

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.54/2007

Date of decision: 30.06.2011

**Hon'ble Dr. K.B. Suresh, Judicial Member.
Hon'ble Mr. Sudhir Kumar, Administrative Member.**

Nasir S/o Shri Abdulla, aged about 42 years, R/o Quarter No.L-23A, Old Loco Railway Colony, Near Masjid, Jodhpur, present working on the post of Sales Man in Loco Cooperative Store, Jodhpur (Raj.).

: Applicant.

Rep. By: K.K. Shah, counsel for applicant.

Versus

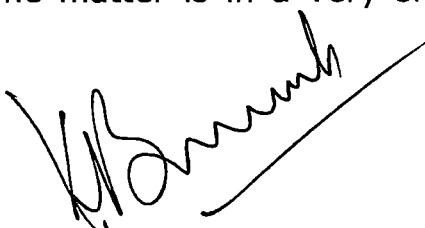
1. Union of India through the General Manager, Northern-Western Railway, Jaipur.
2. Divisional Railway Manager, Northern-Western Railway, Jodhpur.
3. Assistant Personnel Officer, North Western Railway, Jodhpur.

: Respondents.

Rep. By: Mr. Manoj Bhandari, counsel for respondents.

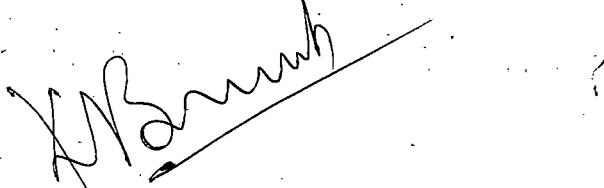
ORDER
Per Dr. K.B. Suresh, Judicial Member.

As always it is the poor, who lose out in litigational adventures and by the time their grievances are fructified into result, they would have tired themselves out so that the result itself would be of no use. Whereas the State machinery functions in a different way, there is no accountability and even if one were to embark on repeated litigational adventures unmindful of the practical resolution thus obtained, since no personal embargo results from such exercises, it is unfortunate that cases like this occurred and reoccurred. The matter is in a very short compass.



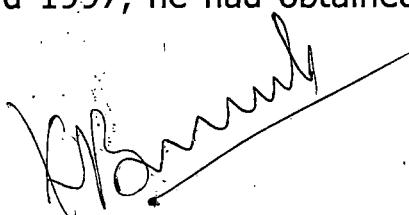
An unfortunate man, now said to be as admitted by both the learned counsels as one single person of the same genre in this particular Railway; claiming for the same post after having been successfully considered for empanelment for Group 'D' post prior to the year 1993 and 1997 and could not be accommodated for want of vacancies. When the Tribunal had considered the matter earlier specific information was given by the respondents to the effect that had there been any vacancy, the applicant would have been accommodated in that vacancy. Therefore, the Tribunal had no other go other than to dismiss the O.A. Against this decision, the applicant went in review to the Hon'ble High Court of Rajasthan and produced document before it to prove that there has been suppression of information by the Railway department. Thereupon, the Hon'ble High Court remitted back the matter once again to the Tribunal for consideration. The matter was taken up for consideration and found that in fact there was suppression of material by the Railway, which had prejudiced the cause of the applicant and at that time itself the submission was made by the Railway that they have additional material for Tribunal's consideration being an explanation of the alleged suppression, such material being placed for its consideration, the Tribunal has adjudged the matter and directed the cause of the applicant to be satisfied.

2. The respondent Railway thereupon again approached the Hon'ble High Court and pleaded that by allowing the R.A. and hearing the O.A. at the same time, a prejudice was caused to them



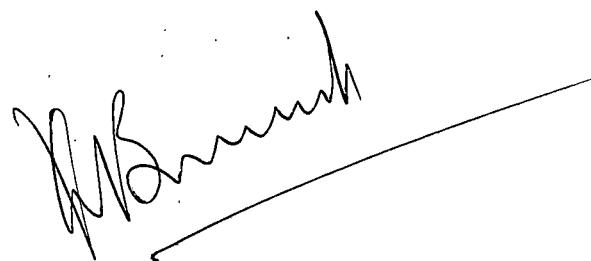
as their cause could not be sufficiently illuminated, therefore, the Hon'ble High Court found that after allowing the R.A. the Tribunal could have consequently posted the O.A. for reconsideration of the O.A. so that the explanation of the applicant could be additionally taken into account. Suppression of material by the authorities is a serious concern as prejudice befalls not only the unfortunate victim, but the system as well.

3. One such factor, which the learned counsels want to adjudge is that on 04.12.1998, the mandate of VIII pass qualification came to be in existence but the said zone selection as well as selection of several others on 1997 occurred much before that, therefore, it cannot be said that there were no vacancies but in fact as covered by the very first order of the Tribunal, the respondents had produced a list dated 22.05.1998 containing 108 names of non working casual labourers and a list dated 09.10.1998 containing 54 names of non working casual labourers, and these people were regularized. The applicant was working at that time and was actually selected twice in the years of 1993 and 1997 and, therefore, would have normally to be considered as he is effectively senior in view of selection in the year 1993 itself. That being so it has to be held that a proper approach was denied to the applicant. Regarding the selection of John, which was pointed out during the hearing it is submitted that it is also prior to 04.12.1998. There were umpteen number of vacancies thus available before 1998 and since the applicant had been held to be eligible through a selection process in the year 1993 and 1997, he had obtained the right of

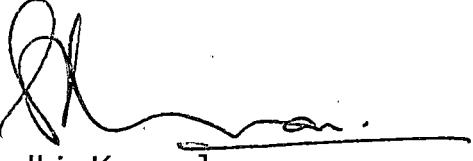
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prior to be considered for appointment. The appointments, which were mentioned thereafter, are in pursuance to the circular dated 04.03.1999, which were in relaxation of qualification as is given for compassionate appointment and for coolies, who were appointed on Group 'D' Post. If the Coolie and Porter can be granted relaxation why not the same be extended to the applicant as well ? The Railway would say that this relaxation to consider then was made only in the year 2000. If Shri Raj Kumar John could be appointed on Group 'D' post vide office letter dated 29.05.1998, the said principle is available to the applicant as well who was actually selected in 1993. Therefore, even then the new arguments are bereft of justice and bona fides. But we note the statement made by the learned counsels that the applicant is only one of his cadres remaining and therefore would be considered. Therefore, the matter would be seen in this perspective also by the Railway Authorities while considering the cause of the applicant.

4. Therefore, the respondents are directed to consider the *included in the list of cases eligible for being* *he* applicant for appointment on the date he was first employed as he seems to be in a possession of all requisite qualification in accordance with the documents produced by the Railway themselves and by virtue of Article 14 of the Constitution of India and the prior judgments of the Tribunal and the Hon'ble High Court. This exercise shall be completed within two months after giving an opportunity to the applicant for being heard.

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5. With these observations and directions, the O.A. is allowed and in the special circumstances of the case, specifically mentioned earlier, no order as to costs.



[Sudhir Kumar]
Administrative Member



[Dr. K.B. Suresh]
Judicial Member

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