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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No. 197/2012

Jodhpur this the 03rd day of July, 2013.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Bhura Ram S/o Shri Balu Ram, Caste-Meena, Age – 45 years,
R/o Near Railway Phatak, Behind Madarsa, Ward No. 30,
Nohar, District-Hanumangarh [Train Light Helper, Khallasi,
Suratgarh Railway, Sri Ganganagar]

.....Applicant

(Through Advocate Mr Nishant Motsara)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Senior Divisional Personnel Officer, N.W.R., Bikaner.
3. Divisional Personnel Officer, N.W.R., Bikaner.
4. Divisional Railway Manager, N.W.R., Bikaner.

(Through Advocate Mr. Girish Sankhla)

5. Ramesh Kumar S/o Shri Patram, Age – 55 years, Helper Kh (Chg.), SOG, R/o Train Light, Suratgarh Railway, District – Sriganganagar.

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant by way of this application has challenged the legality of the order Annex. A/1 by which Ramesh Kumar S/o Shri Patram was included in trade test for the post of

Technician – III (Chg.) and the applicant was not called for the same.

2. The short facts of the case are that the applicant was initially appointed on the post of M.S. Khallasi Hanumangarh and subsequently was promoted on the Train Light, Suratgarh Railway, Sriganganagar. In 2011 when the respondent conducted Trade Test for the next promotional post Technician – III (Chg.) applicant was not called for the said test and in place of him Shri Ramesh Kumar S/o Patram (Respondent No. 5) was invited in spite of the fact that he belongs to Schedule Caste (SC) category. The case of the applicant is that he comes under Schedule Tribe (ST) category and therefore, he should be called for the trade test against the ST category instead of respondent No. 5 who belongs to SC category. It has been averred in the OA that order Annex. A/1 is illegal, therefore, it should be quashed. The applicant has annexed with his application representation Annex. A/2 and other relevant documents.

3. By way of reply the respondents No. 1 to 4 denied the right of the applicant to be called for trade test on the ground that he is junior to the respondent No. 5 and further respondent No. 5 belongs to the ST category as per service record and Annex. R/1 issued by the Munsif & Judicial Magistrate, First Class, Jaipur City (East), Jaipur. The

respondents No. 1 to 4 have further averred that the grounds raised by the applicant are not sustainable in the eye of law. It has also been averred that the respondent No. 5 belongs to the Nayaka community which comes in ST category as per the certificate submitted by the respondent No. 5 and appointment order and service record of respondent No. 5 also confirm that he belongs to ST category. Therefore, OA filed by the applicant cannot be sustained in the eye of law and prayed to dismiss the same.

4. Heard all the parties. Counsel for the applicant contended that though the Annex. R/1 has been issued by the Munsif & Judicial Magistrate, First Class, Jaipur City (East), Jaipur, but he is not the competent authority to issue the caste certificate and contrary to it, Annex. A/4 certificate has been issued by the Sub-Divisional Magistrate, Hanumangarh, Rajasthan certifies that Shri Ramesh Kumar S/o Patram, caste- Nayak, Vill-Jodkia, Teh. - Suratgarh, Distt. - Ganganagar is a person belonging to SC category. Counsel for the applicant contended that Nayak residing in the Ganganagar district comes in the SC category and this fact has not been considered by the respondent No. 1 to 4 on the basis of Annex. R/1 and competent authority recorded category ST in the service record of the respondent No. 5 which is not

correct. Therefore, order Annex. A/1 is illegal and against the provisions of law.

Per contra counsel for the respondent No. 1 to 4 contended that Annex. A/5 is a provisional seniority list showing the applicant as ST and no representation has ever been filed by the applicant to treat his candidature as of the ST category. Therefore, the contentions raised by the applicant are devoid of any force and material ground. Counsel for the respondents contended that Railway authorities are working on the basis of service record and once it is recorded in the service record that respondent No. 5 is of ST category, now no change can be considered without any representation of the applicant.

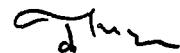
5. Considered rival contentions of all the parties and perused the record. The applicant has already filed representation Annex. A/2 for which counsel for the respondents No. 1 to 4 contended that in this representation it has not been requested by the applicant to treat him as person belonging to ST category and include his name in the call letter for trade test, therefore, it cannot be said to be a representation for the real cause and he only filed a complaint regarding the fact that respondent No. 5 does not belong to ST category. The applicant has brought on record the certificate issued by the Sub-Divisional Magistrate, Hanumangarh,

Rajasthan stating the caste of the respondent No. 5 that is of the SC category, therefore, in our considered view there is substantial indicative evidence on record that respondent No. 5 does not belong to ST category and it for the competent authority to decide the question that an employee comes in which category of the reserved categories.

6. Accordingly, while disposing off this OA we are directing the applicant to file detailed representation to the respondent-department by filing Annex. A/4 and other relevant documents filed with the rejoinder, and respondent No. 1 to 4 are directed to decide the same within 4 months from the date of receipt of representation. Meanwhile, respondents No. 1 to 4 shall not proceed in pursuance to letter dated 20.12.2011 Annex. A/1 qua respondent No. 5. Thereafter, if any grievance remains to the applicant, he may file fresh OA if he so desires.

7. With the above direction, OA is disposed off with no order as to costs.


 (MEENAKSHI HOOJA)
 ADMINISTRATIVE MEMBER


 (JUSTICE K.C. JOSHI)
 JUDICIAL MEMBER

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