

(12)

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 10~~53~~²⁷ of 200~~7~~⁶

Thursday, this the 01st day of May, 2008

**Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. N.D. Dayal, Member (A)**

Brahm Pratap Singh S/o Shri Kapil Dev Singh, R/o Vill.-Post-Sonaura Bujarg, P.S.-Kaimpier Ganj, District-Gorakhpur.

Applicant

By Advocate Sri R.K. Gupta

Versus

1. Union of India, through General Manager, N.E. Railway, Gorakhpur.
2. Senior Personal Officer/R.P., In the Office of General Manager (Personnel), N.E. R., Gorakhpur.
3. General Manager (Personnel), North East Railway, Gorakhpur.

Respondents

By Advocate Sri K.P. Singh

ORDER

By Mrs. Meera Chhibber, Member (J)

The applicant has challenged the Order dated 14.07.2006 whereby he was informed that since there is criminal case pending against him, his case cannot be considered but after his acquittal in the criminal case, further necessary action would be taken according to rules (page 12). He has further sought a direction to the respondents to give him appointment on the selected post.

2. It is submitted by the applicant that he had applied for the post of TEC-III/C & W, DSLTEC (M) category No. 26 pursuant to notification No. Employment M. No. RRB/GKP/04-05. He appeared in the preliminary examination, qualified the same and thereafter appeared in the Written Examination (Mains) with roll number 3260985 on 20.03.2005 at National Inter Collect, Lucknow. He succeeded even in the Written Examination and called for verification of his antecedents on 09.05.2005. After verification he



was finally selected for the post of TEC-III/C & W, DSLTEC (M). The requisite forms were also submitted by the applicant. However, in the meantime a charge sheet under Section 323, 504 and 506 I.P.C. was filed against the applicant and the said case was pending. It was duly intimated to the respondents by the applicant. There was no misrepresentation but yet by the impugned order appointment of the applicant was suspended without any reasonable cause. It is in these circumstances that the applicant had filed the present O.A. on the ground that there is no Rule in the Railway department under which appointment of a person can be suspended on account of pending criminal case. The applicant has also filed a Supplementary Affidavit on 09.12.2007 alongwith Judgment dated 06.10.2007 passed in Criminal Case No. 1090 of 2007 wherein applicant has been acquitted of the charges (page 6 of Supplementary Affidavit). He had also sent a representation to the General Manager (P) North Eastern Railway, Gorakhpur with a request that he should be appointed in view of his acquittal from the Court of law. This representation was given to the respondents on 07.11.2007 but in spite of that till date the applicant has not been given any appointment letter. The applicant has, thus, prayed that direction be issued to the respondents to appoint him on the post of TEC-III/C & W, DSLTEC (M) now.

3. The right of respondents to file the Counter Affidavit was forfeited but since Counter Affidavit only helps in adjudicating the matter in correct perspective and there is no new material, which has been stated by the respondents in their Counter Affidavit, therefore, the said Counter Affidavit has been taken on record. In fact in the Counter Affidavit also the respondents have stated that further process of appointment could not be done until finalization of criminal case at Gorakhpur.

4. We have heard both the counsel and perused the pleadings as well.

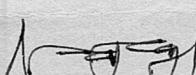
5. Even if there is no such rule, the fact remains that when appointments are to be made, employer has right to verify the antecedents and character verification of the person, who is to be appointed in the Organisation. Admittedly, a criminal case was



pending against the applicant on the day when he was selected for the post, which fact was disclosed by the applicant himself, therefore, it cannot be said that applicant suppressed any material fact. On the contrary, he had clearly stated the same in the form. None the less, the respondents were required to see the seriousness of allegation and gravity of charges and then to decide whether such person can be given appointment straightway or it should be suspended till the criminal case is decided.

6. In the instant case, the respondents felt that appointment should be suspended till he is acquitted in the criminal case by the Court of law. We do not find any illegality in the said approach of the respondents. However, now that applicant has already been acquitted in the criminal case and he had given due information to the General Manager (P) North Eastern Railway, Gorakhpur vide his representation dated 07.11.2007, it was incumbent on the part of the respondents to have issued an appropriate order thereafter, within a reasonable period. In any case since no order has been passed so far by the respondents, this O.A. is disposed of with direction to the respondents to take into consideration the representation and Judgment passed in Criminal Case given by the applicant and keeping in view their own letter dated 14.07.2006, further action should be taken to give appointment to the applicant within a reasonable period. Since the period of 5-6 months has already elapsed after applicant's acquittal in the criminal case, respondents are directed to consider the case of the applicant and give appointment to the applicant on the post of TEC-III/C & W, DSLTEC (M) within a period of four weeks from the date of receipt of a copy of this order, under intimation to the applicant. The respondents shall also grant seniority to the applicant from the same date on which persons of the same panel were given appointment. However, it is made clear that applicant would not be entitled to any back wages or arrears of salary because he had actually not performed any duty. There will be no order as to costs.

7. With the above directions, this O.A. is disposed off. No order as to costs.


Member (A)


15/08/-
Member (J)