

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 21st day of July, 2005.

Original Application No. 732 of 2003.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.
Hon'ble Mr. S.C. Chaube, Member- A.

Awanish Kumar Singh, S/o Sri Ram Bachan Singh,
A/a 35 years, R/o Vill. Baqli Pinjara,
Distt. Maunath BhanjanApplicant

Counsel for the Applicant : Sri Satish Mandhyan

V E R S U S

1. Union of India through
General Manager, N.E. Railway,
Gorakhpur.
2. Divisional Railway Manager,
N.E. Railway, Varanasi.
3. Divisional Railway Manager (Personnel),
N.E. Railway, Varanasi.Respondents

Counsel for the respondents : Sri K.P. Singh

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

The applicant, who was appointed on Group 'D' post under the quota reserved for dependent of Freedom Fighters instead of his claim for appointment in Group 'C' post in relaxation of rules as provided in para 114 of Indian Railway Establishment Manual. It appears that the Divisional Railway Manager, N.E. Railway, Varanasi by his order dated 13.04.1992 upgraded the applicant from Group 'D' to Group 'C' and he was to be appointed as Ticket Collector/Commercial Clerk. Despite

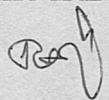
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the order passed by the D.R.M, Varanasi dated 13.04.1992 upgrading the applicant from Group 'D' to Group 'C', the applicant, it appears, was not appointed as TC/Commercial Clerk whereupon he approached the Minister of State for Railways. By office order dated 11/12.10.1996 it was desired that the applicant be given appointment in Group 'C' post as per the orders of the DRM, N.E. Railway, Varanasi. The said order as contained in Annexure- 9 to the O.A is quoted below :-

" This application has been given by Sri Ram Bachan Singh, Freedom Fighter, who participated in the Naval mutiny of 1946. His son Sri Avnish Kumar was upgraded from Class IV to Class III vide order of DRM, Varanasi on 13.04.1992 and he was to be appointed as Ticket Collector/Comml. Clerk.

MOS(R) has desired that Shri Avnish Kumar should be given appointment in Class III as per order of DRM, Varanasi, N.E. Railway."

2. Despite aforesaid order, the applicant, It appears, was not appointed in Group 'C' post in relaxation of rules provided in para 114 of the I.R.E.M on the ground that the said provision has been deleted by order dated 04.11.1993. The applicant instituted O.A. 286/99 which was dismissed by order dated 30.03.2001. Against the order dated 30.03.2001 the applicant filed Writ Petition No. 15042/2001 which was decided vide judgment dated 03.05.2002 and the matter was remitted to the Railway Administration to consider the feasibility of the applicant to give appointment under relaxation of rules provided in para 114 of the IREM. The DRM(P), Varanasi invited



application vide notification dated 17.03.2003 for selection and appointment against 15 vacancies in the post of Ticket Collector under 33 1/2 % quota reserved for departmental candidates of Group 'D'. The applicant appeared in the written examination organized pursuant to the said notification but by impugned order dated 23.06.2003 only 13 candidates were declared successful in the written examination, which was to be followed by oral test. The applicant's name does not find place in the order dated 23.06.2003

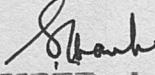
3. The submission made by the learned counsel for the applicant is two folds. First, that the applicant ought to have been appointed on the basis of the order dated 13.04.1992 passed by the DRM, NE Railway, Varanasi to a Group 'C' post in relaxation of normal rules inasmuch as deletion of para 114 of IREM by subsequent Railway Board letter would not ~~be~~ invalidate the order already passed by the DRM; and second, that the impugned order dated 23.06.2003 is liable to be set aside on the ground that the respondents ought to have summoned/qualified the candidates for interview three times ~~or~~ the total number of vacancies' particularly in view of the fact that no cut off marks were prescribed in the notification.

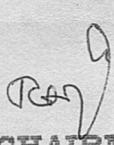
4. Learned counsel for the respondents on the other hand submitted that the order passed by the DRM, N.E Railway, Varanasi cannot be given effect to after deletion of para 114 of IREM and that 60% marks were prescribed as qualifying mark for being called for interview.

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5. Having heard learned counsel for the parties we are of the considered view that deletion of para 114 of IREM by Railway Board letter dated 04.11.1993 would not take away the effect of the order already passed by the D.R.M, N.E. Railway, Varanasi for up-gradation of the applicant from Group 'D' post to Group 'C' post. As regards the second submission that the impugned order dated 23.06.2003 is liable to be set aside on the ground that the respondents have failed to call the candidates at least three times of total number of vacancies. To suffice is to say that it is not necessary to go into the question of appointment of Group 'C' post on the basis of order dated 13.04.1992 passed by the DRM, N.E. Railway, Varanasi, which is in accordance with the then existing rules.

6. Accordingly the O.A succeeds and is allowed. The respondents are directed to give appointment to the applicant as Ticket Collector/Commercial Clerk within a period of two months from the date of communication of this order. No costs.


MEMBER- A.


VICE-CHAIRMAN.

/ANAND/