

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 721 of 2004
Original Application No. 725 of 2004

Jabalpur, this the 17th day of May, 2005

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

1. Original Application No. 721 of 2004. -

1. Kamaljeet Singh Saini, S/o. Shri Preetam Singh Saini, aged about 47 years, Chief Ticket Inspector, Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. Opposite S.R.P. Office, Savitri Vihar, Kanchghar, Jabalpur (MP).
2. Rajendra Arora, S/o. late Shri R.K. Choudhary, Aged about 42 years, Chief Ticket Inspector, Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. Indrapuri Colony, Gorakhpur, Jabalpur (MP).
3. T.P.S. Bhalla, S/o. Late Shri B.S. Bhalla, aged about 44 years, Chief Ticket Inspector, Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. 208, Arpit Apartment, Nagrath Chowk, Jabalpur.
4. S.K. Gulati, S/o. Shri R.S. Gulati, aged about 50 years, Chief Ticket Inspector, Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. Near Sanatan Dharam Mandir, Chhoti Omti, Jabalpur (MP). ... Applicants

2. Original Application No. 725 of 2004 -

1. K.K. Shrivastava, S/o. Shri Ram Shrivastava, aged about 46 years, Dy. S.M. (C), Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. IBM Colony, Kamala Nehru Nagar, Jabalpur (MP).
2. B.K. Mathew, S/o. K.M. Mathai, aged about 43 years, Chief Commercial Inspector DRM Office, Commercial Branch, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. H. No. - A/2, S.S. Nagar, Hathital, Jabalpur (MP).
3. Amit Kumar Verma, S/o. Shri P.P. Verma, aged about 38 years, Dy. S.M. (C), Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP), R/o. 38, Viveka Nand Nagar, Yadav Colony, Jabalpur (MP).



4. Sharad Nareliya, S/o. Shri K.C. Nareliya, aged about 33 years, Chief Commercial Inspector, DRM Office, Commercial Branch, West Central Railway, Jabalpur (MP), R/o. 1438, Ganga Nagar, Jabalpur (MP).
5. M.M. Rahim, S/o. Abdul Mazeed, aged about 47 years, Dy. S.M. (C), Jabalpur Railway Station, Jabalpur Division, West Central Railway, Jabalpur (MP). . . . Applicants

(By Advocate - Shri Manoj Sharma in both the OAs)

V e r s u s

1. Union of India, through it's General Manager, West Central Railway, Jabalpur M.P.
2. The Divisional Railway Manager, Jabalpur Division, West Central Railway, Jabalpur (MP).
3. The Sr. Divisional Personnel Officer, Jabalpur Division, West Central Railway, Jabalpur (MP). . . . Respondents in both the OAs

(By Advocate - Shri M.N. Banerjee)

O R D E R (Common)

By M.P. Singh, Vice Chairman -

As the issue involved in both the cases is common and the facts and grounds raised are identical, for the sake of convenience we are disposing of these Original Applications by a common order.

2. By filing these Original Applications, the applicants have claimed the following main reliefs :

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"ii) quash and set aside the impugned orders dated 20.8.2004 and 24/27.8.2004, Annexure A/1 and A/2 respectively to the extent applicable to the applicants

iii) direct the respondents not to disturb the applicants in any manner whatsoever in their capacity as Chief Ticket Inspectors as a consequence to the orders impugned.

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ii) quash and set aside the impugned order dated 24.8.2004 Annexure A-1 respectively to the extent applicable to the applicants,

iii) direct the respondents not to disturb the

applicants in any manner whatsoever in their capacity as Chief Commercial Inspectors as a consequence to the orders impugned."

3. The brief facts of the case as stated by the applicants in OA 721/04 are that they joined the respondent-railways as Ticket Collectors during the period 1979 to 1982. In due course of time they were promoted as Assistant Chief Ticket Inspector and were eligible for consideration for promotion to the next higher post of Chief Ticket Inspector (for short 'CTI') (Rs.6500-10500). A notification dated 14.10.2003 for formation of panel for the post of CTI was issued. The applicants have applied for the said post and have also participated in the selection. They were declared successful in the written test and have appeared in the viva voce. Vide order dated 5.2.2004 a panel of successful candidates was notified in which all the four applicants find their names. Thereafter, the applicants were promoted vide order dated 26.2.2004 to the post of CTI. All of a sudden, vide order dated 20.8.2004 the respondent no.3 cancelled the said selection. Subsequently, vide order dated 24/27.8.2004 the applicants were reverted. The main contention of the applicants is that they were selected and promoted to the next higher post of CTI after going through the regular selection process, however, they have been reverted to the lower post without giving an opportunity of hearing. Hence they have filed the present Original Application No.721/2004.

4. The brief facts of the case as stated by the applicants in OA 725/04 are that they joined the respondent-railways as Commercial Clerks/ Ticket Collectors during the period 1979 to 1993. In due course of time they were promoted as Senior Commercial Inspector and were eligible for consideration for promotion to the next higher post of Chief Commercial Inspector (for short 'CCI') (Rs.6500-10500). A notification dated 25.8.2003 for formation of panel for the post of CCI was issued. The applicants have applied for the said post and have also participated in the selection. They were declared



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successful in the written test and have appeared in the *viva voce*. Vide order dated 12.1.2004 a panel of successful candidates was notified in which all the five applicants find their names. Thereafter, the applicants were promoted vide order dated 27.2.2004/ 29.3.2004 to the post of CCI. All of a sudden, vide order dated 20.8.2004 the respondent no.3 cancelled the said selection. Subsequently, vide order dated 24.8.2004 the applicants were reverted. The main contention of the applicants is that they were selected and promoted to the next higher post of CCI after going through the regular selection process, however, they have been reverted to the lower post without giving an opportunity of hearing. Hence they have filed the present Original Application No.725/2004 claiming the aforementioned reliefs.

5. The respondents in their identical replies filed in both the Q.As. have contended that the Railway Board vide their RBE No.177/2003 dated 9.10.2003 (Annexure-R-1) restructured certain Group 'C' and 'D' posts. In para 4 of the said circular it had been mentioned that "the existing classification of the posts covered by these orders as selection and non-selection was to remain unchanged". However, the aforesaid instructions were modified by the Railway Board vide RBE No.5/2004 dated 6.1.2004, Para 4 of which reads as under:

"4. The existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant becomes due for promotion to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/ or *viva voce* test. Naturally, under this procedure the categorization as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders. Similarly for posts classified as 'non-selection' at the time of this restructuring the

promotion will be based only on scrutiny of service records and confidential reports. ...

4.1 Normal vacancies existing on 01.11.2003 except direct recruitment quota and those arising on that date from the cadre restructuring including chain/ resultant vacancies should be filled in the following sequence:

(i)from the panels approved on or before 1.11.2003 and current on that date

(ii)and the balance in the manner indicated in para 4 above.'

4.2 Such selections which have not been finalized by 01.11.2003 should be cancelled/ abandoned.

4.3 All the vacancies arising from 02.11.2003 will be filled by normal selection procedure.

4.4 All vacancies arising out of the restructuring should be filled up by senior employees who should be given benefit of promotion w.e.f.01.11.2003 whereas for the normal vacancies existing on 01.11.2003 junior employees should be posted by modified selection procedure but they will get promotion and higher pay from the date... (illegible). Thus, the special benefit of promotion w.e.f.01.11.2003 is available only for vacancies arising out of restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply."

Thereafter, the Railway Board issued another circular vide RBE No.114/2004 dated 3.6.2004 (Annexure-R-2). Relevant extract of the said circular is reproduced below:

"2. A number of references have been received from the Railways regarding the status of panels/selections finalized between 01.11.2003 and 06.01.2004. The issue of status of selections finalized between 01.11.2003 and 06.01.2004 has been examined and it has been decided with the approval of the President that the provisions of Board's letter dated 06.01.2004 regarding Existing classification and filling up of the vacancies as contained in para 4.1 and 4.2 may be modified as under:

'4.1 Normal vacancies existing on 01.11.2003 except direct recruitment quota and those arising on that date from the cadre restructuring including chain/ resultant vacancies should be filled in the following sequence:



- (i) from the panels approved on or before 05.01.2004 and current on that date.
- (ii) And the balance in the manner indicated in para 4 (viz modified para 4 of Board's letter dated 06.01.2004).

4.2 Such selections which have not been finalized by 05.01.2004 should be cancelled/abandoned.

The respondents in O.A.721/2004 have further stated that vide notification issued by the D.R.M. Jabalpur dated 14.10.2003 selection for 15 general and 1 SC category posts of CTI carrying pay scale of Rs.6500-10500 was notified for which the selection was finalized and panel of 12 CTI was declared on 5.2.2004 and promotion order was released on 26.2.2004. Therefore, consequent to the aforesaid Railway Board's circular dated 3.6.2004 the panel was cancelled by order dated 20.8.2004 and by order dated 24/27.8.2004 the employees have been reverted. Thereafter, upon restricting a fresh panel made on the basis of modified selection has been released on 31.8.2004 and promotion order issued on 31.8.2004.

6. The respondents in O.A.725/2004 have further stated that vide notification issued by the D.R.M. Jabalpur dated 19/25.8.2003 selection for 17 general and 1 SC category posts of CCI carrying pay scale of Rs.6500-10500 was notified for which the selection was finalized and panel for 8 CCI was declared on 12.1.2004 and promotion order was released on 27.2.2004. Therefore, consequent to the aforesaid Railway Board's circular dated 3.6.2004 the panel was cancelled by order dated 20.8.2004 and by order dated 24.8.2004 the employees have been reverted. Thereafter, upon restricting a fresh panel made on the basis of modified selection has been released on 31.8.2004 and promotion order issued on 31.8.2004.

7. We have heard the learned counsel for both the parties and carefully perused the pleadings.

8. We find that the selections for the posts of CCI and CTI against the vacancies notified by the respondents have been done as

per the procedure prescribed in the IREM. The applicant have participated in the selections and have been duly selected on merits.

They have been also appointed against the said posts and they had also worked against those posts upto the date of their reversion. The learned counsel for the applicants has, however, contended that in the reversion orders it was mentioned that the fact of their reversion should be got noted by the applicants. However, the applicants are continuing to work on the higher posts and the fact of their reversion has not been noted by the applicants.

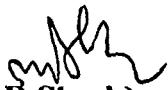
9. We further find that in terms of the Railway Board's order dated 6.1.2004 the selections which have not been finalized by 1.11.2003 should be cancelled and all the vacancies arising out of restructuring should be filled up by senior employees who should be given the benefit of promotion w.e.f.1.11.2003 on the basis of modified selection procedure i.e. by scrutiny of service records and confidential reports. However, on the basis of some references made by different railway authorities regarding the status of panels/selections finalized between 1.11.2003 and 6.1.2004, the Railway Board vide their letter dated 3.6.2004 have modified their earlier circular dated 6.1.2004 to the extent that the 'selections which have not been finalized by 5.1.2004' should be cancelled'. The learned counsel for the applicants has contended that the selection of the applicants in the present case was finalized on 12.1.2004 (in OA 725/04) and on 5.2.2004 (in OA 721/04) i.e. just after a week from the cut off date 5.1.2004 (in OA 725/04) and within a month (in OA 721/04), but the railway authorities in the West Central Railway have not made any reference to the Railway Board for extending the cut off date as has been done in other Railways and the applicants have been reverted after about 7 months from the date of their promotion. This amounts to hostile discrimination.



10. We find that the other Railways have taken up the matter with the Railway Board for extending the cut off date i.e. 1.11.2003 to 6.1.2004 during which period the selections have been made by them as per the recruitment rules and the Railway Board vide their letter dated 3.6.2004 have stated that the approval of the President has been taken to extend the cut off date which was fixed for holding the modified selection in relaxation to the recruitment rules to 6.1.2004 whereby the selection made as per the recruitment rules on merits during the period from 1.11.2003 to 6.1.2004 were not cancelled and the persons selected during this period were appointed on regular basis. However, in the case of West Central Railway where the selections for the posts of CCI and CTI which were initiated in August,2003 i.e. well before the cut off date and finalized on 12.1.2004 in the case of CCI, and on 5.2.2004 in the case of CTI, did not take up the matter with the Railway Board to obtain the approval of the President of India for extending the cut off date so as to enable them to appoint the applicants who were selected in terms of the relevant recruitment rules. On the other hand, they have allowed the applicants to continue to work against the promoted posts till August,2004 and thereafter reverted them without issuing any prior notice and giving them an opportunity of hearing, thus violating the principles of natural justice. It is a well settled legal position that an administrative order which involves civil consequences must be made consistently with the rules of natural justice after giving an opportunity of being heard to the affected employee. To support our findings, we are relying on the decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. K R Erry, AIR 1973 SC 834. In view of the above discussion, we find substance in the contention made by the learned counsel for the applicants that the respondents have made hostile discrimination against the applicants vis-à-vis the employees working in other railways.

11. In the conspectus of the facts and circumstances discussed above, the present Original Applications are allowed. The impugned orders of reversion of the applicants are quashed and set aside. The respondents are directed to take up the matter with the Railway Board to obtain the approval of the President to extend the cut off date and give the applicants same treatment as has been done in the case of other railway employees, as discussed above. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

Rkv.