

25-2-2008

Mr. C. B. Sharma, Counsel for applicant.

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

Heard learned Counsel for the parties.

Order Reserved.

M. L. Chauhan
(J. P. Shukla)

M (A)

M. L. Chauhan
(M. L. Chauhan)
M (J)

26-2-08.

order pronounced today

Time of hearing by the

before said Bench.

S.
26.2.08

C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the ²⁶ day of February, 2008

ORIGINAL APPLICATION NO. 400/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Mahipal Singh Rathore,
s/o late Shri Bhagwat Singh,
r/o 75, Adarsh Nagar, Ajmer and
presently working as Office Superintendent (General)
Grade-I, Office of Chief Works Manager,
North Western Railway,
Ajmer Division, Ajmer.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager,
North Western Zone,
North Western Railway,
Jaiur.
2. Chief Works Manager (Loco),
North Western Railway,
Ajmer Division,
Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage),
North Western Railway,
Ajmer Division,
Ajmer.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant has filed this OA, thereby praying for the following reliefs:-

- i) That the entire record relating to the case be called for and after perusing the same, the respondents may be directed to promote the applicant to the post of Chief Office Superintendent scale Rs. 7450-11500 against the vacancy by quashing notification dated 8/10/2007 (Annexure A/1) with the letter dated 11/10/2007 (Annexure-A/2) to the extent of one vacancy of general category with all consequential benefits.
- ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- iii) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that respondent No.2 issued a notification dated 28.2.2005 (Ann.A8) for selection to the post of Chief Office Superintendent, scale Rs. 7450-11500 thereby notifying 7 vacancies for general category. Thereafter respondents issued another notification 3.12.2005 (Ann.A3) thereby amendment was made in List-A of persons who were eligible for appointment to the said post and simultaneously venue and time for the purpose of conducting examination was notified. The result of the examination conducted on 29.12.2005 was declared on 28.6.2006 in which name of the applicant find mention at Sl.No.8. Against 7 vacancies notified pursuant to ann.A8, 10 persons were declared as passed

in the examination (Ann.A4). Promotion orders were issued vide order dated 17.7.2006 thereby giving appointment to persons who were declared as passed as per Ann.A4. Since there were 7 posts only and name of the applicant was at Sl.No.8, as such he could not be promoted vide order dated 17.7.2006 (Ann.A6). According to applicant, the respondents have again notified 2 posts of Chief Office Superintendent vide impugned notification dated 8.10.2007 (Ann.A1) read with amended notification dated 11.10.2007 (Ann.A2) whereby one post was notified for reserved category and other for general category. The applicant belongs to general category.

In sum and substance, case of the applicant is that since his name find mention in the earlier panel, as such, vacancy which has been notified subsequently for general category should be filled in from earlier panel prepared on the basis of Ann.A8.

When the matter was listed on 15.11.2007, this Tribunal directed that the selection process pursuant to Ann.A1 and A2 may go on but the respondent shall not make appointment against the post meant for general category till the next date and the said stay continued from time to time.

3. Notice of this application was given to the respondents. The respondents have stated that as per notification dated 28.2.2005 (Ann.A8), 7 vacancies for

general category for selection to the post of Chief Office Superintendent were notified. Out of 7 vacancies, 4 vacancies were existing and 3 vacancies were anticipated within ensuing 15 months w.e.f. 28.2.2005. Since Shri Shankar Verjani, COS was due to retire on 30.6.2005, Shri Bhanwar Lal Khatri COS was due to retire on 31.7.2005 and Shri Shyam Sunder Keswani, COS was due to retire on 31.10.2005 and the period of 15 months expired on 30.5.2006 with reference to the notification dated 28.2.2005 (Ann.A8). As such, against 7 vacancies 7 persons have been promoted. Since there was no vacancy available thereafter, as such, the applicant could not have been promoted. The respondents have further stated that further notification dated 11.1.2007 for filling up one post of general category was issued for filling vacancy occurred on superannuation of Shri Prabhual Kayath and one Shri Balwant Singh Jyotiyana was selected as COS against that vacancy and given appointment w.e.f. 10.4.2007 (Ann.R2). The applicant has made no grievance against this notification, thus, according to the respondents, the applicant cannot challenge this subsequent notification issued vide Ann.A1 read with Ann.A2.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. There is no dispute to the facts that vide Ann.A8, selection to the post of 7 vacancies of Chief Office Superintendent belonging to general category was notified. Examination was to be held on 30.3.2005, which was subsequently postponed. It is also not in dispute that vide letter dated 3.12.2005 (Ann.A3) time and venue for examination was fixed. Further perusal of Ann.A3 reveals that name of one person from the eligibility list as issued vide notification dated 28.2.2005 was deleted as the said official retired from service and in his place senior most person from List-B was incorporated in List-A, otherwise no change was made in the eligibility list as prepared vide notification dated 28.2.2005. It is also not disputed that against aforesaid 7 vacancies, 10 persons were declared as passed vide letter dated 28.6.2006 (Ann.A4). It is also not in dispute that 7 persons were given appointment as per the seniority list, against 7 posts meant for general category. Admittedly, the applicant was junior to those persons who were given appointment vide letter dated 17.7.2006 (Ann.A6). The grievance of the applicant is that the post which has fallen vacant as on 30.11.2006 should have been filled from the original panel thereby promoting the applicant. The learned counsel for the applicant, submits that vacancy which has fallen vacant on 30.11.2006 on account of superannuation is an anticipated vacancy in ensuing 15 months w.e.f. the

amended notification dated 3.12.2005, as such, the same should be filled from the previous panel.

6. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the said contention of the learned counsel for the applicant cannot be accepted. The original notification for selection to the post of Chief Office Superintendent was issued on 28.2.2005 thereby notifying 7 vacancies for general category. It is also borne out from the record that there were 4 clear cut vacancies and 3 vacancies were anticipated vacancies to be fallen vacant within 15 months from the original notification dated 28.2.2005. Thus, the time of 15 months has to be computed from the original notification dated 28.2.2005 and not from 3.12.2005 as contended by the learned counsel for the applicant. Notification dated 3.12.2005 (Ann.A3) cannot be said to be amended notification. Vide this notification venue and time for examination has been notified and such examination was to be conducted pursuant to eligibility list issued pursuant to notification dated 28.2.2005 except that name of one person who has already retired from service, was deleted from eligibility List-A and in his place, name of senior most person from List-B was incorporated. Thus, according to us, the period of 15 months has to be computed from 28.2.2005 and not from 3.12.2005. The

period of 15 months as computed from 28.2.2005 expired on 30.5.2006. Admittedly, the subsequent vacancy occupied by Shri Prabhual Kayath, COS who superannuated on 30.11.2006 could not have been covered by the earlier notification. Thus, the applicant has no case.

6. That apart, the grievance of the applicant in this OA is regarding vacancy of 30.11.2006. This vacancy was notified for further selection on 1.11.2007. Against this vacancy, one Shri Balwant Singh Jyotiyana was selected and order to this effect was issued on 10.4.2007. Copy of notification dated 1.11.2007 and 10.4.2007 have been placed by the respondents as Ann.R1 and R2. The applicant has neither challenged the validity of notification dated 1.11.2007 nor he has challenged the selection of one Shri Balwant Singh Jyotiyana as made vide order dated 10.4.2007. Thus, the applicant is not entitled to any relief on this account and the contention that since he has qualified the examination in earlier panel, as such, he should be considered against the subsequent panel, validity of which has not been challenged by the applicant, is without any basis and deserves outright rejection.

7. Thus in view of the facts and circumstances of the case, it is not permissible for the applicant to

challenge subsequent notification dated 8.10.2007 (Ann.A1) and 11.10.2007 (Ann.A2) without challenging the earlier selection as conducted vide notification dated 11.1.2007.

8. Thus, viewing the matter from any angle, we are of the view that the present application is wholly misconceived and the same is dismissed with no order as to costs.

9. IR granted on 15.1.2007 and continued from time to time is hereby vacated.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

R/