

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated :This the 20/8 day of August 2005.

Original Application no. 1298 of 2002.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Smt. Poonam Singh,
W/o Sri Chandrima Kumar Singh,
Senior Commercial Inspector,
(Rate), North Eastern Railway,
Gorakhpur.

....Applicant

By Adv : Sri S. Mandhyan.

V E R S U S

1. Union of India through the General Manager,
North Eastern Railway,
Gorakhpur.
2. The General Manager, (Personnel),
North Eastern Railway,
Gorakhpur.
3. Chief Commercial Manager,
North Eastern Railway,
Gorakhpur.

...Respondents

By Adv : Sri D.P. Singh.

O R D E R

As the applicant had on the earlier occasion approached the Tribunal in respect of the same issue, we have to ensure that only a new cause of action not decided by the Tribunal in its earlier decision has been the main basis of this O.A. I have, therefore, to take the thread from the findings of the earlier decision.

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2. Vide order dated 24-05-2002 in OA 297/99, the Tribunal has held, " I have heard both the counsel and perused the pleadings. The main grievance of the applicant is that she has been eased out to accommodate one of the candidates which seems to be a wrong notion with the applicant as respondents have explained the situation under which it became necessary to post the three junior most persons as Superintendent Gr. II as the vacancies of Commercial Inspector were not available and since the post of Superintendent Grade II is in the same pay-scale. I am satisfied with the explanation given by the respondents and I am sure that no case has been made out for interference by the Tribunal.... I think it would be justified to make such a demand that in case other two persons who were also stated to have been posted as Superintendent Gr. II by the respondents have been accommodated as Commercial Inspector, then the respondents should also consider accommodating the applicant as Commercial Inspector at Gorakhpur or any other nearby place in case the vacancies are available there. It is so being said because as Superintendent Gr. II not only her seniority will be affected, but her promotional chances would have also been changed and since other two persons have been accommodated, the applicant should also be given the same treatment."

3. It is, therefore, absolutely necessary that the case of the applicant is considered within the

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limited and narrow compass that when others have been accommodated, the applicant, who is also similarly situated should also be accommodated. Nothing less, nothing else.

4. The respondents, vide impugned order dated 04-09-2002 have stated that there is no change in their decision and order dated 09-03-1999 whereby the applicant was transferred to Lucknow Division as Superintendent Gr. II.

5. The applicant has raised the self same grievance as in the earlier OA and has not been able to establish that the hostile discrimination. The rule position is clear that based on merit, the selected candidates are appointed as Commercial Inspectors upto the number of vacancies in the said post and the remaining are accommodated as Commercial Office Superintendents. This was explained at the time of when earlier OA 297/1999 was considered by the Tribunal and the same has been fully accepted by the Tribunal as well. In the counter, vide para 10 thereof, the respondents have explained the position as under:-

"It is pertinent to mention here that even those persons which reference has been made in the judgment of the Hon'ble Central Administrative Tribunal dated 24-05-1002 have been posted as Commercial Superintendent Grade II and not Commercial Inspector. Only two persons, namely Baijnath Yadav, Awwalwafa Khan who were at Serial Nos. 1 and 2 in the merit list respectively have been posted as

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Commercial Inspector, whereas other four persons, namely Jatav Nagendra Kumar Gopi Chand who was at Serial No. 3, RajeshKushwaha at Serial No. 4 have been posted as Superintendent Grade II in Izzanagar Division, Manik Chand at Serial No. 5 in Samastipur Division and Ashok Kumar at Serial No. 6 at Lucknow Division and Poonam Singh (applicant) who was at Serial No. 7 in the merit list have been posted as Superintendent Grade II in Gorakhpur Division."

6. The applicant has not denied the above position in her rejoinder.

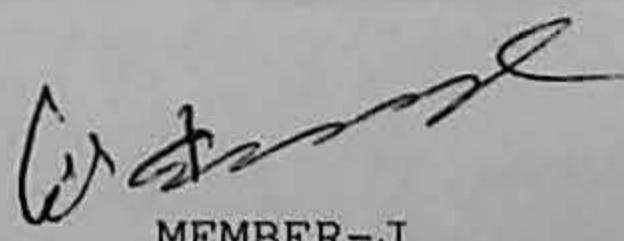
7. Thus, when the other two persons who were stated to have been appointed as Commercial Inspectors have also been posted only as Commercial Superintendent Grade II, the question of hostile discrimination does not arise. In fact, even if such persons in the order of merit have been appointed as Commercial Inspectors, the applicant cannot have any redressable grievance as her rank is seventh in the merit list and thus she would be junior most in the list of selected candidates. Hence, the question of discrimination has not been established.

8. The applicant has given the Written submission which has also been taken into account in arriving at the decision. In fact the matters beyond the permissible parameter as contained in the earlier order dated 24-05-2002 cannot be considered in view of the legal constriction of res judicata.

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9. In view of the above, the application being devoid of merits is liable to be dismissed and I accordingly order so. However, in the interest of justice, it is to be ensured that since the applicant has all along been functioning as Commercial Inspector under the Court's orders, but she has to be treated as appointed only as Commercial Superintendent Grade II, her seniority, in the order of merit she had obtained in her selection/training as the case may be and as per the Rules, shall be fixed in the post of Commercial Superintendent Gr. II from the initial date of appointment so that her promotion prospects in the said ladder of promotion is not hampered. Respondents are directed to act accordingly. If the seniority list in that grade has already been prepared, where the name of the applicant has now to be interpolated, the respondents shall take suitable action in accordance with the laid down procedure and due notice to those whose seniority may be affected by such inclusion of the name of the applicant in the said post of Commercial Office Superintendent Grade II should also be put to due notice as per the laid down procedure.

10. Under these circumstances, no order as to cost.



MEMBER-J

GIRISH/-