

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 931 of 2000

Allahabad this the 11th day of April 2002

Hon'ble Mr.C.S. Chadha, Member (A)
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Chakradhar Awasthi, aged about 39 years, Son of
Shri Shreedhar Awasthi, resident of 88 Loco Colony,
Fatehgarh.

Applicant

By Advocate Shri T.S. Pandey

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Rly. Izett Nagar Division, Bareilly.
3. Senior Divisional Personal Officer, N.E.Rly. Izett Nagar, Division, Bareilly.
4. Senior Divisional Mechanical Engineer, N.E. Rly. Izett Nagar Division, Bareilly.
5. Mahabir Prasad, Trafic Inspector(Scale 5500-9000) through Divisional Rly. Manager, North Eastern Rly. Izett Nagar Division, Bareilly.

Respondents

By Advocates Shri A.V. Srivastava,
Shri R.C. Pathak(for respondent no.5)

Chowdhury

By Advocate Shri T.S. Pandey

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This Original Application has been filed by the applicant seeking the quashing of the order dated 04.07.00 passed by respondent no.3 reverting back the applicant from the post of Traffic Inspector in the scale of Rs.6500-10,500/- to the post of Traffic Inspector in the scale of Rs.5500-9000/- allegedly on the ground of no vacancy. Further he has also sought the quashing of the order promoting respondent no.5, his junior, against the vacancy meant for a Schedule Tribe candidate despite being from the Schedule Caste category. It is alleged by the applicant that vide an order dated 14.5.99 he was promoted to officiate in the higher scale but arbitrarily demoted on 04.07.00. His claim is that the respondents issued a notification dated 05.10.99 clearly notifying 3 vacancies for the post of Traffic Inspector in the higher scale of Rs.6500-10,500/-, two of the posts being for the general category and one post reserved for a Schedule Tribe candidate. However, a corrigendum was issued on 01.03.2000 stating therein that in view of that being the third year of carry forward of the vacancy for a Schedule Tribe candidate, the same could be exchanged with a vacancy for a Schedule Caste candidate due to non-availability of a Schedule Tribe candidate in terms of the directions issued in this behalf. Therefore, it was laid down in the notification of 01.03.00 that there were only 2 vacancies for regular candidates and one for a Schedule Caste candidate. In view of this modified notification

B.C. S. Chadha

:: 3 ::

a written examination followed by a viva voce test was conducted in which the applicant was placed no. 2 in the category of regular candidates and respondent no. 5 was declared successful as a Schedule Caste candidate. The notification was based on vacancies at that time plus future likely vacancies. However, in view of only 2 clear vacancies being available one candidate from the regular category and one from the Schedule Caste category was appointed in accordance with the roster. Since a third vacancy was not available, the applicant, being a regular candidate, could not be regularised and therefore his officiation in the higher post ordered on 14.05.99 was cancelled and he was reverted to his original post.

2. The applicant first of all contended that the no. of vacancies available was higher than calculated by the respondents. However, this has been rebutted by the respondents by giving details of the vacancies available, in para-12 in their counter affidavit. They have clarified that the sanctioned posts operating in various divisions as permanent included 5 posts of the Izzatnagar Division. Out of these 3 posts of Traffic Inspectors, one post of Wagon Movement Inspector in the grade of Rs. 7500--11,500/- and one post of W.M.I. in the grade of Rs. 5500/- Rs. 9,000/- had been made permanent and these posts had been included in the category of Traffic Inspectors, and therefore, the availability of vacancies had been calculated against the availability of 11 permanent posts and not 15 as contended by the applicant. In his rejoinder the

6th June 1999 pg. 4/-

applicant has not specifically challenged the averments made in para-12 of the counter-affidavit of the respondents and therefore we conclude that the position of vacancies as indicated by the department is correct.

3. The applicant has further contended that the respondents had deliberately issued the corrigendum in order to favour respondent no.5 at the cost of the interest of the applicant. This has been adequately refuted by the respondents by indicating that the corrigendum dated 01.03.2000 was issued prior to holding of the examination and the viva voce test and therefore it could not be concluded that the same was done with a view to specifically favour the respondent no.5. We seem to agree with this contention because it was not possible for the respondents to know beforehand that respondent no.5, though offered an opportunity, would succeed at the written examination as well as viva voce test that followed the corrigendum issued on 01.03.2000.

4. The main issue hinges around the fact, whether the year of filling up the vacancies was the third year of carrying forward of the vacancy of the Schedule Tribe candidate. The respondents could convert or substitute a vacancy meant for a Schedule Tribe candidate to one for a Schedule Caste candidate only in the third year of carry forward of the vacancy. Although both, in the corrigendum dated 01.03.2000 and in the counter-affidavit the respondents have mentioned that it was the third year of carry forward

:: 5 ::

of the vacancy, no details have been given to show that the vacancy had been advertised for a Schedule Tribe candidate in two previous years but the department failed to get a suitable candidate from that category. The respondents are duty bound to clarify by giving specific dates of notifications, in which two earlier years they advertised for an S.T.candidates but failed to get a suitable one. Unless this is specifically proved the mere averment that it was the third year of carry forward cannot be sustained.

5. The applicant has also contended that respondent no.5 being junior to him could not be promoted earlier than him and if, therefore, there were 2 vacancies of Traffic Inspectors he should have got the second one . Against this the respondents' claim that the promotion of respondent no.5 is in accordance with the roster and the vacancy for an ST/SC candidate had remained unfulfilled. In his rejoinder the applicant has challenged this position, stating that the quota of ST/SC had already been filled up.

6. In view of the uncertainty of the facts it would be in the interest of justice to remand this case to the respondent no.2 to 4 to examine, on receipt of a fresh representation from the applicant, on only these two issues, i.e. whether in fact the year of selection was the third year of carry-forward and whether a vacancy for an SC/ST candidate existed at the time of appointment of respondent no. 5 in accordance

Babu pg.6/-

:: 6 ::

with the roster. The O.A. is, therefore, disposed of with a direction to the respondents no.2 to 4 to decide a representation on the above mentioned two issues with a reasoned speaking order giving details of the earlier two unsuccessful attempts to fill up the vacancy with an ST candidate as well as the details of the roster clearly enabling respondents no.2 to 4 to appoint respondent no.5 against the vacancy for an S.C. candidate. If the respondents are able to prove that their claim was correct the applicant will have no relief. However, if the respondents fail to prove their contention that the year 2000 was the third attempt of filling of an ST vacancy or that the quota of reserved candidates was in fact unfulfilled at the time of promoting respondent no.5 then their order dated 04.07.00 demoting the applicant would have to be set aside by themselves.

7. There shall be no order as to costs.

Arv
Member (J)

/M.M./

Chawla
Member (A)