

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,  
CIRCUIT COURT SITTING AT BILASPUR

Original Application No 115 of 2005

This the 27<sup>th</sup> day of October, 2005.

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

Shri T.R. Prasad Rao,  
S/o Late Shri T.R. Krishna Rao  
Aged about 47 years,  
Employed as (Adhc) Jr.Clerk,  
O/o The Chief Engineer (Construction)  
S.E.C. Railway, Bilaspur,  
Residing at Railway Quarter No.  
RTS Colony, Bilaspur (CG)

Applicant

(By Advocate – Shri B.P. Rao)

V E R S U S

1. Union of India,  
Through : The Secretary,  
Ministry of Railways,  
Rail Bhawan, New Delhi.
  
2. The General Manager,  
South East Central Railway,  
G.M. Office,  
Bilaspur – 495001 (Chhattisgarh).
  
3. The Divisional Railway Manager,  
South East Central Railway,  
Bilaspur Division,  
Bilaspur -495001 (Chhattisgarh).
  
4. The Sr. Divisional Personnel Officer,  
South East Central Railway,  
Bilaspur Division,  
Bilaspur -495001 (Chhattisgarh).  
Respondents

(By Advocate – Shri M.N.Banerjee)



O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main relief :-

“8.2 to pass a direction to the Respondents to promote the Applicant in the same grade of Drivers/Assistant Drivers at par with his Juniors, so that whenever he will be repatriated back to his parental department, he would get Salary at par with his Juniors.”

2. The brief facts of the case are that the applicant was initially appointed as Casual Employee on 27.12.1979 in the Railway's construction department at Bilaspur and he was regularized on the post of Khalasi on 30.4.1987. He was posted in Open Line i.e. under Loco Foreman S.E. Railway, Bilaspur. While maintaining applicant's lien in Open Line, he was transferred under administrative interest in the construction department as Khalasi vide order dated 11.5.1987. He was relieved from Open Line on 1.9.87 and he reported on the same date for duties to the construction department at Bilaspur. Since then he is working as Junior Clerk on adhoc basis in the pay scale of Rs.3050-4590. The applicant contended that according to seniority list of Group 'D' for Mechanical Loco Department which was published on 29.4.1987(Annexure-A-3) by respondent, wherein the applicant is placed at Sr.No.37. In the year 1990, the Loco department at Bilaspur has been winded up and the staff posted in the Loco/Bilaspur were declared as surplus and a list of such surplus staff were prepared as per seniority. Thereafter, options were invited from the surplus staff for the post of Assistant Drivers(Diesel). While preparing the seniority list of surplus staff of Loco Deptt./Bilaspur, the respondents omitted the applicant's name in the said list of surplus staff and on that time the applicant was posted in construction department at Sambalpur, therefore, he was neither informed, nor given any chance to submit any option for the post of Assistant Driver (Diesel) alongwith his juniors. Some junior than the applicant, were selected and posted as

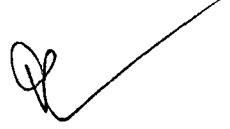


Assistant Drivers (Diesel). The applicant came to know by memorandum dated 15.5.2001 issued by the Sr.Divisional Personnel Officer, Bilaspur that some junior persons were promoted as Goods Driver in the scale of Rs.5000-8000/- . Immediately thereafter the applicant submitted a representation dated 31.10.2001 to the Divisional Railway Manager, SE Railway, Bilaspur requesting for fixation of his seniority and pay at par with his juniors, so that whenever he will be sent back to his parent department, he will not sustain any injustice. The Sr. Divisional Personnel Officer, SE Railway, Bilaspur tried to mitigate the grievance of the applicant and issued a letter dated 1.5.2002(Annexure-A-7) admitting therein that due to administrative reasons, the applicant was not called to appear in the trade test for promotion to the post of Helper-I in the scale of Rs.2650-4000 and it is also stated in the said letter that the applicant is entitled for promotion as Helper-I w.e.f. 6.5.95 at par with his immediate junior. Therefore, he instructed the Sr.DME, Bilaspur to conduct a fresh trade test for the applicant for the post of Helper-I. Thereafter the applicant submitted representations on 3.1.2003 and 22.7.2004 praying therein treating him equal at par with his immediate juniors who are working as Assistant Drivers/Drivers in the higher pay scales of Rs.4500-7000/5000-8000. However, the respondents have rejected his claim vide order dated 21.9.2004 stating that he has not submitted his option for the post of Asst. Driver when he was eligible. However the post of Asstt. Driver is classified as safety category and is safety categories automatic promotion without appearing in prescribed selection is not permissible as per extent rule. It is further stated that Jr. Clerk is a selection post and your have failed twice in selection for the post of Jr. Clerk. Without empanelment in selection of Jr.Clerk, it is not possible to regularize the applicant as Jr. Clerk as per rule. Hence this OA.

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



4. It is argued on behalf of the applicant that according to the seniority list Annexure-A-3 the name of the applicant is shown at Sr.No.37 whereas his juniors who were promoted are placed at Sr.Nos.43, 50 and 55. The applicant was not informed by the respondents for submitting of the option. He also argued that the Loco department at Bilaspur has been declared surplus staff and a list of such surplus staff were prepared as per seniority basis and thereafter options were invited from the surplus staff for the post of Assistant Drivers(Diesel). However the name of the applicant is omitted in this list and neither he was informed nor given any chance to submit any option for the aforesaid post alongwith his juniors. Hence, he could not submit his option and his junior were promoted on the post of Assistant Driver (Diesel). He further argued that the letter dated 1.5.2002 has been written by Sr.DPO, Bilaspur to Sr.DME, Bilaspur requesting for conducting the trade test in favour of the applicant as early as possible and it is further mentioned that "Due to administrative reasons he was not called to appear in the trade test for promotion to the post of Helper-I in scale of Rs.2650-4000 alongwith his immediate juniors. He is therefore eligible to promotion as Helper-I w.e.f. 6.5.95 i.e., the date from which immediate juniors promoted" The learned counsel for the applicant also argued that the respondents have admitted the aforesaid facts. The applicant submitted representation praying for equal treatment at par with his juniors, who are working as Assistant Driver/Driver in the pay scale of Rs.4500-7000/5000-8000. However vide order dated 21.9.2004 the respondents rejected his claim on the ground that he has not submitted any option for the post of Asst. Driver (Diesel) and further stated that the post of Jr.Clerk is a selection post and the applicant has failed twice in selection to the post of Jr.Clerk. Without empanelment in selection of Jr.Clerk, it is not permissible to regularize the applicant as Jr.Clerk as per rules. The action of the respondents is totally illegal and unjustified.



5. In reply, the learned counsel for the respondents argued that the Annexure-A-3 is not a seniority list, It is a statement of casual labour/substitute screened for regular absorption in Loco units of Mechanical department. He also argued that the applicant was transferred in construction organization under Chief Engineer (construction) Bilaspur w.e.f. 1.9.87 on the ex-cadre post. The applicant was lien holder of steam Loco in Mechanical department in Class IV category. The Loco activity was closed during the year 1989-90 and the options were called from the Loco staff who were declared surplus for the post of Assistant Driver (Diesel) during the year 1990. Some co-worker named S.J.Pantulu and B.Sanyasi Rao working in construction organization opted for running category for the aforesaid post of Assistant Driver (Diesel), however the applicant did not apply for the same. The post of Assistant Driver (Diesel) is coming under the safety category looking to the safety aspect of running of Trains, the selection is not automatic but based on the positive act selection and subject to passing of A/one medical category. At that time neither the applicant opt nor applied for selection for the running category, as he was enjoying the adhoc promotion on the post of Jr.Clerk in the scale of Rs.950-1500(RPS) and Sr.Clerk in the pay scale of Rs. 1200-2040 (RPS) on 8.9.89 in ex cadre post in construction organization. The applicant was called for trade test in open line for promotion to the post of Khalasi helper but he did not appear in the trade test and stated in para 5 of his representation Annexure-A-8 that "now the Administration has called me for trade test for post of Khalasi helper which is nothing but an eye wash & little water in big tumbler". Thereafter he appeared for promotion to the post of Jr.Clerk in open line against 33.33% quota in the year 1998-99, 1999-2000, 2000-2001 & 2001-2002 but could not qualify and failed. The learned counsel for the respondents finally argued that the respondents never admitted that due to their fault the applicant could not be not informed for seeking option from the surplus staff for the post of Assistant Driver (Diesel). Hence, this OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the loco activity was closed during the year 1989-90 and the options were called from the Loco staff who were declared surplus for the post of Assistant Driver (Diesel) during the year 1990. Some co-worker namely S.J.Pantulu and B.Sanyasi Rao working in construction organization opted for running category for the aforesaid post of Assistant Driver (Diesel), however the applicant has not applied for the same. We have perused Annexure - R-2 wherein we find that the options are called from the Loco surplus staff Khalasi, Diesel Cleaner and Engine Cleaner of Loco/BSP for the post of Diesel Assistant in the Grade of Rs.950-1500. According to the respondents the post of Assistant Driver is coming under the safety category and looking to the safety aspect of running of trains, the selection is not automatic but based on the positive act selection and subject to passing of A/one medical category. As the applicant on that time neither opted nor applied for selection for the running category, as he was enjoying the adhoc promotion on the post of Jr.Clerk in the scale of Rs.950-1500(RPS) in ex-cadre post in construction organization. The applicant was called for trade test in open line for promotion to the post of Khalasi helper but he did not appear in the trade test. Thereafter he appeared for promotion to the post of Jr.Clerk in open line against 33.33% quota in the year 1998-99, 1999-2000, 2000-2001 & 2001-2002 but could not qualify and failed. We have carefully perused the order dated 21.9.2004 wherein it is clearly mentioned that the applicant has not submitted his option for the post of Assistant Driver and it is further mentioned that "for regularisation of services as Jr.Clerk at par your juniors, it is to inform you that Jr. Clerk is a selection posts and you have failed twice in selection to the post of Jr.Clerk. Without empanelment in selection of Jr.Clerk, it is not permissible to regularize you as Jr.Clerk as per rules." Since, the applicant neither submitted his option for the post of Assistant Driver from the declared surplus staff nor he passed the

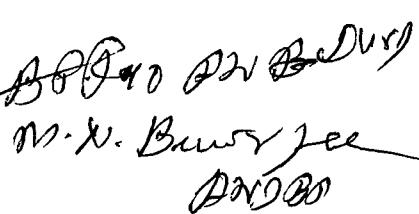
selection test for the post of Jr.Clerk, therefore he is not entitled for any rlie . Hence, the action of the respondents seems to be correct.

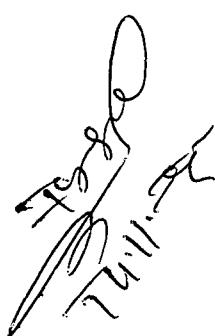
7. Considering all the facts and circumstances of the, we are of the considered view that this OA deserves to be dismissed. Accordingly, the same is dismissed. No costs.

  
**(Madan Mohan)**  
 Judicial Member

  
**M.P.Singh)**  
 Vice Chairman

पृष्ठांकन सं. शो/न्या.....जलपुर, दि.....  
 परिविवरित दोनों दिनाः—  
 (1) सातीरा, रात्रि श्यामा, रात्रि श्यामा, जलपुर  
 (2) शो/न्या.....के काउंसल  
 (3) शो/न्या.....के काउंसल  
 (4) शो/न्या.....के काउंसल  
 सूचना एवं वार्ताएवं दोनों दिनाः—  
 उपराजिकार

  
**M.N. Banerjee**  
 DND

  
 DND