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O.A. No.04/06

ORDER DATED 8th MAY, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)

Assailing Annexure-A/4 order dated 31.08.2004 passed by the Divisional Railway Manager (P)/KUR and questioning the legality in rejecting his representation as per Annexure-A/7 order dated 16.06.05 the applicant, who is at present working as O.S.- Gr.II, under the E. Co. Rlys., Khurda Road has prayed for the following relief:-

- "A) Quash the order dated 16.06.05 under Annexure-7 declaring the same illegal, arbitrary, non speaking and one product of total non application of mind.
 - B) Direction and/or directions be issued to correct the Gradation list as under Annexure-5 and refix the seniority position above Respondent No.6,7 and 8.
 - C) Direction and/or directions be issued to promote and upgrade the applicant w.e.f. 01.11.2003 (Empanelled along with others on 24.11.2003) as under Annexure-3, at par with other three incumbents.
 - D) Any other direction and/or directions be issued as this Hon'ble Court deems fit and proper."
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2. It is the case of the applicant that while working as Head Clerk, as per Annexure-A/1 dated 13.05.03, a list containing the names of 15 eligible officials was notified for the purpose of conducting the written test for promotion to O.S. Gr.-II, wherein the name of the applicant did appear at Sl. No.10. According to the applicant, five candidates including him came out successful in the written and viva voce test and a provisional panel for promotion to O.S. Gr.-II was drawn up as per Annexure-A/2 dated 20.11.03, wherein the name of the applicant did appear at Sl. No.4. In pursuance of Annexure-A/3 dated 24.11.03 the applicant along with four others were promoted to O.S. Gr.-II with immediate effect, wherein the name of the applicant did appear at Sl. No.4. While the matter stood thus, having been declared suitable for upgradation/promotion under the restructuring of cadre in Electrical Department, as per Annexure-A/4 dated 31.08.04 seven officials including Private Respondent Nos.5 to 8 have been promoted as O.S. Gr.-II.

3. The Respondents have accordingly issued a provisional seniority list as per Annexure-A/5 dated 01.11.2004, against which the applicant preferred a representation as per Annexure-A/6 dated 15.01.05 with prayer to give him seniority as O.S. Grade.II, w.e.f. 01.11.03 and place him accordingly and his representation, as per Annexure-A/7 dated 16.06.05 having been rejected, this O.A. has been filed with the prayers referred to above.



4. In response to notice issued by this Tribunal, the official Respondents have filed their counter-reply. They have stated that due to restructuring of O.S. Grade-II cadre, two additional posts were created as per existing scales, besides two posts of O.S.Gr.-I in higher cadre. It is also stated that three vacancies in O.S. Gr.-II were in existence at the time of restructuring, and in all, seven vacancies were filled up on modified procedure. The Respondents have stated that though the applicant was empanelled on 21.11.03 as O.S. Gr.-II but as per Railway Board's guidelines in respect of restructuring cadre, the seniority of the applicant has been fixed below Private Respondent No.8. It has been stated that in view of Railway Board's letter dated 06.01.04 the selection which was not completed within 01.11.03 is to be treated as cancelled, and in effect, the selection that was finalized beyond 01.11.2003, i.e. on 24.11.03 as per Annexure-A/3 had to be treated as cancelled and that all the candidates including the applicant were promoted due to restructuring of the cadre and therefore, the seniority list prepared under Annexure-A/5 is a correct one. With the above the official Respondents have prayed for dismissal of the O.A being devoid of merit.

5. Private Respondent No.5 to 8 have neither entered appearance nor filed any counter.

Applicant has also not filed any rejoinder to the counter.



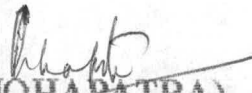
6. We heard Mr. A. Kanungo, Ld. Counsel for the applicant and Mr. B.K. Mohapatra, Ld. Counsel for the Respondents and also perused the records produced before us.

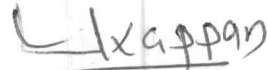
7. It is not in dispute that Head Clerk is the feeder grade for promotion to the grade of O.S.II. The applicant has not filed any seniority list to substantiate this case that he is in fact senior to Private Respondent Nos. 5 to 8 in the grade of Head Clerk. On the contrary, in course of hearing, the Ld. Counsel for the Official Respondents by filing a seniority list of Head Clerk brought to the notice of this Tribunal that Private Respondent Nos. 5 to 8 are all senior to the applicant, being placed above him. Applicant has also not refuted the averment of the Official Respondents by filing rejoinder to the effect that the cancellation of selection to the post of O.S. II made beyond 01.11.03 is bad in law and/or his selection to the grade of O.S.II subsequent to such cancellation due to restructuring, is an afterthought.

8. Having regard to what has been discussed above, we are of the view that the applicant has failed to establish that he is senior to Respondents No. 5 to 8 at all in the feeder grade of Head Clerk.

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9. The O.A. is held to be without any merit and accordingly the same is dismissed. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

Kalpeswar