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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No.314 of 2006

Jabalpur this the 20th day of July, 2006.

Hon'ble Dr. G. C. Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Raj Kishor Nayak, S/o Shri Govind Nayak, Aged about 44 years, Prob. Accounts Clerk, under Sr. DFM, S.E.C. Railway, Bilaspur, at present residing at Rly. Qrs. Construction Colony, Qr.No.917/A, Bilaspur.

-Applicant

(By Advocate – Shri G.S. Ahluwalia)

VERSUS

Union of India, Through

1. The General Manager, South East Central Railway, Bilaspur (C.G.) 495 004.

2. Additional Divisional Railway Manager, S.E.C. Railway, in the DRM's office, Bilaspur (C.G.).

3. Sr. Divisional Finance Manager, S.E.C. Railway, in the DRM's office, Bilaspur (C.G.)

-Respondents

(By Advocate – Shri M.N.Banerji)

ORDER

By A.K.Gaur, JM.-

Aggrieved by the order dated 28.4.2006 (annexure –A/1) passed by the Additional Divisional Railway Manager (for short

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'ADRM'), South East Central Railway, Bilaspur, ordering reversion of the applicant to the post of Peon, the applicant has filed this Original Application.

2. It is urged that a notification for filling of departmental quota of 25% of Accounts Clerk in scale Rs.3050-4590 on promotion from Group-D to Group-C was issued by the Senior Divisional Accounts Officer (for short 'Sr.DAO'), Bilaspur vide letter dated 10.1.2001 (annexure -A/2) calling for option from willing Group-D staff in the prescribed proforma. The applicant submitted his option and furnished the service particulars in the proforma as desired vide aforesaid letter dated 10.1.2001. The applicant was found eligible to appear in the written test of aforementioned 25% departmental quota, which was held on 13.6.2001. After having been qualified in the written examination for promotion to the post of Accounts Clerk, the applicant was called to appear in the viva voce test, which was held on 21.6.2001. The applicant was selected and empanelled for promotion to the post of Accounts Clerk, against the departmental quota and was promoted to the post of Probationary Accounts Clerk with effect from 25.6.2001. The applicant was posted in the Finance Branch as a result of Sectional change. A letter dated 1.8.2001 (annexure A/7) was issued by the Sr.DAO, Bilaspur wherein it has been stated that some irregularities have been detected in the aforesaid selection for promotion to the post of Probationary Accounts Clerk, such as selection committee has not been nominated as per the provisions of IREM; the proceedings of the selection have not been approved by the competent authority; and the panel was not prepared and

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published in terms of provision of Estt.Srl.No.95/88. Accordingly, the applicant, who was provisionally promoted to the post of Prob. Accounts Clerk was reverted to the post of Peon with immediate effect vide aforesaid order dated 1.8.2001. The applicant preferred representations to the Sr.DAO and other authorities but his representations were not disposed of. Having aggrieved by the inaction of the respondents, the applicant preferred a representation to the FA&CAO, S.E.Railway, Calcutta. However, no heed was paid to the said representation. The applicant seeing no hope, filed an Original Application No.1276/2001 before the Calcutta Bench of this Tribunal. The said OA was disposed of vide order dated 10.12.2001(annexure A/10) with a direction to the respondents to consider and dispose of the representation of the applicant within a period of 3 months from the date of receipt of that order. The representation preferred by the applicant was disposed of vide order dated 8.3.2002 (annexure A/11) by observing that since there were major irregularities in the conduct of the selection, the competent authority i.e. the ADRM, Bilaspur has decided that the whole selection should be cancelled and a fresh selection should be initiated and ordered that the provisional promotion already granted should be cancelled. Having aggrieved by the aforesaid order dated 8.3.2002, the applicant again filed OA No.401/2002 before the Calcutta Bench of the Tribunal and the said OA was disposed of vide order dated 2.1.2006 (annexure A/12) by passing the following order:

“6.....In the aforesaid circumstances, we have no hesitation in setting aside the speaking order dated 8.3.2002 and also the order dated 1.8.2001 Annexure-A/7 being bad in law.

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We accordingly remit the matter to the ADRM who is said to be the competent authority to examine the grievance of the applicant with reference to the Recruitment Rules for promotion under 25% departmental quota as also the scheme of examination notified for this purpose and communicate the finding and decision of the competent authority to the applicant within a period of 60 days from the date of issuance of this order. In the meantime, the applicant, who was selected through written test and viva voce test, should be allowed to continue in the post of Prob. Accounts Clerk till the disposal of his representation after giving him an opportunity to submit his written statement in this matter as directed above and also giving him a personal hearing".

In compliance of the aforesaid order of the Tribunal dated 2.1.2006, the applicant was allowed to continue on the post of Accounts Clerk w. e. f. 12.2.2006 till the disposal of representation by the ADRM. The applicant submitted a representation dated 29.3.2006 addressed to the ADRM, Bilaspur justifying his promotion in group-C. The applicant also appeared in person before the ADRM on 10.4.2006 and submitted his case in detail. By the impugned order dated 28.4.2006, the ADRM Bilaspur cancelled the whole selection and reverted the applicant as Peon.

3. The learned counsel for the respondents by means of filing a detailed reply contended that a complaint was received from the staff about serious lapses in the aforesaid selection and, therefore, the entire selection was reviewed by the competent authority, consequent upon detection of irregularities in the selection procedure for promotion from group-D to group-C for the post of probationary Accounts Clerk in unreserved category held on 13.6.2001. The plea taken by the respondents in their reply is that since the selection committee was not nominated as per the

provisions of Para 171 of IREM, Vol.I, 1989 Edition, and the panel of selected candidate was not prepared and published with the approval of the actual competent authority in terms of Est.Srl.No.95/88, the entire selection was cancelled by the competent authority i.e. the ADRM and the applicant was reverted to the former post of Peon with effect from 1.8.2001. The respondents have also clearly stated in their reply that there is no rule to serve any prior notice to the applicant before canceling the selection on account of any irregularities detected in the selection procedure subsequently. The main plea of the respondents was that the selection process adopted by the respondent no.3 was in contravention of procedure laid down in para 217 of IREM, Vol.1. In terms of the said para, it is only the DRM/ADRM of the concerned railways has got authority to nominate the selection committee.

4. The applicant has also filed a rejoinder and the respondents have also filed additional reply controverting the facts stated in the rejoinder.

5. We have heard the learned counsel for the parties. After considering the arguments advanced on behalf of both the parties, and going through the documents available on record, we are of the considered view that in the instant case the selection committee was constituted under the orders of Sr.DAO and the procedure adopted and the selections which were made, were also approved by the said authority, which was not in order in terms of Est.Srl.No.95/88, and that in terms of para 219 and 171 of the IREM Vol.I, 1989 Edition. The panel should have been drawn

according to the seniority of candidates, who have passed the selection, which was also not done in this case. The applicant was reverted within 38 days of his posting to the upgraded post and this reversion was wholly within the competence of the authorities. The competent authority i.e. the ADRM, SEC Railway, Bilaspur has rightly come to the conclusion that the selection committee was nominated by the Sr.DAO, who was not authorized to do so. As per para 217 of IREM, only the DRM and ADRM are authorized to nominate the selection committee and also to approve the selection. It is also found that the selection committee drew the panel in order of merit, but it has ignored the orders contained in Est.Srl.No.95/88, which clearly state that the panel should be formed in the order of seniority in group-D maintaining inter se position. There were other senior candidates who had secured qualifying marks but could not be considered for appointment, as the panel was prepared on merit basis, whereas the panel of qualified candidates should have been prepared as per seniority.

6. The short and die hard question involved in the present case is whether the selection was cancelled rightly or wrongly, and the reply to the same is that in view of Para 171 of the IREM Vol.I, 1989 Edition, while preparing the panel from amongst qualified candidates, the seniority has not been taken into consideration. The competent authority noticing the aforesaid irregularities has rightly passed the order dated 28.4.2006 and observed that in view of para 217 of the IREM, the whole selection procedure starting from notification to issue of posting order of Prob. Account Clerk, is bad in law being not followed by the extant rules and also not

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conducted according to procedure of selection, and the entire selection was liable to be cancelled. Accordingly the applicant is being reverted as peon. After considering all pros and cons of the matter, we do not find any infirmity or irregularity in the impugned order passed by the respondents.

7. In the result, the Original Application is dismissed, however, without any order as to costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
प्रतिलिपि अर्पित:-
(1) सचिव, उच्च न्यायालय वर एसोसिएशन, जबलपुर
(2) आवेदन की प्रतिलिपि/कॉपी.....के कार्डरूल
(3) प्रत्यक्षी श्री/श्रीमती/कॉपी.....के कार्डरूल
(4) मध्यपाल, को.प्र.अ., जबलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु
उप निदेश

G.S. Arora
B. B. B. B.
M. K. B. B.
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