

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application 205/2010**

**Date of Order : 18.10.2011**

**CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &  
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

Surendra Gund S/o Ram Chandra Gund aged about 25 years R/o  
H.No. 78, Shanti Nagar, Masooriya, Jodhpur, Rajasthan.

**.....Applicant.**

**By Mr. Kuldeep Mathur, Advocate.**

**Versus**

- 1- The Union of India through the General Manager, North-West Railway, Jaipur (Raj).
- 2- The Divisional Railway Manager, North-West Railway, Jodhpur (Raj).

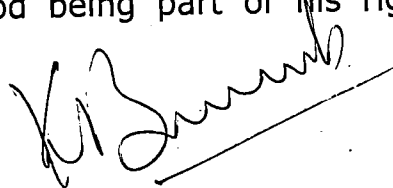
**..... Respondents**

**By Mr. Manoj Bhandari, Advocate.**

**ORDER (ORAL)  
[PER DR. K.B.SURESH,JUDICIAL MEMBER]**

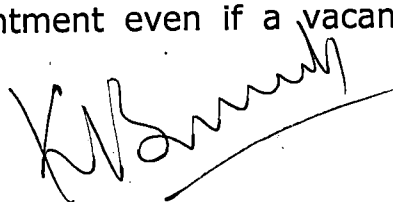
Heard both counsels.

2. It would appear that the applicant was selected in Group - 'D' category under the Sports quota for which an advertisement was issued on 12.01.2009. The applicant was empanelled vide order Annex.A/8 and he is supposed to be at No. 1 in the list of selected persons' panel. But, in the meantime, according to the respondents, the Railway Board has issued a ban on appointments on 1<sup>st</sup> June, 2009, therefore, on the verge of his appointment, the ban came into being, and, therefore, it became necessary for the second respondent to take the permission of the 1<sup>st</sup> respondent. On 14.7.2009 vide Annex. A/8 and 9.9.2008 vide Annex.A/9, the matter is now pending with the respondent No. 1, and the livelihood being part of his right arising from



constitutional matrix, it cannot be taken-away as the applicant is being subjected to suffering for no fault of his, despite the fact that he had been selected through a regular process of selection, which was in existence at that time, and temporary ban of the Railways had not banned the scheme of appointment relating to the applicant. Therefore, it will only be held to have an prospective application. The right in favour of the applicant had accrued to him before the ban was imposed.

3. The Hon'ble Supreme Court has held in **Jatinder Kumar Vs. State of Punjab**, 1985 (1) SCC 122, that it is open to Government to decide how many appointments to a service shall be made and to change this number according to administrative exigencies. Hence, in the normal course, no right to be appointed to a post can be created by promissory estoppel merely because a particular number of anticipated vacancies had earlier been notified. It had also been held in the case of **Shankarasan Dash Vs. Union of India**, 1991 (3) SCC 47, that it is a discretion of the Government of India not to fill-up any vacancies but the Court may interfere if this power is used mala fide, or arbitrarily, so as to deprive the duly qualified candidate, or a candidate recommended by the Public Service Commission or a Selection Board. **Shankarasan Dash Vs. Union of India** (supra), and **State of Haryana Vs. Shamsher Jang Bahadur**, (1972) 2 SSC 188. In the case of **Shankarasan Dash Vs. Union of India** (supra), it was further held that mere fact that a candidate's name appears in the merit list gives him no indefeasible right to appointment even if a vacancy arises or




exists and on their selection a candidate does not acquire any right to the post. But, it was further mentioned that the decision not to fill up vacancies has to be taken bona fide, for appropriate reason and not arbitrarily. Similar ~~issue~~ <sup>directions</sup> have been issued by the <sup>hu.</sup>

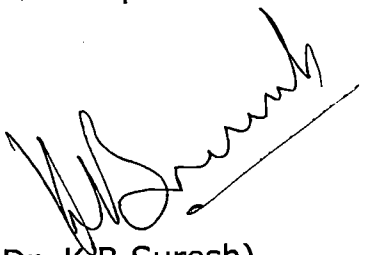
<sup>hu.</sup> Hon'ble Supreme Court in **N.T. Devin Katti Vs. Karnataka Service Commission Public/and Others**, 1986 (3) SCC 157, and **Jaiswal P.K. Vs. Debi Mukherjee and Ors.**, (1972 ) 2 SCC 148, and in **Jatinder Kumar and Ors. Vs. State of Punjab and Ors.** (supra).

4. In this case, no reason has been assigned for not issuing letter of appointment to the applicant. A general ban on appointment would not over-rule or over-ride a specific act of selection for sports quota which was also initiated and almost completed before the ban itself.

5. Therefore, in the above situation the O.A. is allowed. We direct the respondents to appoint the applicant on the post to which he was selected within three months from today.

6. The O.A. is allowed as above and stands disposed of accordingly.

  
(Sudhir Kumar)  
Administrative Member

  
(Dr. K.B. Suresh)  
Judicial Member