tripathi at Sl. NO. 2 above was granted ad hoc promotion as Section Engineer (Electrical) by order dated 21.10.1999, whereas the applicant's case has not been considered. Since he was successful in the written exam and his juniors have been promoted and as per the respondents own submission that the applicant's name has been wrongly omitted from the panel. The action of the respondents in asking the applicant to appear again in the selection process mentioned in the impugned letter dated 21.11.2001 is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India and prays that the said impugned order be quashed and set aside.

5. In their written submission, the respondents submit that, the applicant did qualify in the written examination along with 21 other candidates. However, thereafter on the basis of the interview only 14 candidates were selected and the applicant was not one of them. The panel of the successful 14 candidates was prepared on the basis of merit and promotions were given according to their seniority on the panel and not as per seniority in the cadre. Therefore, the applicant's contention that persons junior to him were promoted is without basis as he was not on the panel of successful candidates to begin with. Respondents contend that based on the recommendation of the Vigilance Department, the panel of 14 candidates was cancelled and all the candidates were reverted. However, subsequently by an order of CAT Patna on 3.7.2001, the cancellation of the panel of 14 and their subsequent reversion was set aside. The applicant is, therefore, not entitled for empanelment in the said panel. Besides all the 14 candidates on the panel have since been promoted. They further maintain that if the applicant has any grievance against the said panel, he should have impleaded the 14 selected candidates, which he has not done.

6. Responding to the applicants allegations that two other candidates who along with him were left out of the panel and subsequently given ad hoc promotion, the respondents submit that one such candidate Shri Rakesh Mani Tripathi was promoted on regular basis on his selection for the post of Section Engineer vide panel published on 26.3.2002. The applicant was also promoted as Section Engineer (Electrical) on the basis



of his selection subsequently on 22.03.2002. They refute the submission made that the other candidate Shri H.C. Lal who was also left out of the panel along with the candidate was given any verbal assurance of promotion. Besides holding that the contention is baseless. The respondents maintain that the applicant is fully aware that promotions are made as per Rules and not on assurances. They, therefore, maintain that the selection for the post of Section Engineer has been conducted by the respondents as per extant Rules and the O.A. is based on misconception and totally devoid of merit and is liable to be dismissed with costs.

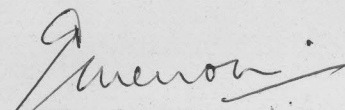
7. We have heard Shri Shesh Kumar, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and perused the pleadings on record.

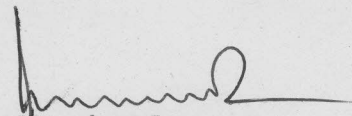
8. The applicant admittedly was declared successful in the written examination for the selection to the post of Section Engineer (Electrical), but in the interview he was unsuccessful and was, therefore, not empanelled while 14 other candidates were empanelled. Those junior to him and who qualified in the interview were empanelled and were ultimately promoted, which ostensibly is the reason why the applicant filed this O.A. Subsequently when the respondents, based on a Vigilance Report cancelled the said panel (of 14 names) and reverted the 14 candidates, the applicant felt he had a chance of getting included in the same panel, although he was fully aware that the cancellation of the panel and the subsequent reversion orders of the respondents were quashed and set aside by the order of CAT Patna dated 3.7.2001. This meant the empanelment of the 14 candidates and their subsequent promotion effected by the respondents earlier was upheld and was made absolute. In view of this, the applicant had absolutely no ground, to file this O.A. in December 2001 and drag this case on for ²fix years.

9. In further transpires that in response to the notification-dated 21.11.2001 (which the applicant is now challenging and prays it be quashed and set aside), the applicant applied for selection to the post of Section Engineer and having qualified in the written exam and interview, he has been selected and accordingly promoted and posted as Section Engineer (Electrical) vide office order dated 22.3.2002. Quashing and

setting aside this notification by which the applicant was selected and promoted as Section Engineer (Electrical) would tantamount to cancellation of his empanelment and his reversion from the promoted post of Section Engineer (Electrical). This would be a futile exercise besides there being no justification for it. We are, therefore, of the opinion that there appears no ground whatsoever on which the applicant's case can be considered, as he did not qualify in the earlier interview, and he was therefore not empanelled. If the respondents have promoted candidates from this panel dated 4.8.1997 even if ^{they are} were junior to the applicant, they were well within their rights and within the ambit of extant Rules to do so.

10. In view of the above, we do not find any grounds to interfere with the impugned order dated 21.11.2001. The O.A. is without any merit and is accordingly dismissed. No costs.


Member-A


Member-J

Manish/