

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the **18th** day of **July, 2008.**

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER- J.
HON'BLE MR. K.S. MENON, MEMBER- A.**

Original Application No. 1207 OF 2004

Mohd. Akil Khan, a/a 59 years,
S/o Late Nanhe Khan, R/o 38/ 15, Idgah Katghar, Agra.
.....Applicant

VER S U S

1. Union of India through General Manager,
North Central Railway, Allahabad.
2. Divisional Railway Manager (P),
N.C.R. , Jhansi.
3. Divisional Railway Manager (P),
N.C. R., Agra.

.....Respondents

Present for applicant : Sri P.K. Khare
Counsel for respondents: Sri Anil Kumar

ORDER

BY HON'BLE MR. JUSTICE A.K. YOG, J.M.

By means of the present O.A, the applicant is claiming relief regarding seniority to the post of Commercial Inspector/Supervisor claiming his promotion retrospectively with respect to the year of vacancy in which he has been promoted . We need not to go into all these details as the O.A can be decided on a short point. Copy of impugned order dated 11.06.2004/Annexure- 12 to the O.A was passed on the



representation of the applicant. The relevant contents of the impugned order reads: -

" In this regard, it is to brought out that the record of the above named is transferred to AGC.divn, so it cannot be confirmed as to what he has represented earlier and disposal thereon. However, as per this representation on the claim is not genuine for the reasons as under: -

1. *His claim earlier to 1997 is not stands, as no record is traceable at this distance date to sort out the factual position. However, it in year 1997, he was called for selection in which he was declared failed.*
2. *He has passed the selection process on 12.06.2001 and promoted accordingly.*
3. *He has compared his cadre with Sri Gautam, Hd. TTE, who has filed a case before Hon'ble Supreme Court so as per directions, the action was taken to extend benefit which were governing the rule.*

In the circumstances explained above, he is not eligible to get benefit in comparisons with a judgment awarded in a particular case."

2. It is contended that the applicant had again filed representation against impugned order but the same was not decided and constrained to approach this Tribunal.

3. Respondents have filed Counter Affidavit. Para 4 of the said Counter Affidavit reads :-

"..... It is further submitted that applicant case is not covered with the relevant case, as in those judgments matter were related with O.M. No. 22011/3/76-Estt.(D) dated 24.12.1980 in which it is provided regarding that in the matter of promotion as per vacancy of the respective year, D.P.C should be convene every year, in view of the same Hon'ble Supreme Court has directed for convening of D.P.C every year, where as in the applicant case, matter are related with the selection in the grade of Rs. 1600-2660 (RPS) is a selection post, which had to be filled as per positive act of selection subject to passing the written test not by way conwering of D.P.C, as such said O.M. dt. 24.12.80 and ratio of Vinod Kumar Sangal are not applicable, beside that as per Rly. Rules

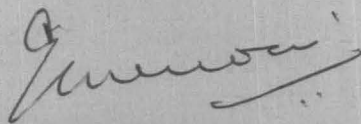
(Signature)

every selection proceedings are only processed when found adequate no. of staff as per assessment of vacancies, in the case of R.N. Gautam, it has never been considered that whether the post of Ticket Collector was to be filled by the convening of D.P.C every year as per O.M. dt. 24.12.80, nor their was any Rly. Rule has been considered regarding the same, where there is specific rule that same was to filled by way of selection/qualifying in the written test."

A perusal of aforequoted para of the Counter Affidavit goes to show that the respondents have attempted to justify their action on the ground mentioned in the said para and not the grounds contained in the impugned order. It is well settled that impugned order cannot be sustained or supported by the ground not mentioned therein. Otherwise we find that to appreciate the submissions made on behalf of the applicant are need to go into question of facts including existence of vacancies which can be efficiently done by the concerned authorities.

4. In view of the above, we set aside the impugned order dated 11.06.2004/Annexure- 12 to the O.A with direction to the respondents to decide the case of the applicant afresh within a period of three months on receipt of certified copy of the order.

5. We make no order as to costs.


MEMBER (A)


MEMBER (J)

/Anand/