

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 49 of 2005

Indore, this the 17th day of November, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Raj Kishor Nayak, aged about 43 years,
S/o. Shri G. Nayak, Peon under Senior
Divisional Fianance Manager, SEC Railway,
Bilaspur, resident of Railway Quarter No.
917/1, Construction Colony, Bilaspur,
(Chhatisgarh).

.... Applicant

(By Advocate – Shri G.S. Ahluwalia)

V e r s u s

Union of India, through,

1. General Manager, South East
Central Railway, GM's office,
Bilaspur (CG).
2. Senior Divisional Finance Manager,
South East Central Railway,
DRM's Office, Bilaspur (CG).
3. Shri K. Ravi Kumar, aged about 33
Years, Peon, Through FA & CAO
(Construction), South East Central
Railway, Bilaspur (CG).

.... Respondents

(By Advocate – Shri M.N. Banerjee)

ORDER

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has claimed the following main reliefs :

“(b) direct the respondents to first decide the pending representations of the applicant & others & publish a final seniority



list before initiating the selection for promotion from Group-D to Group-C,

(c) direct the respondents to delete the name of respondent No. 3 from the provisional seniority list as well as from the list of eligible candidates. In case the private respondent No. 3 has opted to switch over to open line under Sr. DFM Bilaspur, he may be assigned seniority position in the bottom as per extent rules,

(d) quash the selection proceedings, for promotion from Group-D to Group-C as per notification dated 24.9.2004 (Annexure A-5)."

2. The brief facts of the case are that the applicant is posted on a Group-D post. He has completed about 10 years regular service and on 10.1.2001 he was selected as Junior Clerk against 25% quota from Group-D to Group-C and was posted as Junior Clerk on 25.6.2001. The promotion of the applicant was withdrawn on 2.8.2001 under the plea that the select panel was not approved by the competent authority. In the meantime decision was taken by the respondents for absorption of construction staff (Work-charged & Permanent Construction Reserve) in the divisions (Open line) on option and acceptance of bottom seniority as per extent rules. No further action was taken on this subject for about 3 years. All of a sudden a provisional seniority list dated 31.8.2004 was published inviting objections if any. The applicant alongwith others sent a joint representation dated 4.10.2004 (Annexure A-4) to the respondents but before finalizing the provisional seniority list and without deciding the representation of the applicant, the respondent No. 2 has issued a notification on 24.9.2004 to fill up the vacancies against 25% departmental quota of Accounts Clerk in the grade of Rs. 3050-4590/- from Group-D to Group-C. The applicant submitted a separate representation on 25.10.2004 to the respondents. The applicant was regularly selected and had worked on the non-fortuitous post of Junior Clerk from 25.6.2001 to 2.8.2001 and therefore is entitled for protection. The applicant sent reminder on 27.12.2004 (Annexure A-7). In the meantime a list of PCR and work charged posts operated in Accounts(Construction) department was received in the office of




respondent No. 2 on 30.11.2004 in which it is made clear that respondent No. 3 is not having his lien in Bilaspur Divisional Accounts Office but his lien is in the office of FA & CAO (Construction), Bilaspur. The representations of the applicant are yet not considered and decided by the respondents. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that the applicant had submitted a separate representation on 25.10.2004 to place his name at serial No. 1 in terms of para 319(b) of IREM Volume I-1989 and thereafter he also submitted a representation on 27.12.2004 (Annexure A-7). The respondents have not considered the case of the applicant according to the aforesaid para 329(b) of IREM Volume I-1989 and according to the Railway Board's Instruction, inspite of his repeated requests. Hence he is entitled for the reliefs claimed.

5. In reply the learned counsel for the respondents has argued that the combined seniority list of grade-D staff working under Senior DFM/Bilaspur and FA&CAO/Con/Bilaspur was correctly published. Para 319(B) of IREM does not give any benefit of placement of the name of the applicant at serial No. 1 of the seniority list of the Group-D staff. Besides, his erroneous officiating promotion from 25.6.2001 to 2.8.2001 being a fortuitous one, he does not merit any protection. Therefore, the Group-D seniority list needs no revision. The list of eligible staff for promotion from Group-D to Group-C against 25% departmental quota including respondent No. 3 was as per extant rules. The promotion orders were defective as the competent authority i.e. Additional Divisional Railway Manager did not approve the panel. He further argued that the representation of the applicant dated 25.10.2004 (Annexure A-6) and another application dated 27.12.2004 (Annexure A-7) are still pending with the respondents for consideration and before waiting for its disposal



as is prescribed in the AT Act, the applicant approached this Tribunal by filing this OA on 17.1.2005. The action of the respondents is legal and justified. Hence, this OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the representation of the applicant dated 25.10.2004 (Annexure A-6) and another representation dated 27.12.2004 (Annexure A-7) are still not decided by the respondents and the applicant ^{after} ~~before~~ waited for sufficient time of six months had approached this Tribunal by filing the present OA on 17.1.2005. We have perused paragraph 319(B) of the IREM.

7. Considering all the facts and circumstances of the case we are of the considered view that ends of justice would be met if we direct the respondents to consider the aforesaid representations of the applicant dated 25.10.2004 (Annexure A-6) and 27.12.2004 (Annexure A-7) in view of the Railway Board's circular and also in view of the relevant provisions of IREM, and decide the same by passing a speaking, detailed and reasoned order within a period of three months from the date of receipt of a copy of this order. We do so accordingly.

8. In view of the aforesaid, the Original Application stands disposed of. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

पृष्ठंकन सं ओ/न्या.....जयलपुर, दि.....

प्रतिनिधि

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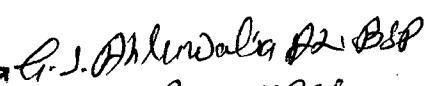
(2) आ


(3) प्रका

(4) संवधान

सूचना एवं 0.7.2005 का.ग.प. 1.1.05

अप. रजिस्ट्रार


G.S. Ahluwalia B.A. B.L.
M.N. Benerjee
B.A. B.L.


22-11-05