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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 257/05

Date of decision: 25.01.2007

**Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. R R Bhandari, Administrative Member.**

Manohar Lal Meena, S/o Sh Basanta Lal Ji, aged about 50 years, r/o Qr. No.T-13A Railway Traffic Colony North Western Railway, Jodhpur Distt. Jodhpur (Rajasthan). Presently working on the post of Head Clerk in the office of Senior Sectional Engineer (Signal) North Western Railway, Jodhpur Distt. Jodhpur (Rajasthan):

Applicant.

Rep. by Mr. S.K. Malik Counsel for the applicant.

VERSUS

1. Union of India through the General Manager, North Western Railway Jaipur. (Rajasthan)
2. The Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur.
3. The Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.
4. Shri Anil Kumar, Office Superintendent II C/o Senior Sectional Engineer (S&T) North Western Railway Jodhpur. Distt. Jodhpur (Rajasthan)

Respondents.

Rep. by Mr. Manoj Bhandari: Counsel for the respondents 1 to 3
Mr. D.D Chitlangi: Counsel for the respondent No. 4

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri Manohar Lal Meena has preferred this O.A. inter alia questioning the validity of order-dated 15.9.2004 at Annex. A/1 and has sought for setting aside the same to the extent it relates to respondent No. 4 with further direction to consider the case of

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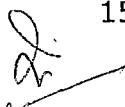
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applicant in the re-structuring scheme and to promote him to the post of Superintendent w.e.f. 1.9.2004 with all consequential benefits etc. etc.

2. We have heard both the learned counsel for the parties at great length and have carefully perused the pleadings, records as well as the relevant Railway Board's Circulars.

3. The abridged facts of this case are that the applicant was initially appointed as Junior Clerk on 31.7.1979. In due course, he enjoyed his promotion and became Head Clerk w.e.f. 20.8.1990. In the seniority list issued on 13.5.2002, the name of the applicant was placed at Sl. No.1. There was one cadre post for Office Superintendent Grade II before 1.11.2003. The official respondents organised a selection for filling two posts of Office Superintendent Grade II. All the persons holding the post of Head Clerk who were within the zone of consideration were called for the selection vide communication-dated 3.1.2003. The selection was finalised and one Shri Ramesh Kumar Bohra was promoted to the post of Office Superintendent Grade II on regular basis and the respondent No. 4 was promoted to officiate on the post of Office Superintendent Grade II on work charge basis.

4. The further facts of the case are that in Railways a re-structuring scheme for Group 'C' and 'D' Cadre, came to be introduced w.e.f. 1.11.2003. There was an increase of one regular post in the cadre of Office Superintendent Grade II and the total posts became three including one work-charge post. The applicant submitted a representation to the competent authority for extending him the benefit under the re-structuring scheme but, vide order-dated 15.9.2003, the benefit of restructuring was extended to respondent



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No. 4, though, he was not entitled for the same. He protested against the same and submitted a representation apprising the authorities that the restructuring scheme was not applicable to the post of work charge and ex cadre post and being the senior most Head Clerk, he was entitled to the benefits of promotion to the post of Office Superintendent Grade II under the scheme in vogue. The official respondents promoted the applicant to the post of Office Superintendent Grade -II on ad hoc basis up to March 31, 2005 without paying any heed to his representation. Thereafter, one Shri Kamlesh Purohit was promoted as Office Superintendent Grade II on work charge basis even though he had not completed two years on the feeder post. The action of the respondents has been assailed on numerous grounds as mentioned in para 5 and its sub paras, which we would be dealing a little later in this order.

5. The official respondents as well as the private respondent have filed their separate replies. As per the averments made in the reply filed on behalf of the official respondents, it has been averred that the selection was conducted for the post of Office Superintendent Grade II for filling up two unreserved vacancies – one against regular cadre and another work charge post. The selection was finalized and one Shri Ramesh Bohra and the respondent No 4, were placed on the panel.

Shri Bohra was promoted on ~~ad hoc~~ ^{regular} basis and Shri Anil Kumar i.e. the respondent No. 4, was promoted to officiate against the work charge vacancy/post on 9.6.2003. There was increase of one regular post of Office Superintendent Grade II under restructuring as on 1.11.2003 and the respondent No. 4, being on select panel, was promoted on regular basis in accordance with the provisions envisaged in the scheme. Shri Kamlesh Purohit was similarly placed in the subsequent

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panel and was rightly promoted in accordance with the rules. The grounds raised in the Original application have been generally denied. The reply filed on behalf of respondent No. 4 almost reiterates the facts and grounds mentioned in the reply filed on behalf of the official respondents and rightly so, even the learned counsel for the private respondents adopted the arguments submitted on behalf of the official respondents in toto. The only difference is that the panel-dated 13.5.2003 for the post of Office Superintendent Grade II has been annexed to the reply.

6. The learned counsel for the applicant has made us to traverse through various documents including the Railway Board's Circulars referred to in subsequent paras. He has submitted that firstly, after promotion of the private respondent to officiate as Office Superintendent Grade II on work charge post, the select panel got exhausted in accordance with Para 220 of the Indian Railway Establishment Manual Volume I wherein, it has been provided that the life of the panel would be two years or when the last person of the panel is promoted whichever is earlier and since the panel was exhausted, the clause, prescribing that the post should be filled up from the existing panel as on 1.11.2003, does not arise. He has next contended that even as per the provisions made by the Railway Board, an exception has been provided and the post relating to direct recruit and those arising out of restructuring including resultant vacancies, would fall within such exception. Therefore, on this count also, extending the benefit of the restructuring to the private respondent cannot be countenanced. He has next contended that subsequently, a clarification has been issued vide RBE 114/2004 dated 03/06/04 wherein, a clarification has been provided and specific manner has



been laid down for filling up the posts arising out of restructuring. The claim of the senior person cannot be side tracked by giving priority even to the person whose name exists on the panel. He also contended that the private respondent was empanelled despite the fact that there was only one regular vacancy and one cannot be empanelled against a non-existent post and thus his very empanelment was contrary to the rules. He lastly contended feebly that the private respondent was illegally regularized on the post of OS-II and he has cited numerous authorities in support of his contentions, which shall be dealt with in later part of this order. Therefore, on all counts the action of the official respondents is whimsical and offends the Article 14 of the Constitution of India.

7. Per contra, the learned counsel for the official respondents has also with equal vehemence, tried to counter the submissions made on behalf of the applicant. He has submitted that the private respondent was very much on the existing panel and merely a person has been put to officiate, would not mean that the panel is exhausted. The panel was very much in force. He has also submitted that the very Para 220 which has been relied upon by the learned counsel for the respondents, makes a provision that a person who is put to officiate during the currency of the panel, need not be subjected to the same selection again, therefore, the theory as projected by the learned counsel for the applicant that the panel was exhausted, is misconceived and misconstrued. He has next contended that only the exception from the general rule of restructuring, is regarding the direct recruit and all other categories including existing vacancies arising due to restructuring and also resultant vacancies, would be covered by the provisions of para 4 of the Scheme. He has next contended that the

subsequent order which is heavily relied upon by the learned counsel for the applicant is out of context and that regulated a different controversy, therefore, the same is of no help to the case of the applicant. He has also contended that the panel for two posts was rightly prepared in as much as ~~that~~ only a selected person can be promoted to officiate on work charge post. In any case, the select panel is not under challenge and the argument on behalf of applicant in this respect is out of context, requiring no adjudication. The action of the respondents, therefore, cannot be faulted with and is well in consonance with the rules in force, needing no indulgence or interference by this Bench of the Tribunal. The learned counsel for the private respondent adopted the submissions made on behalf of official respondents in toto.

8. We have considered the rival submissions put forth on behalf of both the parties. As far as factual aspect of the matter is concerned, there is hardly any dispute. Admittedly, there was selection for two posts and the private respondent was one of the candidates who found the place on the select list. The private respondents came to be promoted to officiate on the post of Office Superintendent Grade II on a work charge post. It is also admitted position of the case that in the graded seniority for the Head Clerk, the applicant is senior to the private respondent, but the applicant failed in the selection held for the post of Office Superintendent Grade II. The select panel dated 13.5.2003 is admittedly not under challenge and no adjudication on the same is possible. However, the vacancies are required to be calculated in accordance with para 215(f) of IREM Vol-I, which is wide enough to include the work charge posts. Now, we will advert to the

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legal position involved in the instant case. The following are the extract of relevant rules.

IREM VOL-I 215 (f).

a.

i.**the assessment of vacancies for selection posts within a cadre will include the existing vacancies and those anticipated during the course of next 15 month. All the vacancies, if any, existing and reported upon by a Construction Organisation including Railway Electrification and other Projects should also be taken into account. For selection for ex-cadre posts, actual vacancies plus those anticipated in the next two years should be taken into account."

** Substituted vide Advance Correction Slip No. 30 issued under Railway Board's letter No. E(NG)I-96/PM1/19 Dated 21.10.1997 (RBE 141/97)

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.

b. An employee who once officiates against a non-fortuitous vacancy in his turn on the panel whether against a leave arrangement, deputation or a temporary transfer of another employee vacating the post, shall not be required to appear again for fresh selection. (E(NG)I/62/PM 1-91 dt. 10.7.1964 & 9.3.1967).

RBE No. 5/2004 dated 06/01/04-Subject:- Restructuring of certain Group 'C' & 'D' cadres.

4. The existing classification of the posts covered by the these order as 'selection' and 'non-selection', as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant becomes due for promotion to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and / or viva-voce test. xxx

4.1. Normal vacancies existing on 01.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence:

- i. From panels approved on or before 01.11.2003 and current on that date;
- ii. and the balance in the manner indicated in para 4 above

4.2. Such selections which have not been finalised by 01.11.2003 should be cancelled/abandoned.

4.3. All vacancies arising from 02.11.2003 will be filled by normal selection procedure.

RBE No. 114/2004 dated 03/06/04 : Subject :- Restructuring of certain Group 'C' & 'D' cadres - Status of selections finalised between 01.11.2003 and 06.1.2004

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As per the provisions contained in para 4 of this Ministry's letter dated 09.10.2003 (RBE 177/2003), existing classification of the posts covered by these orders as 'selection' and 'non selection', as the case may be, was to remain unchanged and action was to be taken to position the employees as per the existing procedure. Subsequently, above provision was substituted by new para 4 of this Ministry's letter dated 06.01.2004 (RBE 5/2004) and modified selection procedure had been introduced. According to the revised provisions as contained in para 4.1 & 4.2, normal vacancies existing on 01.11.2003 (**except direct recruitment quota**) and those arising on that date from the cadre restructuring including chain/resultant vacancies should be filled up in the following sequence:

- i. From panels approved on or before 01.11.2003 and current on that date;
- ii. and the balance in the manner indicated in para 4 (viz. Modified selection procedure).

It was also provided in para 4.2 that such selections which have not been finalised by 01.11.2003 should be cancelled/abandoned.

2. A number of references have been received from the Railways regarding the status of panels/selections finalised between 01.11.2003 and 06.01.2004. **The issue of status of selections finalised between 01.11.2003 and 06.1.2004 has been examined** and it has been decided with the approval of the President that the provisions of Board's letter dated 06.01.2004 (RBE 5/2004) regarding existing classification and filling up of the vacancies as contained in para 4.1 and 4.2 may be modified as under:-

4.1 to 4.2. xxx

4.3. It is also clarified that the panels approved till 05.01.2004 and current on above date are to be operated to cover only the already existing vacancies (except DR quota) as on 01.11.2003 as per Para 4 (i) above and the remaining existing vacancies (except DR quota) and those arising out of restructuring (including chain/ resultant vacancies) should be filled up as per para 4 (ii) above. The candidates left out in the un-operated portion of the above, panels may be considered as per their seniority for promotion as per para 4 (ii) above. If they are not promoted as per their seniority, such candidates placed on the un-exhausted portion of the panel may be considered for promotion against the anticipated vacancies for which they were selected, without subjecting them to fresh selection, provided they are otherwise eligible as per normal rules and the panel is also in force. The panels which were formed to fill up only the normal anticipated vacancies arising after 01.11.2003 may be operated as per normal rules after filling up the existing vacancies and those arising out of restructuring including chain/ resultant vacancies." (emphasis ours)

9. As regards the currency of the panel or otherwise is concerned, the bare perusal of the contents of para 220 of IREM-I supra, makes it evident that the normal life of panel is either two years or when the last person on the panel is promoted, which ever is earlier. In the

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instant case, the respondents No. 4 was promoted to officiate and not on regular basis, therefore, the panel cannot be said to be exhausted. In any case since the said respondent has officiated on the promotional post, he would not be required to pass the selection again, meaning thereby that he would be deemed to be on the select panel by implication under para 220(b) read with para 220(a) of IREM Vol-I above. Therefore, we have no hesitation in holding that the select panel in respect of respondent No. 4 for the post of OS-II was current on dated 1.11.2003 when the restructuring scheme came into force.

10. Now adverting to the another plea relating to the mode of filling up the various types of vacancies- we are not impressed with the interpretation projected by the learned counsel for the applicant that only the normal existing vacancies as on 1.11.2003 were to be filled in as per the provisions envisaged in the scheme and the other vacancies e.g. direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies were covered by the exception. The exception was only in respect of normal existing vacancies wherefrom the direct recruitment quota vacancies were excluded. This position is also amply clear from the language used in RBE No. 114/2004 above wherein the exception clause is put in bracket as **(except direct recruitment quota)**. Similar position is evident from bare reading of clause 4.3 of RBE No. 114/2004. Therefore, the clause 'and those arising on that date from the cadre restructuring including chain/resultant vacancies' is the additional/inclusive clause to the normal existing vacancies. Had the intention of law maker would have been to apply the provisions of restructuring only to the existing vacancies, nothing prevented them to



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specifically so prescribe and they would have used only the word 'normal existing vacancies'. Thus this ground also has no substance and the plea raised is only to be rejected.

11. Turning to yet another plea of the applicant that the case of the applicant ought to have been regulated by the provisions envisaged in para 4.3 of RBE No. 11/2004 ibid according to which the applicant was entitled for grant of benefits under upgradation as per his seniority irrespective of his junior being on the panel. This plea can straightway be termed as misconstrued. The very subject of RBE No. 114/2004 makes it clear that it relates to Status of selections finalised between 01.11.2003 and 06.1.2004. Para 2 of the same further amplified this aspect wherein it has been specified that A number of references have been received from the Railways regarding the status of panels/selections finalised between 01.11.2003 and 06.01.2004. The issue of status of selections finalised between 01.11.2003 and 06.1.2004 has been examined. But the facts of this case are different and the select panel for the post OS-II was finalised on dated 13.5.2003 and not during the period between 01.11.2003 and 06.1.2004. Quoting the said circular is totally out of context since it has absolutely no applicability to the facts of instant case. Therefore, implications said circular need not be examined. If that were so, the aforesaid plea also falls on the ground and the action of the respondents cannot be faulted on this count also.

12. We may assert that the private respondent was not regularized on the post of OS-II. Otherwise also the regularization is to be done as per specific scheme or rule. The word regularization does not appear in any of the documents forming part of the records. The

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learned counsel for the applicant seems to have introduced this word without any foundation; perhaps for justifying the claim of the applicant by taking support of numerous authorities without any proximity. He has cited the decision in cases of **State of M. P and ors. vs. Yogesh Chandra Dubey and ors.** (2006) 8 SCC 67, **Secretary State of Karnataka & ors vs. Umadevi (3) & ors.** [(2006) 4 SCC page 1], **A Uma Rani vs. Registrar Cooperative Societies & ors** [(2004) 7 SCC 112 and **Union of India vs. V.K. Sirothia** [1999 SCC (L&S) 938] etc. and all except the last one relate to regularization matters and in the last it was held that redistribution of posts is not promotion attracting reservation. None of them have any relevancy to the controversy involved in this case, hence they are of no help to the applicant.

13. In view of what has been said and discussed above and the legal position crystallised therein, we reach to an inevitable conclusion that this Original Application sans merits and the same fails and stands dismissed accordingly. Costs made easy.

R.Bhandari
(R.R BHANDARI)
ADMINISTRATIVE MEMBER

J.Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER.

Jsv.

Received copy of order
D.D.C. Chittan
3/10/07
for Sh. Manot Bhandari

Copy rec'd
D.D.C. Chittan
3/10/07
A.D.

R/C
on 1/2/07
for (Dayalan)
A.D.

Part II and III destroyed
In my presence on 2/6/14
under the su
section officer
order dated 26/3/14

Section officer