

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 426 of 1999

Jabalpur, this the 20th day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.
Hon'ble Shri J.K. Kaushik - Judicial Member.

Balram Rajak, s/o. Shri Chapatal Rajak, aged about 30 years, Junior Engineer, Gr. II, Office of Rail Spring Workshop, Sithauli, District Gwalior (M.P.).

... Applicant

(By Advocate - Shri V. Tripathi)

V e r s u s

1. Union of India, through its Secretary, Ministry of Railway, Rail Bhawan, New Delhi.

2. General Manager, Central Railway, C.S.T., Mumabi.

3. Chief Workshop Manager, Rail Spring Workshop, Sithauli, District Gwalior.

... Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R

By J.K. Kaushik, Judicial Member :-

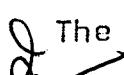
Shri Balram Rajak has sought the following reliefs in this original application :

- "(i) Summon the entire relevant record from the respondents;
- (ii) Set aside the impugned order dated 5-12-1998 Annexure A/1;
- (iii) Direct the respondents to provide all consequential benefits to the applicant as if the impugned order is never passed;
- (iv) Any other order/orders as deemed fit and proper, in the interest of justice;
- (v) Award cost of the litigation to the applicant."

2. The factual matrix of this case leading to

filling of the OA is that the applicant was initially appointed to the post of Artisan Grade-III on 11/09/1989 in the respondents Department. He enjoyed his further promotion to the post of Artisan Grade-II and Artisan Grade-I in the scale of Rs. 1200-1800/- and Rs. 1320-2040/- respectively. These two grades were revised on 07/11/1998 and the applicant was promoted in Scheduled Caste quota to the post of Junior Engineer Grade-II in the pay scale of Rs. 5000-8000/- vide promotion order dated 07/11/1998 (Annexure A/4). The applicant immediately resumed the duties on the promotion post.

3. The further facts of the case of the applicant are that he was appointed on electrical wing from the very beginning and possessed the qualification of ITS(Electrical). He has been discharging his duties of electrical machinery maintenance even since he is appointed. He belongs to scheduled caste category and was only eligible candidate for promotion to the post of junior engineer Grade-II in the electrical faculty. But just after about 1 month of his promotion he was ordered to be reverted without giving any show cause notice or assigning any reason. A writ petition was filed at Gwalior Bench of the Hon'ble High Court of Madhya Pradesh due to non-availability of judges in Central Administrative Tribunal at the relevant time. The Hon'ble High Court granted ad-interim order and the applicant is being continued on the said post. The writ petition was subsequently disposed of with a liberty to redress the grievances before the Central Administrative Tribunal. The original application has been filed mainly on the ground that the impugned order was issued without following the principles of natural justice and the same entails civil consequences and is liable to be quashed.

 The next ground of challenge is that the order of reversion

does not contain any reason and the impugned order is arbitrary. The other ground is that Shri Magaria who is not at all eligible to consider in electrical branch being an employee of mechanical branch cannot be a ground for applicant's reversion.

4. The respondents have contested the case and have filed a detailed reply to the original application. A preliminary objection has been taken that the Union of India is required to be served notices through General Manager of the said Zonal Railway and not to Secretary, Ministry of Railway. The cause title is required to be corrected. The main ground of defence on behalf of the respondents is that the Junior Engineer Grade-II is a selection post and the applicant was appointed on adhoc basis without going through the requisite selection and thus he has no right to hold the post. He was given the adhoc promotion on the basis of bottom seniority. The applicant opted for mechanical wing which has separate seniority for the purpose of promotion to the post of Junior Engineer Grade-II. The applicant has given his option for mechanical wing and the averments made in the original application that he opted for electrical wing is false in toto. The applicant failed in the written test as a part of selection to the post of Junior Engineer Grade-II in mechanical branch. He has not availed the alternative remedy. Hence this application deserves to be dismissed.

5. A rejoinder has been filed on behalf of the applicant and grounds raised in the ground of defence submitted in the reply has been controverted. A reply to the rejoinder has also been filed wherein it has been submitted that the total cadre of the Junior engineer Grade-II is of

5 posts and all the posts have been filled in accordance with the recruitment rules. No posts are vacant. An application was filed for taking certain additional documents on record on behalf of the applicant.

6. We have heard the learned counsel for the parties at a length and have carefully perused the records of this case. The learned counsel for the applicant has heavily banked upon the model roster Annexure 1A/1 and has submitted that the Railway Board has issued a circular and as per this on the 4th point the applicant ought to have been considered, since he belongs to the scheduled caste category for which this point is meant. The learned counsel for the applicant has also submitted that even though he has opted for mechanical branch and also he failed in the selection held for the post of Junior Engineer Grade-II in mechanical branch yet the respondents by their subsequent action considered him as belonging to the electrical branch and this position is evident from the factum that an order dated 07/11/1998 (Annexure A/4) was passed by which the applicant was promoted to the post of Junior Engineer Grade-II in electrical branch. The learned counsel for the applicant has strongly submitted and has reiterated the facts and grounds raised in the original application and rejoinder. He has submitted that the applicant was promoted to the post of Junior Engineer Grade-II with a condition that he shall be continued till replaced by regularly selected candidate but he was reverted just after a period of one month and that too without any notice or disclosing any reasons.

7. On the contrary the learned counsel for the respondents have submitted that the cadre of 5 posts out of which none of the point is made for scheduled caste as per

the reservation roster and that to all these posts have already been filled. Nextly the applicant has already opted for mechanical branch where he also got a chance to perspire in as much as he was allowed to appear in the examination held for the promotion posts. But he has failed. He has submitted that the applicant should thank to himself and should not blame the respondents. Since he has opted for another cadre question of considering him in another cadre does not arise. ~~XXX~~ Even in electrical side there is one person Shri Madan Lal who is senior to the applicant and belong to scheduled caste category and he is still awaiting the promotion. As regards the breach of principle of natural justice in issuance of the impugned order of reversion is concerned the applicant was only promoted on adhoc basis and without any mention as regards his continuance till replaced by regularly selected candidates. A person who is promoted on adhoc basis does not get any right ~~XXX~~ least to say ^{right} vested to hold the post, hence no error has been committed by the respondents. In fact the respondents needed the services of the applicant on the post of Junior Engineer Grade-II for a short period and when the necessity was over the applicant was brought to his substantive post.

8. We have considered the rival contentions raised on behalf of the parties. At the very outset the contention of the applicant that the cadre of the Junior Engineer Grade-II in electrical side is of 5 posts and on point No. 4 the applicant ought to be considered, is concerned, it comes to our mind that the post based roster issued by the Railway Board which is being relied upon by the learned counsel of the applicant has already been struck down by co-ordinate Bench of this Tribunal in Rajendra Kumar Gaur and another Versus The Union of India and another

2001(2) ATJ 438 and the judgment has been affirmed by the Hon'ble Rajasthan High Court, Jodhpur in Union of India and others Versus Rajendra Kumar Gaur and others

2003(1) SLR 533 and wherein a direction has been given to follow the circular which is framed by the DOPT. We have perused the model roster for promotion in the cadre strength of less than 13 issued by the DOPT and it has been provided that up to the strength of 6 no reservation has been provided. The reservation only comes on the second replacement. In the present case it has not been shown that any replacement has been made so far and only the initial points have been filled in. Thus the contention of the learned counsel for the applicant stands repelled.

9. The other contention of the learned counsel for the applicant that he has been continued in the Electrical branch is also unfounded. We have perused the Annexure A/4 by which the applicant was promoted purely on adhoc basis. Admittedly he has not passed the selection for the post of Junior Engineer Grade-II. The adhoc promotion does not give any ~~vested~~ right to hold the post. It is not the case of the applicant that any of his junior is continued to work on adhoc basis and he has been singled out for reversion. Rather it is a specific case of the respondents that one of his senior is still awaiting promotion and that to the said senior belongs to scheduled caste category. In this view of the matter the applicant's contention by ~~stretch~~ ^{and} no ~~xxx~~ of imagination can stand, ~~xxx~~ stands repelled.

10. The other contention of the applicant that he belongs to the electrical side also does not have any force in as much as it is a fact that the applicant has opted for mechanical branch in which he has undertaken a selection also and after failing the selection therein the applicant

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has been trying to establish his claim in the electrical side. In our opinion he can have no claim in the electrical side. Now last but not the least the contention of the argument of the learned counsel for the applicant that there is a clear breach of the principle of natural justice in as much as the applicant has been reverted without any prior notice, we have already held in the aforesaid paragraph that the applicant had absolutely no right to hold the post of Junior Engineer Grade-II in electrical side in as much as he never passed the selection and was holding the same only on a stop gap arrangement. The contention of the applicant has no legs to stand. In this view of the matter the applicant has no case for interference of this Tribunal.

11. The upshot of the aforesaid discussion is that the original application is meritless and hence fails. The same stands dismissed, but without any order as to costs.


(J.K. KAUSHIK)
JUDICIAL MEMBER


(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

पूठांकन सं ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अबो शिन:-
(1) राधिक, उच्च न्यायालय वार एसोसिएशन, जबलपुर
(2) आदेशक नी/कोमी/सु..... के काउंसल V. Tripathi, Adv.
(3) फरमानी नी/कोमी/सु..... के काउंसल S P Sinha, Adv.
(4) व्यापार एवं आवश्यक कार्यवाही देव
सूचना एवं आवश्यक कार्यवाही देव


अप संसद
29/5/03

Agreed
22.5.03

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