

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 219 of 2004

Indore, this the 12th day of July, 2005

Hon'ble Shri Justice M.A. Khan, Vice Chairman  
Hon'ble Shri S.K. Naik, Administrative Member

Rajeeva Stephen, S/o. Vijaya  
Stephen, A.C. Assistant under  
Chief Traction Foreman, Ratlam (MP). ... Applicant  
(By Advocate - Shri A.N. Bhatt)

V e r s u s

Union of India & Others  
through :

1. The General Manager,  
Western Railway,  
Churchgate/Mumbai - 20.
2. The Divisional Rail Manager,  
Western Railway,  
Divisional Office - Ratlam. ... Respondents

(By Advocate - Shri Y.I. Mehta, Sr. Advocate assisted by Shri  
H.Y. Mehta)

O R D E R (Oral)

By Justice M.A. Khan, Vice Chairman -

The applicant was appointed as Assistant in the pay scale of Rs.950-1500 against direct quota in Bombay Division of the Western Railway. On his request, he was transferred to Ratlam Division and was placed in the seniority list at S.No.371 instead of S.No.164 at the time of joining Ratlam Division on 3.12.1993. The applicant filed OA No.865/97 assailing the seniority position given to him. The OA was allowed vide order dated 30.4.02 and he was directed to be placed at S1.No.163A above



one Shri Mehboobkali. The order has been implemented and the applicants' placement in the seniority list has been positioned at 163A in the revised seniority list. Vide notification dated 23.7.1996, the respondents had conducted selection for 219 posts of Goods Driver in the pay scale of Rs. 1350-2200/- (pre-revised) Rs. 5000-8000/- (revised) and also issued a list of eligible candidates in which the name of the applicant was at S. No. 371 instead of 163A. The applicant passed written test and appeared in the viva voce and his performance was good. Since there were only 219 vacancies, hence as per old seniority of 18.10.1994, the candidates whose names appearing upto S. No. 217 were placed in the panel and were promoted. The applicant was deprived of his promotion because of the incorrect seniority. After the revision of the seniority in accordance with the directions of the Tribunal, the applicant made several representations for giving him promotion from the date his junior was promoted but of no avail. This OA is filed, by the applicant for grant of promotion in the higher grade of Goods Driver at par with his junior with all consequential benefits.

2. In the counter, the respondents have refuted the claim of the applicant <sup>in this stage</sup> stating that the applicant had passed the written examination but he had failed in the viva voce and psychological test. Therefore, his name was not recommended by the DPC in the select panel. It is submitted that in the selection held in 2000, the applicant appeared but failed to qualify the test. In the selection held in 2001, however he did not appear in the written test held on 27.1.2001, hence he could not be empanelled in the selection list. But he appeared in the selection held in 2002 and was selected and has since been promoted to the post of Goods Driver.

3. In the rejoinder, the applicant has reiterated his own case and denied the allegations made in the reply.

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He further stated that he was aggrieved only for his non-selection in the selection test held in 1996.

4. We have heard the learned counsel and perused the records.

5. The argument of the learned counsel of the applicant is that the applicant was not empanelled in the selection in 1996 only because he was placed at S. No. 371 of the seniority instead of the correct position at 163A. Had he been considered to be holding the position of 163A at the time of selection in 1996, he would have qualified the interview also as per the standard prescribed in Rule 219 of I.R.E.M. He stated that as per this Rule, 15 marks are awarded for seniority only and applicant lost these marks only because he was not shown senior in the list. As a result he could not find place in the selection panel Annexure A5.

6. Learned counsel for the respondents has strongly refuted the claim of the applicant and has stated that many seniors of the applicant have also not been empanelled, which is clear from the comparison of Annexures A4 & A5. According to him, the only reason for the applicant in not coming in the selection list of 1996 is that he could not perform well in the viva voce and psychological test. This is denied by the learned counsel for the applicant and he has stated that had the applicant been considered at S. No. 163A in the seniority list, he would have earned more marks for the seniority and would also have qualified in the viva voce test. He has referred to the list and stated that only the candidates upto the position 254 have been empanelled, whereas the applicants' position in the seniority list was erroneously shown at serial number 371.

7. Learned counsel for the applicant has submitted that the applicant ~~would~~<sup>will</sup> be satisfied if he is given proforma promotion from the date his junior was promoted on the basis

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of selection held in 1996 and that he would not claim backwages/consequential monetary benefits. Learned counsel for the respondents, on the other hand, submitted that certain persons who have since been promoted on the basis of the result of the select panel and further promoted to the higher position will be prejudiciously affected if the applicant's case is considered now. He also submitted that all those persons who are likely to be effected ought to have been impleaded in the OA.

8. We have given our careful consideration to the submission made by the learned counsel for the parties. It is true that at the time of holding the selection, the applicant was shown at S. No. 371 in the seniority list. As per para 219 of IREM, 15 marks have been allotted to seniority. Since the applicant's seniority was not revised at that time, he would have been allotted marks as per the seniority that existed at the time of selection. In this view of the matter, the selection seems to have been vitiated.

9. As regards the contention that juniors of the applicant, who were promoted on the basis of select panel of selection held in 1996 will be prejudicially effected and they have not been made party to this OA suffice to mention that the applicant is not claiming any relief against them. His grievance is that he should also have been promoted on the basis of selection held in 1996. The OA cannot be said to be bad for non-joinder of his junior.

10. In the totality of the facts and circumstances and in view of the statement of the learned counsel of the applicant we are of the view that a direction should be given to the respondents to re-examine the case of the applicant in the light of his revised seniority at 163A in the selection which has taken place in 1996 and in case, on the basis of his revised seniority, he comes on the select panel, he should be granted the benefit of proforma promotion from the date his junior was given such promotion. We do so

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accordingly. The applicant, however, shall not be entitled to any backwages or monetary benefits. This order shall be implemented within four months from the date of receipt of a copy of this order. Parties shall bear their own costs.

S.K. Naik  
(S.K. Naik)  
Administrative Member

M.A. Khan  
(M.A. Khan)  
Vice Chairman

aa.

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

पतिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय तार एम्प्लोयेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/शु.....के काउंसल
- (4) जंदागल, को.प्र.अ. जबलपुर अयावदीउ

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

D. K. Bhatt & Ratlam  
Y. J. Mehta & Co  
Adv.

Signd  
21.7.05