

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

ALLAHABAD this the 20th day of March, 2013

ORIGINAL APPLICATION NO. 266 of 2006

HON'BLE MR. SANJEEV KAUSIK, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER-A

Atul Kumar Srivastava, aged about 48 years, Son of Shri G.P. Srivastava, resident of 61/7C, Bhawapur, Beniganj, Allahabad. Presently posted as Chief Inspector of Tickets at North Central Railway, Allahabad.

.....Applicant.

V E R S U S

1. The Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad.
3. The Chief Personnel Officer, North Central Railway, Allahabad.
4. The Senior Divisional Personnel Officer, North Central Railway, Allahabad.
5. The Senior Divisional Commercial Manager, North Central Railway, Allahabad.

..... Respondents

Present for the Applicant: Sri ~~Sri~~ Shyamal Narain

Present for the Respondents: Sri B. Tiwari

O R D E R

By Hon'ble Mr. Shashi Prakash, AM

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant

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has prayed for quashing the impugned order dated 06.03.2006 to the extent of para 'B' whereby the name of the applicant has been deleted from the provisional panel of Chief Inspector of Tickets Gr. Rs. 6500-10500 (RSRP) dated 30.04.2004. Prayer has also been made for direction to the respondents not to disturb the promotion as well as functioning of the applicant as C.I.T on account of the inclusion of the names of new candidates.

2. The facts of the case are that on account of restructuring of certain Group 'C' and Group 'D' posts pursuant to the Railway Board circular dated 09.10.2003 (Annexure No. 2) the resultant vacancies for the post of Chief Inspector of Tickets (C.I.T for short) in grade Rs. 6500-10500 had arisen and decision was taken to fill up the said posts by way of modified selection i.e. only on the basis of assessment of preceding years A.C.Rs and the relevant service records of candidates falling within the zone of consideration. A provisional panel of suitable candidates was prepared and declared vide letter No. 561-E/EC-I/Restructuring/CIT/03 dated 30.06.2004 (Annexure No. 3). In the present original application it has been averred on behalf of the applicant that as on 01.11.2003, 61 vacancies of C.I.Ts were available out of which 52 posts were for general category whereas six posts were reserved for S.Cs and three posts for S.Ts. The provisional panel dated 30.06.2004 contained 50 names against general category, two names of

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S.Cs and three names of S.Ts, hence there were a short fall of two candidates under the S.T. category. In the panel dated 30.06.2004 the name of the applicant appeared at Sl. No. 50. It is further stated that in pursuance of the said panel the applicant was promoted as Chief Inspector of Tickets on 01.11.2003. It is further alleged that vide order dated 25.10.2005 (Annexure No. 5) the name of one Smt. Sushila Tripathi, J.I.T/C.N.B was interpolated in the panel dated 30.06.2004 above the name of Shri G.I. Arif on the ground that her mutual transfer of the year 1988 had been rendered null and void by G.M (P), N.C.R., Allahabad. It is alleged that despite inclusion of name of Smt. Sushila Tripathi, no candidate from the panel dated 30.06.2004 was dropped as there still existed a short fall of two candidates under the general category. However, the respondents vide impugned order dated 06.03.2006 deleted the name of the applicant from the said panel because of interpolation of Shri P.K. Tiwari, J.I.T, Allahabad above Shri G.I. Arif and below Smt. Sushila Tripathi at Sl. No. 01A.

3. Aggrieved by the action of the respondents the applicant has filed the instant Original Application on the ground that even after inclusion of Shri P.K. Tiwari in the panel dated 30.06.2004 there is no need to remove the name of the applicant from the said panel as the strength of general candidates was to be 52 and after inclusion of the name of Shri

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P.K. Tiwari the strength of panel would touch the figure of 52, which is within the prescribed vacancies for general category candidates and not beyond that. It is also averred that the life of a panel is two years, which has since expired hence no alteration is permissible at the belated stage.

4. In the Counter Reply on behalf of the respondents it has been stated that as a result of cadre restructuring the selection of Chief Ticket Inspector were decided to be filled in accordance with modified selection procedure and a panel was prepared. In the general category against 52 vacancies, a panel of 51 candidates was received and there was short fall of one general candidate. It is averred that one post of C.I.T in general category remained unfilled due to pending disciplinary proceeding against Shri O.P. Sharma and his result for promotion is still in sealed cover. It is further stated that Shri P.K. Tiwari, against whom the disciplinary proceeding was also pending, was exonerated from the charges on 09.03.2006 hence following the provisions contained in para 228 of I.R.E.M. Vol. I he being senior was placed at Sl. No. 2 in the select list of C.I.T and the applicant was de-panelled as his name figured at the bottom of the list i.e. at Sl. No. 50.

5. Arguments of learned counsel for parties were heard carefully and note taken of the material on record.

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6. Shri Shyamal Narain, learned counsel for the applicant placed emphasis on Annexure A-4 / Communication of the Railways dated 02.07.2004, which consists a list of persons promoted to the rank of C.I.T. The name of the applicant has appeared at Sl. No. 41 of the aforesaid list. Learned counsel further submitted that this communication had been issued with the approval of the competent authority. He also went to add that the communication at Annexure A-4 was based upon a provisional panel prepared by the Railways on 30.06.2004 containing names of 53 candidates in which the name of the applicant figured at Sl. 50 as the last general candidate. As against 61 vacancies for the post of C.I.T, the provisional panel dated 30.06.2004 had 50 names against the general category, two names against SC category and three names against ST category. So far as the general category is concerned, there still existed a short fall of two candidates. Consequently due to interpolation of name of Smt. Sushila Tripathi, whose request for transfer had been cancelled and her old position in the Division was restored, was interpolated above Shri G.I. Arif, the person standing at Sl. No. 1. Thereafter Shri P.K. Tiwari was also included above Shri G.I. Arif and below Smt. Sushila Tripathi. It is the argument of the counsel for the applicant that even if the interpolation of these two persons in the list are accepted, there is no basis for dropping the name of the applicant from the list, as after interpolation the total number of general candidates (including that of the applicant) comes to 52,



which is the available vacancies as notified in the year 2003. Hence the impugned order dated 06.03.2006 deleting the name of the applicant from the panel does not have adequate basis and suffers from arbitrariness.

7. Relying on the Counter Affidavit learned counsel for respondents argued that interpolation in the provisional panel drawn up for promotion to the post of C.I.T was done keeping in view the merit of the cases of Smt. Sushila Tripathi and Shri P.K. Tiwari. In the case of Smt. Sushila Tripathi, since her request transfer had been cancelled by the respondents hence she was restored to her original position in the Division and being senior most person she was placed at the top of the list. So far as the case of Shri P.K. Tiwari is concerned, he argued that his name was included in the panel as on his representation, his case was inquired into and it was found that due to inadvertence, the punishment of different spell was wrongly drawn for withholding increment temporarily for six years. After approval of the competent authority, this error was rectified and his name was placed at Sl. No. 1A in the provisional panel dropping the name of junior most candidate, namely the applicant. Learned counsel also argued that with the interpolation of these two name the number of candidates in the panel stood 51 and one post was kept vacant since the name of one Shri O.P. Sharma, who was senior to the applicant, had been kept in sealed cover because of departmental

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proceeding against him. Therefore, on the ground of foregoing reasons all 52 vacancies of general category have been accounted for and the respondents were left with no other option but to drop the name of the applicant from the provisional panel. Learned counsel submitted that the action taken by the respondents was in conformity with the Railway Board's Letter No. E(D&A)88/RG6/21 R.B.E No. 211/1988 dated 21.09.1988. Para 3.6 of the aforesaid letter prescribes the procedure for dealing with such nature of eventuality.

8. We have considered rival submissions and perused the pleading.

9. Before proceeding further it may be appropriate to reproduce relevant extract of para 3.6 of Railway Board's Letter No. E(D&A)88/RG6/21 R.B.E No. 211/1988 dated 21.09.1988 :

"If the disciplinary proceeding against the person under suspension etc. for whom a vacancy has been reserved, is finalized - in the case of promotion to selection post - within a period of 2 years of the approval of the provisional panel or at any point of time in the case of promotion to non-selection posts and if such a person is inflicted only a minor penalty he should automatically be assigned the position in the selection panel / suitability list and his in empanelment enlistment announced and he may be promoted in the turn. If his junior has already been promoted before interpolation of his name in the

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selection panel / suitability list, he should be promoted reverting the junior most person if necessary and his pay on promotion should be fixed under the normal rules."

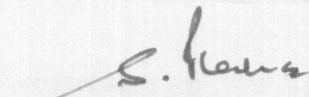
10. It is observed from the above that in the case where a vacancy has been reserved for a person against whom disciplinary proceeding is pending in the case of promotion to the non-selection post and if such a person is imposed only minor penalty in the event of finalization of disciplinary proceeding, he should automatically be assigned the position in the selection panel and he may be promoted in its turn at any point of time. It is also observed that if a junior has already been promoted, he should have to revert back in the event of not availability of vacancy. A perusal of Annexure -2 and Annexure -3 appended with the Suppl. Written Submissions shows that against the charge sheet served upon Shri O.P. Sharma he was imposed a penalty of withholding of increment of one year w.e.f. 01.10.2006 without cumulative effect vide order dated 28.09.2006. Hence the penalty imposed upon Shri O.P. Sharma falls within category of minor penalty and his case is squarely covered by the provision of para 3.6 of Railway Board's Circular mentioned above. Since Shri O.P. Sharma is senior to the applicant, he is entitled to be placed in the provisional panel prepared for promotion to the post of C.I.T as per his seniority and on account of this if the name of the

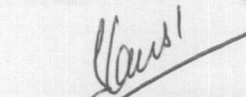
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applicant gets excluded from the provisional panel, it is in terms of the extant rule as laid down by the Railway Board.

11. In view of the foregoing circumstances we find that the action of the respondents is in accordance with rules. Therefore, the O.A lacks merit and deserves to be dismissed.

12. Accordingly, the O.A is dismissed. No order as to costs.


(Shashi Prakash)
Member-A


(Sanjeev Kaushik)
Member-J

Anand....