

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:BILASPUR

Original Application No.203/00757/2016

Jabalpur, this Monday, the 10th day of September, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Chandra Shekhar Sharma, S/o Shri T. Ramasharma,
Aged about 42 years, Junior Engineer
/P.Way/Construction, Under Dy. Chief Engineer
(Construction), S.E.C. Railway, Chindwara,
District: Chindwara, (M.P.)-480001

-Applicant

(By Advocate –**Shri B.P.Rao**)

V e r s u s

1. Union of India, through the General Manager,
S.E.C.Railway, Bilaspur Zone, Headquarters' Office,
Bilaspur-495004 (CG)

2. The Chief Personnel Officer (RR),
S.E.C. Railway, Bilaspur Zone,
Headquarter's Office, Personnel Office,
Bilaspur 495004 (CG)

3. The Asstt. Personnel Officer,
Personnel Department, Headquarter Office,
S.E.C. Railway, Bilaspur Zone, Bilaspur-495004 (CG)

4. Mr. Hemant Kumar Joshi, working as SSE/P-Way
Under Principle Chief Engineer, S.E.C.Railway,
Headquarters, Bilaspur-495220 (CG) **-Respondents**

(By Advocate –**Shri Vijay Tripathi**)

(Date of reserving the order:-10.07.2018)

O R D E R

By Navin Tandon, AM:-

This Original Application has been filed as the applicant is aggrieved by the fact that he was not promoted as Senior Section Engineer after restructuring of his cadre.

2. The applicant has made the following submissions:-

2.1 The applicant was appointed on 17.03.2005 as Junior Engineer-II and is having his lien in Civil Engineering in Headquarters Bilaspur. He is presently posted under Dy. CE (Construction) at Chindwara. Next promotional post is SSE (P-Way).

2.2 The sanction cadre for the post of SSE (P-Way) in Headquarter was 10, which has been raised to 13 with effect from 01.11.2013 under restructuring as communicated vide order dated 03.02.2015 (Annexure A-3). These posts of SSE (P-Way) are filled up 20 % by direct recruitment and 80% through promotion.

2.3 Shri Hemant Kumar Joshi, JE-I (P.Way), (respondent No. 4), who is having his lien with Bilaspur Division was posted as SSE (P-Way) and was temporarily posted in Engineering Department of Headquarter office against the existing vacancy vide order dated 28.08.2012 (Annexure A-1). Note 4 of this order say that Shri Joshi

will be repatriated to his parent division when RRB candidate will report. However, he is still continuing in Headquarter office.

2.4 After restructuring, one RRB candidate namely Shri Tikeshwar Verma has joined the post of SSE (P-Way) under direct recruitment quota. As such against the sanctioned strength of 13 posts, 11 persons are working as SSE (P-Way), including respondent No.4. Therefore, the respondents conducted modified selection process/suitability test only for two vacant posts and the senior most J.E. (P-Way) Shri Arun Kumar Sinha (UR) has been promoted as SSE (P-Way) on 26.10.2015 (Annexure A-5). The applicant, who was at serial No.2 in the seniority list of J.E. (P-Way) (Annexure A-4) has been denied this promotion.

2.5 The applicant submitted his representation dated 05.11.2015 (Annexure A-6) with a request to fill up the remaining vacant post of SSE (P-Way) as on 01.11.2013. The said representation has been rejected vide order dated 26.02.2016 (Annexure A-7).

2.6 It is the case of the applicant that respondent No. 4 is occupying one post of Headquarter which is not correct. Also keeping one post reserved for SC category is against the settled legal position.

3. The applicant has sought for the following reliefs in this Original Application:

“8. Relief(s) Sought:

(8.1) That, the Hon'ble Tribunal be pleased to allow the O.A.

(8.2) That, the Hon'ble Tribunal be pleased to quash and set aside Officer Letter No. HQ/Ara. Sanwarg/503/Engg.-67/4442 dated 26.2.2016 (Annexure A-7).

(8.3) That, the Hon'ble Tribunal be pleased to pass an order, directing the respondents to promote the applicant as SSE (P-Way) under restructuring w.e.f. 1.11.2013 against the vacant post which would arise on repatriation of respondent No.4 Mr. Hemant Kumar Joshi back to Bilaspur Division.

(8.4) That, the Hon'ble Tribunal be pleased to comply with R.B.E. No. 102/1999 and to take positive steps regarding de-reservation of reserved post, and to fill up reserved post of SSE (P Way) from UR category due to non-availability of SC/ST candidates. ”

4. The respondents have filed their reply and have made the following submissions.

4.1 Shri Hemant Kumar Joshi, respondent No.4 was promoted as SSE (P-Way) in Bilaspur Division vide order dated 09.01.2012 (Annexure R-1). Subsequently, he was temporarily posted as SSE (P-way) under PCE/SECR against the existing vacancy vide order dated 28.08.2012 (Annexure A-1)

4.2 Before implementation of restructuring the sanctioned cadre of SSE (P-Way) in Engineering Department/HQ was 10, wherein 10 staff were working, including respondent No.4.

4.3 Consequent upon implementation of restructuring, the cadre strength of SSE (P-Way) in Engineering Department/HQ has been

revised/increased from 10 to 13 with effect from 01.11.2013 vide order dated 03.02.2015 (Annexure A-3).

4.4 During the process of filling up the posts of vacancies of SSE (P.Way) as per normal procedure, Shri V.R.C. Dange, SSE (P.Way) working in Construction Organization, Bilaspur and lien holder of engineering department/HQ was repatriated and posted in Engineering Dept./HQ on 25.02.2015 (Annexure R-2).

4.5 Further, one Trainee SSE (P-Way) namely Shri Tikeshwar Verma, appointed directly through RRB/Bilaspur, was regularized and posted in Engineering Department/HQ after completion of training vide order dated 16.06.2015 (Annexure R-3).

4.6 Consequent upon posting of Shri Tikeshwar Verma and Shri V.R.C. Dange as SSE (P-Way) in Engineering Dept./H.Q., 11 persons excluding respondent No.4 were working on roll against revised sanctioned strength of 13.

4.7 Therefore, there were two vacancies in cadre of SSE (P.Way). As per roster register, these two vacancies were identified one for Unreserved and one for SC (Short fall). Accordingly, assessment was done for filling up of these vacancies by promotion of the senior most employees in feeder grade i.e. JE (P.Way). However, after perusal of the seniority list of JE (P.Way) it is observed that no SC candidate is available in the feeder grade and

in absence of SC candidate only one UR candidate can be promoted after modified selection.

4.8 Against one unreserved vacancy the senior most employee in feeder grade, Shri Arun Sinha, JE (P.Way) was found suitable and empanelled for promotion to the post of SSE (P.Way). Since no SC candidate was available in feeder grade i.e. J.E. (P.way) one vacancy of SC category remains unfulfilled.

4.9 To fill up the vacancy earmarked for SC, after downgrading, one JE (P. Way) of SC category namely Shri Shyamlal is under training and will be regularized/ posted in Headquarter shortly.

5. Heard the learned counsel for the parties and perused the documents available before us.

6. It has been communicated in annexure A-7 that:

विदित हो वरिष्ठ अनुभाग अभियंता (रेलपथ) का पद मुख्यालय नियंत्रिक संबंध (centralized cadre) नहीं है। उसके बावजूद पुनर्गठन के पूर्व उक्त पद पर कुल स्वीकृत 10 पदों के विरुद्ध कुल 17 कर्मचारी मुख्यालय लियन के कार्यरत थे। जिनमें 10 कर्मचारियों के अतिरिक्त 05 कर्मचारी निर्माण संगठन तथा 02 अन्य विभाग में बाह्य संबंध आधार पर कार्यरत थे। वर्तमान में अभी भी लगभग 05 कर्मचारी मुख्यालय लियन के मुख्यालय से बाहर कार्यरत हैं।

6.1 The respondents in their reply have not clarified whether the personnel working in Construction Department are having their lien with Engineering/Headquarter or otherwise. Also no light has been thrown regarding the methodology of assessment of

vacancies. If 17 persons were already working against the sanctioned strength of 10, the assessment of two vacancies does not appear to be correct. In that case, there should not have been any promotion.

6.2 However, if the persons physically working in the Headquarter/Engineering has to be taken into consideration, it is clear that Shri R.C. Dange was not on the roll of Engineering/Headquarter as on 01.11.2013, the date on which the restructuring is to be carried out. What is the status of the post Shri R.C.Dange was occupying in Construction Department has not been indicated.

6.3 It is apparent that the respondents have not carried out the exercise in fair and transparent manner.

7. Accordingly, we direct the respondents that the assessment of vacancies in Engineering Headquarter as on 01.11.2013 should be carried out again. The persons on roll should be calculated by excluding respondent No.4.

7.1 The vacancies so worked out should be filled up as per the relevant rules. This exercise should be completed within 60 days from the date of receipt of a certified copy of this order. The outcome of this exercise be communicated to the applicant.

8. Accordingly the O.A. is disposed of. In case the applicant is still aggrieved, he has the liberty to approach this Tribunal through fresh O.A. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

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**(Navin Tandon)
Administrative Member**