

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, J O D H P U R

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Date of order : 10.1.2000

O.A.NO. 207/1996

Bhanwarlal S/o Shri Jai Chand, Train Driver, Lalgarh.

.....Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Senior Divisional Personnel Officer, Northern Railway, Bikaner.
4. Divisional Personnel Officer, Northern Railway, Bikaner.

.....Respondents.

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Mr.N.K.Khandelwal, Advocate, for the applicant.  
Mr.S.Jodha, Advocate, Brief Holder for  
Mr.Ravi Bhansali, Advocate, for the respondents.

CORAM :

Hon'ble Mr.A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

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PER HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER :

The applicant has filed this O.A. with the prayer that the respondents be directed to treat the applicant (a panelled employee), a regular employee on the post of Passenger Train Driver w.e.f. 7.10.1992 and the respondents be further directed to grant all consequential benefits treating the applicant regular incumbent to the post of Passenger Train Driver Grade Rs. 1600-2660 w.e.f. the date of the panel i.e. 7.10.1992 and fixation of pay of the applicant be ordered accordingly.

2. Notice of the O.A. was given to the respondents who have filed their reply to which a detailed rejoinder was also filed by the applicant. In the reply, the respondents have stated that the applicant was placed in the panel dated 7.10.1992 but



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mere placement in the panel does not entitle the applicant to claim promotion to the higher post. It is also alleged by the respondents that the life of the panel is two years and if the applicant could not be promoted during the currency of the panel, the applicant cannot claim promotion as per his empanelment. The respondents have also stated that the O.A. is devoid of any force and deserves to be dismissed.

3. We have heard the arguments and considered the case. The learned counsel for the applicant has argued that the respondents have admitted in Annex.A/1 dated 15.3.1996 that the name of Bhanwar Lal /"J" figures in the list of empanelment but in spite of this the applicant has not been promoted. Moreover, the respondents have admitted in their reply that the name of the applicant is placed in the panel, therefore, the applicant is entitled to be promoted to the higher grade as per his empanelment. He has further argued that many of the juniors of the applicant have been promoted as per the panel ignoring the applicant and thus the applicant has been discriminated. On the other hand, it was argued that mere empanelment is no right.

4. We have considered the rival arguments. On going through the panel dated 7.10.1992, Annex.R/1, we find that the name of the applicant i.e. Bhanwarlal/"J" does not figure in the panel. This panel is not disputed by the applicant. The learned counsel for the applicant has pointed out that the name of the applicant figures at Sl.No. 61 but we do not think that the name at sl.No. 61 which is mentioned in the panel is that of the applicant because this name has been mentioned as "Bhanwarlal/"M". About this name, the learned counsel for the applicant says that "M" has been wrongly mentioned together with the applicant's name, it should have been "J" but we do not subscribe to this argument. We have also seen the letter dated 23.7.1992 (Annex.A/2) through



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which, candidates were called for interview. In this list, the name of the applicant is mentioned at sl.No. 140 as Bhanwarlal/"J", Goods Driver, Lalgah, that means, the applicant was called for interview. The last successful candidate shown in the panel is at No. 99 and named as Harbhajan Lal/"T", Goods Driver, Rewari. In the list of eligible candidates, the name of Harbhajan Lal, figures at sl.No. 109 as Harbhajan Lal/Tejpal, Goods Driver, Rewari, that means, the candidates subsequent to Harbhajan Lal, were probably not empanelled at all. The name of the present applicant figures at No. 140 in the list of the eligible candidates. Since no candidate subsequent to No. 109 of the eligibility list finds place in the panel, therefore, it is un-thinkable that the name of the applicant has wrongly been mentioned at sl.No. 61 in the panel. The name of Bhanwar Lal/"M" is just above the name of Gangasaran/"C", Goods Driver, Ratangarh at No. 62 in the panel. The name of Gangasaran/"C" figures at sl.No. 71 in the list of eligible candidates as Gangasaran/Chedalal, Goods Driver, Ratangarh and just above him, name of Bhanwarlal/"S", Goods Driver, Lalgah, is mentioned at No. 70. Therefore, this Bhanwarlal "S" may have been wrongly mentioned as Bhanwarlal "M" at No. 61 in the empanelment. But in any case, this Bhanwarlal "M" cannot be the present applicant who figures at No. 140 in the list of eligible candidates. In view of this factual aspect, mere admission of the respondents in this regard, does not help the applicant. In our opinion, the applicant can succeed in this O.A. only when he shows himself to be an empanelled candidate for the post of Passenger Driver, as claimed by the applicant. In view of this factual aspect of the case, the applicant cannot get the relief as claimed by him in the O.A.



5. In view of the above discussion, we are sorry to observe that the answering respondent i.e. Divisional Personnel Officer

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(Litigation), Northern Railway, Bikaner, did not examine the matter in detail before filing the reply and although the respondent was labouring under the belief that the promotion of the applicant was not accorded during the currency of the panel which expired on 7.10.1994. If the matter had been examined factually by the answering respondent and his legal advisor in the details as indicated above, probably the case would not have lingered on for so many years. It is surprising how the applicant's name was mentioned in Annex.A/1 dated 15.3.1996 when his name had not figured in the panel of successful candidates to be promoted on the post of Passenger Drivers in the scale 1600-2600 (RPS). In view of the position explained above, how the respondents could continuously emphasise that no junior of the applicant was ever promoted. On the contrary, the respondents should have pleaded that the name of the applicant does not figure in the empanelment list. This is an instance of very casually attending the litigation. Needless to say that pleading is the back-bone of the entire case and if the pleading is wrong, the decision could be wrong and in such circumstances, some times applicant may get a relief which <sup>he</sup> is not entitled to get it or the applicant may be refused a relief for which he is otherwise entitled. We may further venture to say that it was all the more necessary for the learned counsel for the respondents to have examined the matter in detail before filing the reply. But, this has also not been done in the instant case. In our opinion, the admission of the respondents under mistaken belief or due to some bonafide mistake, would not confer any right on the applicant to claim promotion as has been argued by the learned advocate for the applicant. After all only an empanelled candidate can be given promotion. When the name of the applicant does not figure at all in the list of empanelment, how a wrong admission of the respondents can help the applicant in securing the promotion. Therefore, the respondents' admission either in Annex.A/1 or in their reply, neither helps the applicant nor can bind the



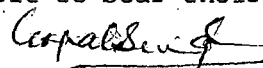
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respondents on the principle of estoppel. The arguments relating to the admission of the respondents advanced by the learned counsel for the applicant, deserve to be rejected and are hereby rejected.

6. It was next argued by the learned counsel for the applicant that the applicant has wrongly been called to appear in selection test in pursuance of the Notification dated 1.12.1995 when he was already admitted by the respondents to have been empanelled in the earlier panel. But this argument deserves to be rejected out-right. Since the name of the applicant does not figure in the earlier panel, therefore, there was nothing wrong on the part of the respondents to call the applicant <sup>for examination</sup> when they were holding subsequent selection for the post in question. The arguments in this respect are, therefore, rejected.

7. In view of the above discussions, the O.A., in our opinion, is devoid of any merit and deserves to be dismissed.

8. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.

  
(GOPAL SINGH)  
Adm.Member

  
10/1/2000  
(A.K.MISRA)  
Judl.Member

mehta

Lib - 20-1-2000

(copy received)

John  
(Cavender's note)  
20/1/2000

R/C

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20/1/2000

Part II and III destroyed  
in my presence on 2-5-06  
under the supervision of  
section officer (J) as per  
order dated 29/8/96

Section officer (Record)