

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 1363 OF 2004

ALLAHABAD THIS THE 28/11 DAY OF NOVEMBER, 2007

HON'BLE MR. SHAILENDRA PANDEY, MEMBER-A

S.K. Sinha, aged about 47 years, S/o Shri Mahendra Narain, R/o C-74, Raj Nagar Colony, Jwalapur, District Haridwar (Uttaranchal).

.....Applicant

(By Advocate Shri Rakesh Verma.)

V E R S U S

1. Union of India through the General Manager (P), Northern Railway Headquarters, Baroda House, New Delhi.
2. The D.R.M. N.R., Moradabad.
3. The Sr. Divisional Personnel Officer, N.R., Moradabad Division, Moradabad.
4. Sri Madan Sen, Presently working as Commercial Inspector, posted at Moradabad under the control of the Sr. Divisional Commercial Manager, Northern Railway, Moradabad Division, Moradabad.

.....Respondents

(By Advocate: Sri A.Sthalekar)

O R D E R

The applicant who is working as Sr. Booking Clerk w.e.f. 3.3.1993 in the pay-scale of Rs. 4000-6000/-, under the control of the Sr. Divisional Commercial Manager, Northern Railway, Moradabad, has sought quashing of the order dated 11.3.2003 passed by the Sr. Divisional Personnel Officer, Northern Railway, Moradabad absorbing and posting respondent



no.4 on medical grounds against the post of Commercial Inspector in the pay scale of Rs. 5000-8000/-. He has challenged the order on the ground that he has been working in the Railways since 1983 without there being any adverse report, and that on a post of Commercial Inspector becoming vacant, the respondents had invited applications vide notification dated 27.7.2001, in response to which, the applicant had submitted an application dated 9.8.2001 alongwith three others. However, after inviting applications, no further action was taken by the Railway authorities to go ahead with the recruitment/promotion as in the meanwhile they promoted respondent no.4 (who had been medically de-categorized from the post of Assistant Station Master) in terms of the impugned order. The applicant's counsel has contended that the impugned order is bad in law as the authorities concerned had not kept in mind the provisions of the Railway Board circulars as referred to in para 4(vii) of the O.A. These circulars required that absorption of an official from another department to the Commercial department on medical grounds should be avoided as far as possible and should be resorted ^{to} only if no any other suitable post in other departments (particularly in the transportation department) was available, and that by not doing so and absorbing respondent no.4 in the Commercial department, the applicant's chance of promotion has been adversely affected, unjustifiably.

2. In reply, the respondents' counsel has argued that the order dated 11.3.2003 posting respondent no.4 against the post of Commercial Inspector in the pay scale of Rs. 5000-8000/-was perfectly legal. He has also stated that while applications had been called pursuant to the notification dated 27.7.2001 for filling up the post of Commercial Inspector from the eligible staff working in the Goods Coaching cadre to fill up the post of Commercial Inspector(against which the applicant alongwith three others had applied), further action for recruitment could not be taken as respondent no.4, who had been medically de-categorized from the post of ASM was appointed to the post after the Screening committee considered him suitable for the said post. He has also stated that all Asstt. Station Masters and Station Masters are also eligible for absorption in the Commercial Department. He has also contended that the act of inviting application to fill-up a particular post does not confer any right on the applicant, and that the applicant has a right to seek promotion in his own cadre as per his seniority.

3. I have heard both the counsels and have gone through the pleadings and materials available on record and find from the Rejoinder Affidavit that while there was no post available on the Booking Clerk's side in the pay-scale of Rs. 4500-7000/-,



the post of Commercial Inspector in the pay scale of Rs. 5000-8000/-, against which respondent no.4 has been appointed, has become vacant from 14.3.2005 due to transfer of the incumbent. It is, however, noted that the respondents have not stated in their Counter Affidavit whether they had explored the other channels of absorption/promotion in other departments for respondent no. 4 after he was medically de-categorized before he was absorbed and promoted in the Commercial department. However, the fact remains that the order passed by the respondents is a legal order under the rules. Having regard to the facts of the case, it would not be possible to quash the impugned order, but it would be just and proper to direct the respondents to consider the case of the applicant in terms of the rules whenever a post in his own cadre or in the Commercial cadre is available, ~~exists~~ keeping in view the fact that he has completed over 20 years of service.

4. The O.A. stands disposed of with the above directions, with no order as to costs.

MEMBER-A

GIRISH/-