

Central Administrative Tribunal, Lucknow Bench, Lucknow.

O.A. No.167/2007

This the ^{25th} day of July, 2008

Hon'ble Shri A.K.Gaur, Member (J)
Hon'ble Dr. A.K.Mishra, Member (A)

Girish Lal Srivastava aged about 35 years son of Sri Gauri Shankr Lal Srivastava resident of B-40/3, RDSO Colony, Manak Nagar, Lucknow, presently posted as JEI (Works), Civil Maintenance, Research Design and Standard Organization, Lucknow.

Applicant

By Advocate: Sri N.C.Srivastava

Versus

1. Union of India through Director General, Research Design and Standard Organization, Lucknow.
2. Director General, Research Design and Standard Organization, Manak Nagar, Lucknow.
3. Railway Board through it Chairman, Rail Bhawan, New Delhi.

Respondents

By Advocate: Sri S. Lavanja

ORDER

By Hon'ble Dr. A.K. Mishra, Member (A)

This O.A. is made against the order No. E-II/CC/Civil/464/06/GSL dated 8.8.2006 passed on behalf of Opposite Party No.2 (Annexure No.1) whereby the representation of the applicant was rejected and also against the order No. 9E-II/SLN/Civil/LDLD dated 2.11.2006 passed on behalf of Opposite party No.2 (Annexure No.2), by which his further representation in the matter was rejected.

2. We have heard the learned counsels for the parties at length.
3. The case of the applicant, in brief, is summarized as under:-

The applicant was appointed as Junior Engineer Grade II (Works) on 16.11.9 in the Directorate General, Research Design and Standard Organization (RDSO) Lucknow. He was promoted to the post of Junior Engineer Grade I (Works) in Maintenance Directorate of Civil Engineering of RDSO in the year 2006. RDSO has two wings; i) Design Directorate and ii) Civil Maintenance Directorate. According to him, the Junior Engineer Grade I of the Maintenance Directorate did not have any promotional opportunity, Although the Junior Engineers of the Design Directorate could be promoted to the post of Assistant Design Engineer, Assistant Research Engineer and AIE. The next higher post in the maintenance directorate is that of

Assistant Engineer (AEN). This post was filled up on transfer from zonal railways and by Group 'B' officers of RDSO cadre. In order to provide better promotional opportunities for the Group 'C' officers of RDSO, a Committee was constituted by the opposite party No. 2. The Committee recommended that the post of AEN under Town Engineer (TEN) should be merged with the total cadre of Group B officers of the Civil Engineering Directorate of RDSO and that Chief Inspector of Works (CIOWs), Inspector of Works (IOWs) and other Technical Staff in the immediate lower rank should be made eligible for selection to Group 'B' posts of all Civil Engineering disciplines of RDSO. On the basis of this recommendations, the Director Administration passed an order dated 5.2.1996 (Annexure -6) saying that the two posts of AEN will form part of the combined Group B Civil Engineering Cadre of RDSO. This order was challenged by some other employees of RDSO and it was vigorously defended by opposite party No.2 before this Tribunal. After full hearing, the Tribunal held that the said office order dated 5.2.1996 was valid and accordingly, dismissed the O.A. concerned.

4. Even in spite of these developments, the opposite party No. 2 continued the earlier practice of filling up of post of AEN on transfer from zonal Railways. The Group 'B' Grade II post of Civil engineering Department of RDSO are filled up through a combined competitive examination of all eligible employees in the lower grade. A notice was issued on 1.8.2005 for filling up two posts in general category. Having successfully cleared the written competitive examination, the applicant was asked to appear before the interview board in a notice dated 2.3.2006. There were three other candidates also for this interview. After completion of the interview, two other candidates namely Sri Vimal Kumar Yadav and Sri Jitendra Kumar Srivastava were finally selected and appointed in Group 'B' technical gazetted posts. It came to light that two posts of AEN of Civil Maintenance Directorate were kept out of the purview of selection process. As a result, the applicant who was fourth in the select list prepared for interview could not ultimately qualify.

5. It is the grievance of the applicant that the opposite party No. 2 did not follow up on their own decision dated 5.2.96 for merger of the post of AEN in the over all Group 'B' Technical cadre which has adversely affected the promotional



prospects of the applicant. The applicant filed an application (O.A. No. 464/2006) before the Allahabad Bench of this Tribunal praying to keep one post vacant till decision and not to permit the O.P. No. 2 to fill up the post on transfer. This Tribunal ultimately dismissed the application on the ground that the office order dated 5.2.96 did not specifically say that CIOWs/ IOWs will be given promotion to the post of AEN exclusively and that as per the submissions of the cadre controlling authority, the posts of AEN have not been merged in the over all cadre of Group B officers of Civil Engineering Directorate.

6. Having officially come to know the stand of the RDSO that the post of AEN have not been merged, the applicant filed the present O.A.

7. The submissions made by the opposite parties are summarized below:-

Admittedly, there are only two posts of AEN in the Civil Maintenance Department and no recruitment and promotion rules have been framed for filling up of these two posts. Therefore, long back, in the year 1989, the Railway Board decided to combine the Railways Engineering cadres in small units including that of RDSO with the Civil Engineering Cadre of adjacent Railways (Annexure CR-1). However, subsequently, this arrangement was cancelled and the opposite party No. 2 constituted a Committee to recommend both as regards avenues of promotion for Junior employees as well as for arrangements to be made for recruitment of AENs. As stated earlier, this Committee recommended for merger of the post of AEN. However, merger could not take place in the absence of appropriate recruitment and promotion rules. Meanwhile some officers having work experience only ⁱⁿ Design and Research Stations were posted as AENs and the experiment did not work out satisfactorily. The job of AEN requires experience in supervision over execution of works ability to record measurements of works, dealing with contracts and tenders matters, handling labour problems, dealing with encroachment cases etc. and the staff who have worked only in Research and Design Section of RDSO lacked such experience and were found unsuitable. Such officers themselves found the task beyond their training and capacity and requested to be posted out. In these circumstances, the matter was reviewed and it was decided that only such IOWs who had worked in Civil Maintenance of RDSO and those who had experience



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required for the job in the Railways , should be considered for posting as AENs. Further , it was held that the job of AENs and IOWs being sensitive in nature, it would not be prudent to continue an officer in the same place for a longer duration. Keeping all these facts in the view, the opposite party No.2 moved the Railway Board (Annexure CR-4) for merger of the post with the Railway Maintenance cadre of North Eastern Railways and for drawing up a combined seniority list of Civil Maintenance Supervisors of RDSO with those of North Eastern Railways. The Railway Board in their letter dated 12.8.98 decided to frame a Recruitment and Promotion Rules for AEN (Maintenance) and pending finalization of these rules, decided that these posts should be filled up by way of transfer from the neighboring Railways. According to the respondent No. 2, their proposal for having a combined list of Railway Maintenance Supervisors of RDSO and that of North Eastern Railways had the advantage of opening up promotion prospects for the employees of RDSO not only upto the level of AEN but beyond that and, at the same time take care of the problems of not posting one officer in a sensitive post at one place beyond a reasonable time. However, the Railway Board in their letter dated 24.5.2000 (CR-7) decided that the status quo should be maintained.

8. Learned counsel for the respondents forcefully contended that the notice for selection clearly mentioned that only two posts were available for general candidates and the applicant knew very well about this position at the time of applying as is evident from the Annexure no. 9 of the O.A. Although, the applicant qualified in the written examination, he was not able to make the grade after the final interview. As such, he should not have any grievance that he was unfairly discriminated against.

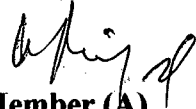
9. From the above discussions, it is clear that the matter relating to recruitment and promotion for the post of AEN (Civil Maintenance of RDSO) is hanging fire for a very long time. The Railway Board themselves had decided, as far back as 1998 to frame recruitment rules for the purpose. The opposite party No. 2 has followed up the matter with a reasonable proposal in their letter dated 25.11.98 to the Railway Board for having a combined cadre with North Eastern Railway, but the decision of Railway Board was to carry on with the status quo and the reasons which

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prompted them to maintain status quo are not forthcoming from letter dated 24.5.2000. It is high time that the Recruitment Rules for the purpose should be framed without further loss of time.

10. It goes without question that the Cadre Controlling Authority has discretion and prerogative how to constitute a particular cadre. Their decision to exclude the post of AEN from other Group B Technical post of RDSO is a policy decision and the same cannot be assailed. The Hon'ble Apex Court in its judgment reported in 2006 SCC (L&S) 1225 State of Orissa Vs. Gopi Nath Dash, has held that the correctness of reasons for such a policy decision is not open to Judicial review. The respondent No. 2 has given sufficient justification based on their past experience why such merger is not in the interest of administration. Therefore, we see no merit in the O.A.. However, at the same time, we would like to direct the Railway Board (Opposite Party No. 3) to finalize the framing of Recruitment and Promotion Rules for AEN, Civil Maintenance at the earliest. In the result, the O.A. is dismissed. No costs.


Member (A)


Member (J)

HLS/-