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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 288/2009

Date of decision: 28.03.2012.

CORAM:

**HON'BLE DR. K.B.S.RAJAN, MEMBER (J) &
HON'BLE MR. B.K.SINHA, MEMBER (A)**

Bhagirath Bhat S/o Shri Niku Ram by caste Brahman, aged about 62 years, resident of 2/203, Mukata Prasad Colony, Lalgah, Bikaner, as Inspector of Tickets under the Commercial Department, North Western Railway, Bikaner.
..... Applicant

By Mr. Nitin Trivedi, Advocate, for the applicant.

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, DRM's Office, Bikaner.
3. Deputy Personnel Officer, North Western Railway, Bikaner.
..... Respondents

By Mr. Salil Trivedi, Advocate, for the respondents.

ORDER

Per Dr. K.B. S. RAJAN JUDICIAL MEMBER

The applicant was functioning as Junior Inspector of Tickets (Rs. 5500 – 9000) in the Commercial Department of the North-Western Railway, Bikaner and superannuated in the same capacity on 31-05-2007. Earlier, on 24-07-2006, Respondent NO. 3 issued a communication by which persons who were likely to appear for selection to the post of Chief Inspector of Tickets in the grade of 6500 – 10500 were reflected and the selection was scheduled on 27-08-2006. The name of the applicant was figuring in at serial No. 2 on the basis of seniority.

2. Three individuals, whose names figured in the aforesaid communication moved the Tribunal claiming seniority over and above two more individuals vide OA No. 172 of 2006. Since the applicant's position was comparatively high, he was not impleaded as private respondent in the said O.A. The applicants in the said OA did not challenge either the selection process or the seniority position of any others except two as stated above. At the time of initial admission hearing, as an interim relief, the

respondents, who were permitted to go ahead with the selection process, were forbidden from publishing the result till the next date. However, due to non-constitution of Division Bench for a substantial period, the case could not be taken up by the Tribunal and in the meantime, the applicant had superannuated on 31-05-2007. It was thereafter, that on 19-09-2007 that the Tribunal allowed the M.A. filed by the applicant herein and modified the interim order to the extent that the respondents are free to declare the result of the selection process of the Chief Inspector of Tickets of all candidates except respondent No. 3 and 4 in the aforesaid OA No. 172 of 2006. As a matter of fact, much earlier to the aforesaid order of the Tribunal, the Respondents, vide Annexure A-5 order dated 21-11-2006 declared the panel on the basis of the selection conducted in which the name of the applicant figured in at serial No. 2. The said order contained a rider to the extent that the empanelment for the post of CIT Grade 6500 – 10500 in Commercial Department will depend upon the final completion of rest of selection proceedings and as per direction passed by the Hon'ble CAT in O.A. No. 172 of 2006. And, the final result of the selection will be declared after outcome of the O.A.

3. After the pronouncement of the order in OA 172 of 2006 which was allowed and the respondents were directed to recast the panel the respondents had accordingly prepared the panel in December, 2007 but the name of the applicant was not reflected therein. Representation filed by the applicant was responded to stating that name of the applicant was omitted from the panel in view of his superannuation prior to declaration of the result.

The applicant has thus come up with this OA, seeking the following reliefs:-

“(A) That by an order or direction in the appropriate nature, the order dated 13.5.2009 (Annex.A/1) may kindly be quashed and set aside and accordingly, the respondents may kindly be directed to provide the benefits of promotional post of Chief Inspector of Ticket to the applicant with effect from the date 21.11.2006 or from any other date when the final result of the panel for the post of Chief Inspector of Ticket in the grade of Rs. 6500-10500 was prepared by them.

(B) That any other order or direction, which this Hon'ble Tribunal deems fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of the applicant.

(C) That the cost of the Original Application may kindly be awarded in favour of the applicant."

4. Respondents have contested the O.A. According to them the reason for not including the applicant's name in the panel for selection to the post of Chief Inspector of Tickets is on the basis of a Railway Board circular No. 831-E/63/2-XII/EIV dated 20-03-1982 as per which, whenever a selection panel is released it should contain the names of serving employees and staff who retire during the process of selection and are no longer in service at the time of approval of the panel should not be included in the panel. Annexure R-1 refers. Yet another reason advanced by the respondents is that as per one of the decisions of the Apex Court in the case of **Union of India and others vs. Tarsem Lal and others** on the doctrine of 'no work no pay', the applicant would not be entitled to any monetary benefits.

5. Counsel for the applicant argued that the Railway Board circular has been issued in connection with delay in finalization of selection on administrative Grounds, while in the instant case, it was on account of a pendency of OA NO. 172 of 2006 that the results could not be declared. As a matter of fact, when the respondents had declared the panel on 21-11-2006 and made the same subject to outcome of the OA, on finalization of the OA the respondents published another panel, which was in no way different from the earlier panel, except the absence of the name of the applicant on the ground of his having superannuated prior to publication of the panel. It would have been a different matter if there be any other mode of preparation of panel and the applicant not becoming entitled to be empanelled on that score. But that was not the case. And, the applicant's claim is only restricted to the extent of notional fixation of pay in the scale of Rs 6500 – 10500 and all that the applicant claims is pension based on the notional fixation of pay.

6. Counsel for the respondents objected to the claim of the applicant, stating that the Railway Board circular is very clear and as such, the

applicant is not entitled to any relief claimed.

7. Arguments were heard and documents perused. The fact remains that the applicant was senior most in the list of Junior Inspector of Tickets and he had qualified in the selection test as well. He was not allowed to reap the fruits of his selection and empanelment due to the litigation filed before the Tribunal in OA No. 172 of 2006. Initially, the stay granted was not to publish the result and not to act upon the panel if prepared but on the applicant's making an application for modification, the order was modified. Before the same, order dated 21-11-2006 had been published, which could not be pressed into service due to the order of the Court. Had there been no such restraint, the applicant would have been the beneficiary. The counsel for the applicant relied upon the ratio in the judgment in the case of **Jang Singh vs Brij Lal and others (AIR 1966 SC 1631)**, wherein the Apex Court has stated that Act of the court should do no harm to the litigant and if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake. "**Actus curiae neminem gravabit**" The counsel further argued that Annexure R-1 would not be applicable in the case of the applicant as the said order applies only where the delay in finalization occurs due to administrative reason and not on the ground of any restraint imposed by the Court.

8. The counsel further submitted that all that the applicant prays for is notional fixation of pay and that the terminal benefits be on the basis of the higher pay and pension be also fixed accordingly.

9. Counsel for the respondents submitted that in view of the Railway Board circular at Annexure R-1, the applicant cannot be granted any relief as he stood retired at the time when the final panel was prepared on 19-12-2007 on the basis of the order of the Tribunal.

10. Arguments were heard and documents perused. The fact that on 21-11-2006 a panel has been prepared in which the name of the applicant figured in at serial No. 2 is not disputed. Again, though OA No. 172 of 2006 was filed challenging the earlier pre-select list, it was not against the selection process nor against the entitlement of the applicant for selection but limited to some inter-se seniority dispute with which the selection of the applicant was not connected. Had there been no case pending, the applicant would have not only been promoted but would have been the beneficiary of the higher pay and allowances till he retired and his retirement benefits would have been based on the last pay drawn. In fact, the applicant did make entire efforts to see that the interim order passed earlier was modified, but unfortunately due to non constitution of Division Bench, the order could not be got modified before his superannuation. The fact that the Tribunal did modify the interim order clearly goes to show that had there been a Division Bench constituted prior to the superannuation of the applicant, a like order would have sure been passed. The doctrine ***Actus curiae neminem gravabit*** does apply in full force to the case of the applicant. It is not the case of the respondents that had the panel been prepared prior to the superannuation of the applicant, even then his name would not have figured in for any plausible reason. Thus, the non promotion of the applicant before his superannuation is purely due to the delay that had occurred in passing the order modifying the interim order. He should not be made to suffer for the reason which is beyond the control of the applicant.

11. In view of the above, **the OA is allowed.** It is declared that the applicant should be deemed to have been promoted to the next grade of Chief Inspector of Tickets in the grade of Rs 6500 – 10500(Pre-revised) and such a promotion shall be notional. The pay fixation shall also be notional since the applicant did not perform the duties of the said post, but the terminal benefits such as pension, DCRG, and leave encashment shall be worked out on the basis of the last pay fixed on the basis of notional

promotion and the difference between the amount due and drawn shall be made available to him and revised pension shall be continued to be paid. To that extent, there shall be revision of the PPO.

12. This order with reference to Revision of the PPO on the above lines and payment of the arrears of terminal benefits shall be fully complied with, within a period of six months from the date of communication of this order.

13. Under the circumstances, there shall be no orders as to cost.


(B.K. Sinha)
MEMBER (A)


(Dr. K.B.S. Rajan)
MEMBER (J)

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