

20

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

19.09.2011

MA No. 96/2011 (in OA No. 176/2007)

Mr. Ramesh Chand, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

As prayed by the applicant's counsel, put up the MA and
OA for hearing on 28.09.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Known to

[Signature]
9/9

28.9.2011

Mr. Ramesh Chand, Counsel for applicant
V.S. Gurjar, Counsel for respondents
Mr. ~~Ramesh~~

MA No. 96/2011 filed by the
applicant for restoration of the OA is allowed.
The OA is restored to its original position.
The MA stands disposed of.

Heard on OA. The OA is disposed
of by a separate order

Anil Kumar
(Anil Kumar)
M(A)

K. S. Rathore
(Justice K.S. Rathore)
M(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 176/2007

DATE OF ORDER: 28.09.2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Panchu Ram Bairwa S/o Shri Narain, aged about 48 years, R/o Sawami Narain Bhawan Poojamarg Dholla Bhatta Ajmer, presently working on the post of Section Engineer, Loco Workshop, under Chief Works Manager, N.W.R. Loco Shop, Ajmer.

...Applicant

Mr. Ramesh Chand, counsel for applicant.

VERSUS

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi - (name of R-1 has been deleted vide order dated 21.08.2008 passed in MA No. 209/2007).
2. General Manager, N.W. Railway, Jaipur.
3. Chief Works Manager, N.W.R. Loco Workshop, Ajmer.

...Respondents

Mr. V.S. Gurjar, counsel for respondents.

ORDER (ORAL)

Heard the rival submissions made on behalf of the respective parties. A very short controversy is involved in the present Original Application as this Original Application is directed against the letter dated 30.11.2006 (Annex. A/1), show cause notice dated 18.04.2007 (Annex. A/2) and show cause notice dated 04.05.2007 (Annex. A/3) and claimed relief to direct the respondent nos. 2 and 3 that the applicant may not be reverted from the post of Section Engineer, pay scale of Rs. 6500-10500.

2. The main ground of the applicant to challenge the impugned show cause notices is that as per Annexure A/6, letter



dated 15th May 2007, Roster Reservation Point No. 8 ST is lying vacant since 01.04.1995 on account of Promotion of Shri Babu Lal Agarwal, on the post of Sr. Section Engineer. Further, the applicant submitted that the respondents have failed to appreciate relevant documents which contain that point no. 8 ST lying vacant had already been filled on 23.12.1997 by replacement to Shri Ram Kumar Meena (ST) as per Annexure A/7. As per seniority, the applicant was promoted to the post of Section Engineer in the pay scale of Rs. 6500-10500 on adhoc basis, vide office order dated 02.04.2003 (Annex. A/4). One Shri Lakhan Singh, ST, was promoted as Section Engineer in the pay scale of Rs. 6500-10500 and again replaced against roster point no. 8 vide Annexure A/7. The applicant was regularized on the post of Section Engineer in the pay scale of Rs. 6500-10500 w.e.f. 01.11.2003 vide Annexure A/5 office order dated 19.10.2004.

3. The applicant further submitted that now the respondent no. 3 proposed to conduct a selection for three posts for promotion to the post of Section Engineer in the pay scale of Rs. 6500-10500, out of which one post was kept vacant for ST against Roster Point No. 8 vide Annexure A/8 notification dated 24.12.2006. The respondent no. 3 issued Office Order dated 27.02.2007 (Annex. A/9) in which three employees namely Shri Ramji Lal Sharma, Rameshwar Prasad Meena and Rajendra Kumar Sharma were placed on panel of Section Engineer, and subsequently they were promoted to the post of Section



Engineer in the pay scale of Rs. 6500-10500. Hence, Roster Point No. 8 meant for ST has again been replaced.

4. The applicant further submitted that the respondent no. 2 sent a letter dated 30.11.2006 (Annex. A/1) to the respondent no. 3 wherein it has been submitted that under modified procedure of 01.11.2003 the reservation policy has not been followed as before operating point no. 13, the deficiency of ST point no. 8 should be filled up though the fact is that there is no deficiency of ST in the sanctioned cadre of 8. Further, the respondent no. 3 issued show cause notice dated 18.04.2007 (Annex. A/2) and show cause notice dated 04.05.2007 (Annex. A/3). The applicant submitted reply dated 15.05.2007 to the show cause notices in which all the relevant facts have been pointed out and prayed for dropping the show cause notice, and asked the factual position of the roster point no. 8 and submitted that Roster Reservation Point No. 8 ST is lying vacant since 01.04.1995 on account of promotion of Shri Babu Lal Agarwal. In the rejoinder also, the applicant has produced Annexure A/12 and further submitted that Roster Point No. 8 meant for ST employee has already been utilized by promoting Shri Ram Kumar Meena.

5. Per contra, the learned counsel appearing for the respondents has submitted that this Original Application is not maintainable because it is directed against the show cause notices. He further submitted that when a show-cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government



servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law, and placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **State of U.P. vs. Brahm Datt Sharma** reported in (1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943. The Hon'ble Supreme Court in the case of **State of U.P. vs. Brahm Datt Sharma** (supra) has held that the purpose of issuing show-cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature. The Hon'ble Supreme Court further has held that the High Court in our opinion ought not have interfered with the show-cause notice.

6. In support of his submission, the applicant has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **R.K. Sabharwal & Ors. vs. State of Punjab & Ors.** reported in 1995 SCC (L&S) 548, wherein the Hon'ble Supreme Court has observed that once the posts earmarked for the Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant, in a cadre thereafter, is to be filled from the

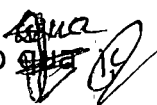


category – reserve or general – due to retirement etc. of whose member the post fell vacant.

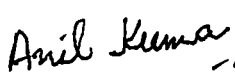
7. Having heard the rival submissions made on behalf of the respective parties and upon careful perusal of the pleadings and material available on record, it is apparent that the applicant has challenged the show cause notice dated 18.04.2007 (Annex. A/2) and another show cause notice dated 04.05.2007 (Annex. A/3) by filing the present Original Application. The applicant was called upon vide show cause notice dated 18.04.2007 (Annex. A/2) and given an opportunity for showing cause against the proposed action within 15 days from the date of receipt of that order, and similarly Annexure A/3 dated 04.05.2007 is also a show cause notice. It is not disputed that the applicant has preferred this Original Application without showing cause before the respondents. Therefore, in our considered view and in view of the ratio decided by the Hon'ble Supreme Court in the case of **State of U.P. vs. Brahm Datt Sharma** (supra), the applicant could have raised all the objections before the respondents, which are raised here in the present Original Application, and it was for the respondents to consider and decide the same, but the applicant has chosen to file this Original Application. Having considered the Annexure A/12 that the Roster Point No. 8 meant for ST employee had been earlier utilized by promoting one Shri Ram Kumar Meena, we deem it proper at this stage to give liberty to the applicant to submit his representation before the respondents mentioning all these facts, which are taken here in the Original Application, and the respondents are further directed

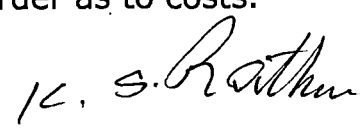


to consider the case of the applicant, if roster point is made available. The applicant is further directed to file representation within a period of fifteen days from the date of receipt of a copy of this order, and after receiving such representation, the respondents are directed to consider the same in accordance with the provisions of law.

8. As at the time of issuing notice to the respondents, this Bench of the Tribunal has granted ex-parte interim order on 24.05.2007 directing the respondents to maintain status quo  the applicant, and we further extend the interim order dated 24.05.2007 till the disposal of the representation of the applicant, as directed hereinabove. However, it is made clear that if the applicant is failed to submit representation within a period of fifteen days from the date of receipt of a copy of this order, the interim order dated 24.05.2007 granted by this Bench of the Tribunal shall stand vacated automatically, and even after disposal of the representation, this interim order shall stand vacated.

9. With these observations and directions, the present Original Application stands disposed of with no order as to costs.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)