

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 154/2006

Date of decision: 05.01.2007

**HON'BLE MR. J K KAUSHIK JUDICIAL MEMBER.
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER.**

Sh Balkishan Naval, S/o Shri Bhera Ram Naval aged 31 years, r/o Maderna Colony, Near Bhadwasia School Jodhpur 342 007 (Presently Stenogrpahe (Hindi) at D.R.M. North Western Railway, Jodhpur)

: Applicant.

Mr. S.P. Sharma : Counsel for the applicant.

VERSUS

1. Union of India through the General Manager, Headquarter North Western Railway, Hasanpura Road, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Jodhpur.
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur.
4. Shri Pukhraj Rathore, Hall Stenographer posted in Confidential Section at Senior Divisional Manager, North Western Railway, Jodhpur.

: Respondents.

Mr. Manoj Bhandari : Counsel for the respondents 1 to 3

Mr. J K Mishra : Counsel for respondent No. 4

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri Bal Kishan Naval has preferred this Original Application for seeking the following reliefs:

"(i). The impugned order dated 19.07.2006 (Annex.A/1) passed by the respondent no. 3 may kindly be quashed and set aside and the respondents may very kindly be directed to issue fresh order of select list by deleting the name of respondent No. 4 from the select list order, by declaring him " not eligible" for appointment to the post of Welfare Inspector.

(ii) In alternate, by an appropriate order or direction, the impugned order dated 19.07.2006 (Annex. A/1) may kindly be ordered to be modified by directing the respondents to delete the name of the respondent No. 4 from the select panel, after declaring him " not eligible" for appointment to the post of Welfare Inspector (Personal) and consequently the respondents may kindly be directed to give appointment to the applicant to the post of Welfare Inspector (Personal) by declaring him eligible for appointment to aforesaid post.



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(iii) The impugned order of reversion of pay scale passed vide order dated 30.01.2006 (Annex. -10) passed in respect of respondent No. 4 may kindly be declared illegal and unsustainable.

(iv) Any other appropriate relief which this Hon'ble Tribunal deem just and proper in the facts and circumstances of the case may be passed in favour of the applicant.

(v) The original application of the applicant may be allowed with the cost.

2. We have heard the learned counsel representing all the contesting parties at great length and have very anxiously considered the pleadings as well as the records of this case.

3. The abridged material facts as averred in the pleadings of the applicant are that the applicant is presently holding the post of Stenographer (Hindi), in the pay scale of Rs. 4000-6000, in DRM Office Jodhpur. He has passed Diploma Course in Labour Laws from JNV University, Jodhpur in the year 2005. He belongs to SC reserved category. A notification-dated 9.1.2006 came to be issued inviting applications from Group C employees fulfilling the eligibility conditions and willing to undertake the selection to the post of Welfare Inspector (Personnel) in the pay scale of Rs. 5000-8000. There were total three vacancies out of which one post was reserved for SC category. The applicant was fully eligible for the same and accordingly applied as per the scheduled date. His name was included in the eligibility list of 22 candidates, finding place at Sl. No. 4. He was deputed ^{to} undertake pre-selection training organised for the reserved category candidates. He underwent the same and appeared in the written test held in pursuance with the aforesaid notification. He qualified in the same and was found eligible for verification of documents for selection to the post in question vide impugned order dated 19.7.2006.

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4. The further averments are that the name of respondent No. 4 has been included in the aforesaid list dated 19.7.2006 at Sl. No. 4. His name was not included in the eligibility list itself. The applicant gathered the details and came to know that the said employee has been allowed reversion in the lower pay scale from Rs. 5000-8000 to that of Rs. 4000-6000 by making some manipulations. He was allowed to draw his pay in his original scale of pay till the month of July 2006. He also does not possess the requisite qualification i.e. Diploma in Labour laws. He was allowed reversion only vide order dated 30.1.2006 and on the last date of submission of his application, he being in higher pay scale was not otherwise eligible to apply for the said post. The grounds are intermixed with the facts of this case. A very exhaustive rejoinder has been filed on behalf of applicant wherein the averments made in the reply of respondents have been denied and the facts and grounds raised in OA have been reiterated.

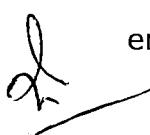


5. Separate replies have been filed on behalf of official respondents and the private respondent. The official respondents have averred in their reply that it is wrong to contend that the private respondent Shri Pukh Raj Rathore was not eligible for undertaking the selection test in question. He was allowed reversion on his own request as per his application-dated 20.1.2006. The competent authority accepted the same vide order-dated 25.1.2006 (R/2). Due to inadvertence, salary in higher grade was wrongly drawn and paid to him and same is being recovered ^{from} him. He also fulfilled the requisite eligibility condition for post in question; one of qualification being as having five years service in the grade of Rs.4500-7000 and Rs.4000-6000 or together in both these grades. It is true that name of the private respondent did not figure in the main list of eligible candidates (A/2) but in response to a protest from him, an amendment to the same was issued vide letter dated 10.5.2006 (R/4). The OA is premature in as much as no

promotion order has so far been issued and the applicant has no locus standi to assail the eligibility of the private respondent. The correct facts have not been placed on records in regard to sending of private respondent for pre-selection training who was working in Division and he was deputed for training by the Division vide order dated 11.05.2006 (R/5). It is also strange that the applicant did not come to know about appearing in the written test of the respondent No. 4, especially when both of them belong to stenographer cadre and also belong to SC category. Thus he has not approached to this court with clean hands. The grounds mentioned in the OA have been generally refuted. The reply filed on behalf of private respondent contains the similar averments.

6. The learned counsel for the applicant has reiterated the facts and grounds enunciated in the pleadings of the applicant as noticed above. He was at pains and made us to repeatedly traverse through various documents and parts of pleading in order to demonstrate that a conspiracy was entered into with the respondents just to get special favour to the private respondent. The private respondent neither possessed the requisite educational qualification nor fulfilled other eligibility conditions. The manipulation has been at writ large. The private respondent did not even apply for the selection and everything has been manipulated in back dates. There are lot of overwriting and cuttings in the various communications and an incompetent authority has passed the various orders. There is no rule to permit reversion in lower grade of pay and the whole action is without jurisdiction. The whole exercise has been done to favour the private respondent due to some extraneous reasons best known to authorities.

7. Per contra, the learned counsel for the official respondents has emphasized the defence version of the respondents as set out in the



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reply. He has submitted that the private respondent fulfilled all the eligibility conditions envisaged in the notification (A/4). The private respondent has rendered more than five years of service in the pay scale of Rs. 1200-2040/4000-6000 i.e. during the period from 29.1.90 to 1997; such being one of the alternative eligibility requirements. His reversion to the lower grade was well in consonance with Rule 227 of Indian Railway Establishment Code Vol-I. The competent authority has passed the same. He has also made us to go through various orders that came to be passed in respect of private respondent and none of them except the orders at Annex A/1 and A/10 are under challenge in this OA. He has strongly contended that the applicant has absolutely no case for indulgence or judicial review from this bench of the Tribunal. The learned counsel for the private respondent adopted the arguments advanced on behalf of official respondents.

8. We have considered the rival submissions put forth on behalf of all the contesting respondents. As far as factual aspect of this case is concerned, the name of private respondent did not figure in the main eligibility list of candidates and the same is added through an amendment. The respondent No.4 was allowed reversion to lower grade of Rs. 4000-6000 vide order dated 23/25.1.2006. It is not the case of applicant that the private respondent did not appear in the written test and he did not know of it. His case is that the name of said respondent did not figure in the main eligibility list. The bald allegations have been made against the communicating authority of various orders without impleading him as party respondent by name. The plea of competence has been raised only in the rejoinder to reply against which there is no provision for giving opportunity to refute or otherwise to the other side. Only Annexure A/1 and A/10 have been challenged and the other basic orders which are going to the root of the matter have not been challenged. However, all the material orders



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have been communicated by a subordinate authority indicating therein as having been issued 'for' the particular authority.

9. Ostensibly it was projected as if a grave injustice was done to the applicant and the private respondent is a powerful person, capable enough to influence the authorities and get any order passed in his favour. We therefore, had to carry out an incisive analysis in the matter. Nevertheless we found that the applicant only became wiser when he calculated his fate from the result of written test that he was not going to get a berth on the final panel. The applicant as well as the private respondent belongs to the same cadre and category and there is no plea that the later did not appear in the written test, in such circumstances it cannot be believed that he came to know the things only after the result of written test was promulgated. The principles of law relating the rights of a failed candidate that they are estopped to challenge a selection in which they have appeared without protest after having failed in the same, would apply to the facts of this case (**University of Cochin V. N S Kanjoonjamna and others** (AIR 1997 SC 2083) and **G N Nayak V. Goa University and others** (AIR 2002 SC 790), **Madanlal vs. State of J&K** AIR 1985 SC 1088, **Om Prakash Shukla vs. Akhilesh Kumar Shukla** AIR 1986 SC 1043 and also a judgement of Delhi High Court in **R.B. Bhasin and Ors. vs. D.K. Tyagi and Ors.** reported in SLJ 2002 (2) 239. refer), and the OA deserves to be dismissed on this count itself.

10. As far as the plea relating to power of the competent authority to transfer a railway servant on a lower post is concerned, Rule 227 of IREC Vol-I envisages such provision and to appreciate the same the contents of said rule are reproduced as under:

"227. A competent authority may transfer a Railway servant from one post to another provided that, except:-

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1. On account of inefficiency or misbehaviour, or
2. On his written request,

A Railway servant shall not be transferred to, or except in a case of dual charge, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien.

[Authority : Rly. Board's Letter No. E(NG)I-98/CN5/2 dt. 5.2.99 (RBE 6/1999)]

The bare perusal of the aforesaid rule reveals that one could not be transferred on a post carrying lower pay scale except on his written request amongst other specified exceptions. Therefore, the main plank of stand of the applicant falls on the ground and cannot be sustained.



11. Adverting the plea of ineligibility of the private respondent, the Railway Board Circular RBE No. 106/2002 (as indicated in Notification dated 9.1.2006 (A/1), envisages five eligibility conditions for the post in question. The contents of first three of them being relevant here are reproduced as under:

2. Eligibility Criteria:-

2.1 The following staff will be considered eligible to volunteer for appearing in the selection for promotion to the post of Welfare Inspector Gr. III in the pay scale of Rs. 5000-8000.

- i. Group 'C' staff in possession of any of the following qualifications irrespective of the grade or length of service or other educational qualifications.
 - a. Diploma in Labour Welfare/Social Welfare;
 - b. Diploma in Labour Laws.
 - c. LLB with paper(s) in Labour Laws.
 - d. Post Graduate Diploma in Personnel Management awarded by an institution recognised by the Government of India, and
 - e. MBA with paper(s) in Personnel Management awarded by an institution recognised by the Government of India.

Provided that staff working in grade Rs. 5000-8000 or above on regular basis will not be eligible to appear in the aforesaid selection.

Provided further that eligibility of staff in possession of qualification as mentioned above will also be subject to the condition that they have successfully completed the probation the respective grade.

- ii. Group 'D' staff who have completed at least 7 years' service in Group 'D' and are in possession of any of the qualifications mentioned in (i) above.
- iii. Staff in the grades next below the grade of Welfare Inspector i.e., those in grades Rs. 4500-7000 and Rs. 4000-6000 with 5 years service

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in the respective grade in case the higher grade does not fall in the normal line of advancement, otherwise 5 years service together in these grades.

iv. and v. xxx

The conjoint reading of the whole notification makes it evident that one is required to fulfil one of the said conditions. The case of the private respondent falls in under item No. (iii) above. There is no requirement of possessing any of the qualification mentioned in (i) unlike the one required to be fulfilled in case of Group D staff in (ii) above. The only requirement in (iii) is that Staff in the grades next below the grade of Welfare Inspector i.e., those in grades Rs. 4500-7000 and Rs. 4000-6000 with 5 years service in the respective grade in case the higher grade does not fall in the normal line of advancement, otherwise 5 years service together in these grades. He fulfils the same. The plea of the applicant that the private respondent did not possess the diploma in law is misconceived as well as unsustainable.

12. Now we turn up to another plea that there have been numerous manipulations just to favour the private respondents. We are not impressed with the submissions made on this point. The exercise seems to be an afterthought one just to cause an overwhelming confusion and get benefits of misplaced sympathy. Nothing prevented the applicant to challenge the various orders passed in favour of the private respondents. The plea of working hand in glove is also a plea of last resort and elaborated only in the rejoinder. There is no proof in support of the very contention raised on behalf of applicant in this respect. Certain letters/orders said to be having so-called manipulations, have been filed on behalf of applicant and they have been certified as true copies from their originals. On the other hand the respondents have been able to justify their action with the support of specific documents forming part of the records of this case. It is trite law that the court of law should not proceed on line of proving

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 morale indicated in one of Aescop's Fable of the lamb and the wolf when the complaint was that the stream was being polluted by the lamb and if not by it, by any of its forefathers. There is always a presumption in favour of administration that it exercises powers in good faith and for public benefit. The burden is on the individual who disputes the same to produce sufficient material in support of his contentions, which the applicant has failed to discharge in the instant case.

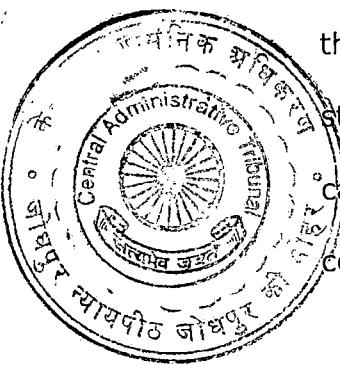
13. We are equally not impressed with the plea of incompetence of the authority that passed the impugned orders for more than one reasons. Firstly, there is no such ground or pleading to this effect in the main OA and the respondents cannot be taken at surprise. In the rejoinder no new factual ground can be set out. Secondly, subordinate authority has communicated the said orders as 'for' the competent authority. In regard to the plea of hand in gloves, the concerned authority has not been made as party respondent and the same cannot be examined in absence of such party as per verdict of Apex court in case of **Federation of Railway Officers Association and ors. vs. Union of India** – Para 20- AIR 2003 SC 1344), besides the fact that such plea is only taken in rejoinder to reply and not in the main OA. Much pressure was given on the pre-selection course. The position is quite clear from the order-dated 11.5.2000 (R-4/7). Nevertheless, if one is not subjected to such course, the individual concerned may have a cause of complaint and not anyone else like applicant. This plea has also no legs to stand. In this way the action of respondents cannot be faulted with on any count; rather the same has to be held in order.

14. The upshot of the aforesaid discussion leads us to an inescapable conclusion that this Original Application sans merit or substance and



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the same stands dismissed accordingly. The rule already issued stands discharged forthwith. In the facts and circumstances of this case all the contesting parties are directed to bear their respective costs.



R.R.Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

J.K.Kaushik
[J.K.KAUSHIK]
JUDICIAL MEMBER

jsv

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