

13  
CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 434 OF 2002  
Cuttack, this the 2nd day of January 2004

R.Ganapati

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

21/01/04  
(M.R.MOHANTY)  
MEMBER(JUDICIAL)

(B.N.SOM)  
VICE-CHAIRMAN

04

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 434 OF 2002  
Cuttack, this the 2nd day of January 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....  
Sri R.Ganapati, aged about 52 years, son of R.Thammaih, working for gain  
as Head Clerk under Loco Foreman (Chief Crew Controller), S.E.Railway,  
Khurda Road, at present residing at Railway Qr.No.A/180/B, Loco Colony,  
Khurda Road, P.O. Jatni, Dist.Khurda ..... Applicant

Advocate for the applicant

- Mr.Achint Das

Vrs.

1. Union of India, service through General Manager, S.E.Railway,  
Garden Reach, Kolkata 43
2. Member Staff, Railway Board, Rail Bhavan, New Delhi.
3. Chief Personnel Officer, S.E.Railway, Garden Reach, Kolkata 43,  
Pin 700 043.
4. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O.Jatni,  
Dist.Khurda, PIN 752 050 ..... Respondents.

Advocates for Respondents

- Mr.R.C.Rath, SC (Railways)

.....

2

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed by Shri R.Ganapati assailing the letter of the Senior Divisional Personnel Officer, Khurda Road, dated 11.12.2001 (Annexure A/4) conveying rejection of the prayer of the applicant for promotion as Office Superintendent (hereinafter referred to as "O.S."), Grade II, on account of expiry of the currency of the panel prepared for promotion to the said grade vide Divisional Personnel Officer, Khurda Road, Memo No. 16/95, dated 29.3.1995 (Annexure A/1).

2. The facts of the case, in short, are that the applicant was selected and empanelled as O.S.Grade II by conducting a written test and viva voce and was placed at serial No.10 in the panel drawn by the Selection Board, which was duly approved by the competent authority and published on 29.3.1995. Out of that panel, eight candidates were promoted to the said grade immediately. But no promotion/posting was done in respect of the

officers at serial Nos. 9 and 10, although two more vacancies in the grade occurred, one on 1.8.1995 and the other on 1.1.1996 due to retirement of two of the incumbents in that grade. The applicant being aggrieved had made series of representations to the Senior Divisional Personnel Officer on 9.11.1995, 8.12.1995, 15.3.1996, 8.10.1996 and the latest being on 7.11.2000, but to no effect. No reply was received in response to any one of these representations. In the circumstances, the applicant had approached the Respondents through the S.E.Railway Men's Union and in response to their representation, the Respondents finally informed him through the Union that he could not be promoted due to the expiry of the validity of the panel. The applicant has forcefully submitted that two vacancies in the grade of O.S. Grade II having arisen, one on 1.8.1995 and the other on 1.1.1996 during the currency of the panel, he ought to have been promoted against one of these two resultant vacancies, but that was not done creating discrimination against him. He has, therefore, approached the Tribunal to direct the Respondents to

2

promote and post him as O.S. Grade II against one of the said vacancies which arose on account of retirement.

3. The case of the Respondents is that they had calculated 10 vacancies in the grade of O.S. Grade II and all these vacancies were in Unreserved category. The senior most Head Clerks were called to appear in the written test which was held on 21.5.1994 in the ratio of 1:3 as envisaged in Paragraph 215 of the Indian Railway Establishment Manual, followed by a viva voce test held on 28.9.1994 and 23.11.1994. They have admitted that eight candidates were promoted with effect from 30.3.1995. They have stated that promotion of the applicant along with another candidate in the panel could not be effected due to non-availability of vacancies as on 29.3.1995. They have submitted, in defence of their decision not to promote the applicant, that the latter was called to appear in the selection test based on the seniority list of Senior Clerks dated 05.08.1988 which was under challenge before the Tribunal in O.A.No.366/91. This Tribunal after hearing the parties directed the Respondents in their order

dated 3.8.1993 to draw up the seniority list afresh and a revised Seniority List was published, inviting objections by giving a notice period of thirty days. The applicant never submitted any representation though his position underwent a change and because of that the applicant was not coming within the zone of consideration for promotion to the post of O.S. Grade II at that point of time. The provisional seniority list of Head Clerks was published on 2.12.2001 against which the applicant had never submitted any representation and according to that seniority list, the applicant was going out of the zone of consideration for promotion from Head Clerk to O.S. Grade II. They have also argued that law is well settled that merely because one has been selected for a post in a selection, he has no right to be appointed to that post.

4. The Respondents have also submitted that because of pendency of two cases before the Tribunal in OA No.328 of 1994 and 329 of 1994 regarding seniority of Senior Clerks and Head Clerks, promotion from the grade of Head Clerks to O.S. Grade II

✓

for the two candidates at serial Nos.9 and 10 of the panel dated 29.3.1995 could not be effected.

5. We have heard the learned counsel for both sides and have perused the records placed before us. The learned counsel for the applicant has also placed before us two case laws:

- (i) Prem Prakash, etc. v. Union of India and others, 1984(2) AISLJ 376; and
- (ii) Nilcsh Majumder and others v. Union of India and others, 2002(2) Administrative Total Judgments 556.

6. The short question to be answered in this case is whether the applicant, after having been recommended by the duly constituted Selection Board for promotion to O.S. Grade II and that recommendation having been approved by the competent authority for effecting promotion, could have been denied the fruit of promotion. The learned counsel for the applicant has vehemently submitted that the applicant having been included in the panel and vacancy being available during the currency of the panel, the Respondents could not have denied the applicant the benefit of promotion. In support of his argument, he has relied on the decision of the Hon'ble Supreme Court in *Prem Prakash's case (supra)* where their Lordships have observed that if vacancies are available, the candidates who passed the examination ought to be appointed. Their Lordships have also

9

upheld the notification dated 8.2.1982 of the Ministry of Home Affairs, Department of Personnel & Administrative Reforms, that "Once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of the vacancies undergoes a change, after his name has been included in the list of selected candidates." Referring to the decision of Calcutta Bench of this Tribunal in *Nilesh Mazumder's case (supra)*, the learned counsel for the applicant submitted that the ratio of that case is eminently suited to this case also. On the other hand, the Respondents have pointed out that law is well settled that inclusion of name of a candidate in the select list does not confer on him any right to appointment. This is the submission so far as the legal aspect of the case is concerned. In the matter of fact of the case, the Respondents have given two reasons for not granting him promotion from the panel. In their communication to the S.F. Railway Men's Union, they have taken the ground that the applicant could not be promoted due to expiry of the currency of the panel. As per Paragraph 220 of the Indian Railway Establishment Manual, Vol.I (1989 Edition) (Annexure A/10) the currency of panels is as follows:

4

**"220. Currency of panels**

(a) Panels drawn by the Selection Board and approved by the competent authority shall be current for two years from the date of approval by the competent authority or till these are exhausted whichever is earlier."

In the counter, however, the Respondents have taken a different stand. They have stated that the applicant could not be promoted on 29.3.1995, along with others, because there were no ten vacancies at that time. They have not, however, answered why he could not be considered against the two vacancies which arose one in August 1995 and the other in January 1996. They have, on the other hand, submitted that after finalization of OA Nos.328 and 329 of 1994, by virtue of the judgment in these cases it was found that in the revised seniority list the applicant was not within the zone of consideration for promotion and that is why the candidates whose names were recommended at serial Nos.9 and 10 of the panel could not be promoted.

7. We have carefully considered the rival contentions regarding the right of an individual whose name appears in the select list for promotion. We are aware that Ernakulam Bench of this Tribunal in O.A.No. 175 of 1995 had held that a person whose name has been included in the select list has no right to be appointed. Their Lordships of the Hon'ble Supreme Court in the case reported in (1993) 1 SCC 154: 1992 AIR SCW 3263,

*Union Territory of Chandigarh v. Dilbagh Singh*, had also observed that an individual does not get a legal right to be appointed in such post unless there is any rule or law giving him such a right. Their Lordships in that case had, however, observed that while an individual does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment, the exception is that he could be aggrieved by his non-appointment only when the administration does so either arbitrarily or for no bona fide or valid reason. We would, therefore, like to find out whether there was an element of arbitrariness or whether there were no bona fide reasons on the part of the Respondents in not promoting the applicant to O.S. Grade II.

8. We will see whether the Respondents have acted arbitrarily or without any bona fide reasons in denying promotion to the applicant. The very basic point to be decided here is, whether the applicant has any legal right to demand appointment because his name was included in the panel. Their Lordships in *Dilbagh Singh's case (supra)* have observed that a candidate derives such a legal right only when there is a rule of law giving him such a right. In the instant case, the position is that the panel for promotion from the grade of Head Clerk to O.S. Grade II was carried out in terms of Paragraph 215 of the Indian Railway Establishment Manual,

by

27  
Vol.I, as admitted by the Respondents. It is only those who are eligible to be considered by the Selection Board are called before that Board for testing their merit through written test and viva voce and appointment to O.S. Grade II is made only out of the candidates who are selected by the Selection Board. In view of this Rule position, we have no doubt that the applicant in this case has a legal right to demand promotion out of the list, as he has made in this Original Application.

9. That apart, the question is whether the decision of the Respondents to deny promotion to the applicant was arbitrary or without any bona fide reasons. When they were asked by the applicant as to why he was not being promoted although there were vacancies, they gave him no reply. When the same question was put to them on his behalf by the S.E. Railway Men's Union, they retorted that because the currency of the panel has expired, he could not be promoted. In their counter they have not touched this argument at all. They have stated that there were no ten vacancies as on 29.3.1995 and so the applicant could not be promoted. Then they have said in the same counter that as the seniority list on the basis of which he was called for interview before the Selection Board in 1994 had undergone change by virtue of the Tribunal's order in the two seniority cases in December 2000, the successful candidates including the applicant, whose

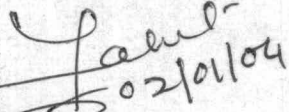
✓

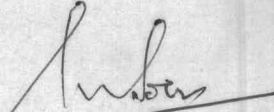
names appear at serial Nos. 9 and 10 of the panel of March 1995, were not promoted. The way they have placed their position for not giving promotion to the selected candidates in the panel dated 29.3.1995, to say the least, is evasive, suspicious, arbitrary and devoid of logic. We have no doubt that the reasons for not granting promotion to the applicant, as stated in the counter, are an afterthought. They have also not denied that two vacancies arose, one on 1.8.1995 and the other on 1.1.1996, when the panel was very much current, and there was absolutely no cause available with them to deny promotion not only to the applicant but also to the person immediately above him. Further, they have also not properly interpreted the period of validity of panel, as given in Paragraph 220 of the Indian Railway Establishment Manual that a panel will remain to be valid till it is "exhausted" or up to two years from the date of approval of the panel by the competent authority. In this case, the panel could have been exhausted as on 1.1.1996 when the seniority list of 1994 was very much in order. What happened on receipt of the orders of this Tribunal, dated 6.12.2000, in OA Nos.328 and 329 of 1994 was a separate matter and in any case, action to be taken by them in August 1995 or in January 1996 could not have been influenced by the Tribunal's orders which they received only in December 2000.

10. This Original Application must, therefore, succeed. Our reasons for allowing the Application may be summed up thus. In the first case, the applicant having been included in the panel on the recommendation of a duly constituted Selection Board in terms of Paragraph 215 of the Indian Railway Establishment Manual, Vol.I, he had acquired a right to enforce appointment to the post. Secondly, eight vacancies existed immediately on publication of the panel on 29.3.1995 and two more anticipated vacancies arose, one on 1.8.1995 and the other on 1.1.1996 and therefore, as per Paragraph 220 of the Indian Railway Establishment Manual, the panel could have been exhausted by utilizing those two vacancies. Thirdly, it is futile on the part of the Respondents to argue that the seniority list of Head Clerks as available in 1994 was provisional because in finalizing the selection process in March 1995 no such decision was available that the seniority list of 1994 was provisional and any promotion made out of the seniority list would be subject to the outcome of any case pending in Court. Finally, at no point of time, either during the two years of currency of the panel or afterwards, the applicant was ever told by the Respondents that his promotion was not effected because of the matter of seniority being subjudice and in the circumstances the Respondents are effectively estopped to raise this issue at this late hours.

11. We accordingly direct that the Respondents will take expeditious steps for notifying the appointment of the applicant as well as the appointment of the individual immediately above him, to O.S. Grade II from the date the vacancies were available to promote them during the currency of the panel. Since they have not actually worked as O.S. Grade II during the intervening period, they will not be entitled to any remuneration for the period. They will, however, be entitled to notional fixation of pay with reference to the date of their notional promotion.

12. In the result, the Original Application is allowed to the extent indicated above. No costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN