

(Reserved on 12.07.2013)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 10th day of Oct, 2013

ORIGINAL APPLICATION NO. 837 of 2007

**HON'BLE MR. JUSTICE S. S. TIWARI, MEMBER- J
HON'BLE MR. SHASHI PRAKASH, MEMBER- A**

Chandra Shekhar Singh, son of late Shri Jang Bahadur Singh, resident of present address RE 4 D, Railway Electrification Colony, Rambagh, Allahabad present posted as Stenographer (1240-2040) (4000-6000).

.....Applicant

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. General Manager, North Central Railway, Allahabad.
3. General Manager, Railway Electrification, Allahabad .
4. Mrs. Annie Abraham, Daughter of N.J. John, posted as Senior Stenographer(Adhoc), CORE / Allahabad.

..... Respondents

Present for the Applicant: Sri A. Bhushan

Present for the Respondents: Sri D. Awasthi through his proxy Shri Rakesh Dixit, Advocate.

ORDER

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 has sought following main relief/s: -

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- “(i). to issue a writ, order or direction in the nature of mandamus directing the respondents to consider the claim of the applicant with regard to fixation of his paper lien in N.C. Railway observing the letter dated 23.12.1996, 14.01.1997, 24.07.2002, 19/20.08.2002, 26.08.2002, 18.09.2002, 11.10.2006, 14.02.2007, 10.05.2007 and parity claim of respondent No. 4;
- (ii). to issue a writ, order or direction in the nature of mandamus directing the respondent to provide same benefit to the applicant as of respondent No. 4;
- (iii). to issue a writ , order or direction in the nature of mandamus directing the respondent No. 2 to consider the representation dated 11.10.2006, 14.02.2007 and 10.05.2007 in the light of letter/ order dated 13.09.2006 issued by himself for respondent No. 4, so that the justice may be done with the applicant;
- (iv). to issue a writ, order or direction in the nature of mandamus directing the respondents not to declare the result of the written examination dated 25.08.2007 for the post of Confidential Assistant in pay scale of Rs. 6500-10500 in pursuance of Notification dated 3.8.2007 till the final decision of the present original application.”

2. The facts, as enumerated in the O.A, are that the applicant was initially appointed as Stenographer in pay scale of Rs. 1200-2040 on 23.01.1996 and he was posted under the General Manager, Railway Electrification, Allahabad

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(Respondent No. 3). Pursuant to the option sought from the General Manager, North Central Railway, Allahabad (Respondent No. 2) for being inducted in Head Quarter Officer, North Central Railway, Allahabad, the applicant submitted his option on 23.12.1996, which was forwarded by the Respondent No. 3 to the Respondent No. 1 on 14.01.1997. Thereafter pursuant to the letter dated 27.07.2002 (Annexure-3) the applicant was spared for appearing in suitability test on 20.08.2002. It is the contention of the applicant that a seniority list relating to the employees in pay scale of Rs. 4000-6000 was issued by the Respondents on 10.07.2001 in which his name appeared at Sl. No. 5 showing his paper lien in Railway Electrification whereas persons junior to him at Sl. No. 12, 13, 14 and 15 have been absorbed and their lien have been shown in N.C.R., Allahabad Division (Annexure-8). The Railway Board issued a circular letter dated 15.10.2003 to the respondent No. 3 regarding paper lien of the staff working in Railway Electrification (Annexure -9). Thereafter a revised provisional seniority list of Stenographer in N.C.R., H.Q., Allahabad was issued on 27.07.2004 in which the name of the applicant was not mentioned (Annexure -10). Aggrieved by inaction of the respondents the applicant preferred a representation on 06.10.2004, which was supplemented by reminders dated 02.05.2005, 27.07.2005 and 24.01.2006. The representation of the applicant was rejected by the Senior Personnel Officer (NG) vide order dated 10/13.2.2006 (Annexure-15). The applicant

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has alleged that he has been discriminated, as his junior Mrs. Annie Abraham prior to her transfer of lien to N.C. Railway, was the staff of Bhopal Division of Central Railway and on her application she has been given lien in North Central Railway vide order dated 13.09.2006 (Annexure-18) although her transfer was cancelled earlier vide letter dated 20.04.2006 (Annexure-17). A notification dated 03.08.2007 was issued for filling up the vacancy of Personal Assistant in pay scale of Rs. 6500-10500 (Annexure -22). In the said notification name of 22 eligible candidates including the name of respondent No. 4 was reflected. Aggrieved the applicant has filed the instant original application on the ground that had his name appeared in the revised provisional seniority list of Steno dated 27.07.2004, he would have been included in the list dated 03.08.2007 with regard to the candidates eligible to the post of Personal Assistant. Accordingly, the action of the respondents is discriminatory and violative of Article 14 of the Constitution of India.

3. In the Counter Reply on behalf of the respondents it has been stated that the applicant was working on ad hoc basis on work charge post and during the suitability test on 20.08.2002 he was found unsuitable and his lien was not maintained in the North Central Railway, Head Quarter. Therefore, his name could not be included amongst the eligible candidates in the notification dated 03.08.2007. It is stated that the candidates,

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against whom the applicant is claiming parity, were absorbed automatically in the new Zonal Head Quarter. It is further stated that the Railway Board letter dated 15.10.2003 (Annexure -9 of O.A) is applicable to the applicant as the paper lien of the applicant was not transferred to the NCR Head Quarter and his name could not be placed in the seniority list.

4. The applicant has filed Rejoinder in which nothing new has been added.

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

6. The case of the applicant is that pursuant to the option sought by the General Manager, North Central Railway / Respondent No. 2 the applicant submitted his option. Subsequently the applicant appeared in suitability test held on 20.08.2002. What was the out come of the suitability test in relation to the applicant has not been brought out in his pleadings. The claim of the applicant is based on the ground that in the seniority list of the employees in pay scale of Rs. 4000-6000/- issued on 10.07.2001 his name appeared at Sl. No. 5 showing his lien with the Railway Electrification Organization. It is the contention of the applicant that the juniors placed at Sl. No. 12, 13, 14 and 15 have been absorbed and their lien have been shown in the N.C.R, HQ, Allahabad.

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However, the subsequent provisional seniority list of Stenographers of N.C. R., H.Q, Allahabad issued on 27.07.2004 did not mention the name of the applicant. Aggrieved by omission of his name in this list the applicant had submitted a representation, which was rejected.

7. The respondents in their Counter Reply have stated that the name of the applicant could not be considered for lien with the N.C.R, H.Q, Allahabad because he failed to clear the suitability test prescribed for the purpose. However, he was allowed to continue on a work charge post purely on adhoc basis. It is further contended that the claim of the applicant that his juniors were given the benefit of lien with the N.C.R HQ, Allahabad cannot be sustained because those employees had been accepted in the newly created zone in terms of the Railway Board Letter dated 15.10.2003 and provisions of which were not applicable to the applicant. The letter covers only those employees who were accepted by newly created zones and those who were accepted by the new zones and presently working in Railway Electrification Organization. The respondents have also challenged the O.A on the ground of delay and latches.

8. The issue relating to the option for lien with the newly created Railway zones is governed by the R.B.E No. 123/1996 dated 06.12.1996. In the aforesaid R.B.E, priority have been indicated regarding the offices from where the non-gazetted staff

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were to be considered for lien with the newly created zones (Annexure A-23 of O.A). Relevant extract of the para of the RBE dated 06.12.1996 is reproduced below: -

"2. For the purpose of manning of posts in the New Zones at their headquarters offices, the Board desire that options may be called for from the staff as follows: -

- I. From non-gazetted staff working at the headquarters offices of the existing Zonal Railway from whose jurisdiction the new Zones have been carved out, for being transferred to the headquarter offices of the respective new Zonal Railways.
- II. From the non gazetted staff working in the affected Divisions of existing Zonal Railways as follows: -
 - a. Whether they would like to continue to work wherever they are working at present ; or
 - b. Proceed to the headquarter offices of the respective new Zonal Railways.

Note: Non-gazetted staff of affected Divisions in categories / cadres controlled by headquarters will have the option to remain in the existing Zonal Railway or join the new Railway for which they must exercise option.

- III. From non-gazetted staff working in other Divisions of existing zonal railways for working in the respective new zonal railways; and
- IV. From non-gazetted staff of all zonal railways / production Units for working in the headquarters office of one of the new zonal railway against short all, if any.

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2.1. *Preference for transfer on option to the new zonal railways should be given in the order as indicated in para 2 above.*

2.2.


3. *It should also be made clear to the staff that those who opt for transfer should be prepared for transfer accordingly. However, the mere fact of their exercising an option does not necessarily imply that their transfers would be automatically effected. It is essentially the efficient working of the headquarters offices of the new zones, which will have to be kept in view, if deciding the transfer of staff to the new zonal railways."*

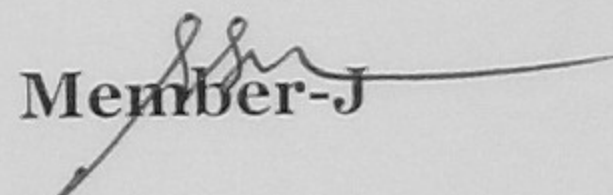
9. It is specifically stated in para 2.1 of the R.B.E that preference of transfer on option should be given in the order, as indicated in the order of priority. It also goes on to state in para 2.2 of the above RBE that staff working in the establishment other than H.Q of the Zonal Railways can also exercise their option alongwith other staff of the respective Divisions of the New Zonal Railways. However, a clear conditionality has been provided that mere fact of exercising of option do not necessarily imply that transfer would be automatically effected. While transferring staff, it was necessary to keep in mind the need of efficient working of the Headquarter offices. This implies that the staff exercising option could be subjected to a kind of suitability test.

10. The case of the applicant has to be seen in the context of the provisions of the above R.B.E. It is interesting to note while in his pleadings the applicant had stated the facts till his appearance in the suitability test he does not mention any thing about the result of the same. Whereas, it is the clear averment of the respondents that the applicant had appeared in the suitability test held on 20.08.2002 but he failed to clear the same and it is on this ground that his name did not figure in the Notification dated 03.08.2007 listing out the name of the persons eligible to appear in the test for promotion to the post of Personal Assistant. It is also to be noted that the persons who are allegedly junior to the applicant and whose option for lien with the NCR HQ, Allahabad have been accepted, are the persons falling in priority No. 1 and 2 as they were working at Zonal HQ of the other Railways and affected Divisions. Hence, in terms of the RBE No. 123/1996, they had been straight way provided the lien with the NCR HQ, Allahabad. The applicant was an employee of non-zonal HQ setup / affected Divisional office therefore, he was required to satisfy the eligibility criteria, as laid down for the purpose in the RBE No. 123/1996. As the applicant had failed to meet the requirement of eligibility criteria because he failed to clear the suitability test, his option for lien with the NCR HQ could not be accepted and his lien was continued with the Railway Electrification. In this regard it may be relevant to point out that the Apex Court has observed that when rules lay down eligibility condition for promotion those

must be strictly complied with (**R. Prabha Devi Vs. Government of India & Ors - AIR 1988 (SC) 908**). It has also gone to observe that mere seniority cannot overrun the requisites of the eligibility criteria. As the applicant was not having his lien with the NCR HQ, Allahabad for the reasons that he could not clear the suitability test, which was one of the eligibility criteria, his name could not have been included in the Notification dated 03.08.2007 in which the candidates eligible for promotion to the post of Personal Assistant has been mentioned.

11. In view of the foregoing observations, we do not find force in the claim of the applicant. Accordingly, the O.A is dismissed with no order as to costs.


Member-A


Member-J

Anand....