



CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

OA No.350/01480/2015

Reserved on -

Dated of order: ~~10/05/2016~~

30.5.2016

2.6.2016

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member  
The Hon'ble Ms. Jaya Das Gupta, Administrative Member

.....

Raghunath Banerjee, son of Late Ramprasad Banerjee aged about 58 years, working for gain at 3, Koilaghat Street, Eastern Railway, Kolkata-700 001.

.....Applicant

For the Applicant :Mr.A.K.Gayen & Ms.T.Maity, Counsel

-Versus-

1. Union of India service through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Kolkata-700 001.
2. The Chief Personnel Officer, Eastern Railway, 17, N.S.Road, Fairlee Place, Kolkata-700 001.
3. Shri Om Prakash Singh, the Senior Personnel Officer (W&IR), Eastern Railway, 17, N.S.Road, Fairlee Place, Kolkata-700 001.
4. The Sr. Personnel Officer (CW & MPP), Eastern Railway, 17 N.S.Road, Fairlee Place, Kolkata-700 001.
5. The Assistant Personnel Officer (W), Eastern Railway, 17, N.S.Road, Fairlee Place, Kolkata-700 001.
6. Sri Rajesh Biswas working for gain at Fairlee Place Canteen (TRIPTI), 17, N.S.Road, Fairlee Place, Kolkata-700 001.

..... Respondents

For the Respondents: Mr.L.K.Chatterjee, Counsel.

20/5/16

## ORDER

**MS. JAYA DAS GUPTA, AM:**

The Applicant (Shri Raghunath Banerjee) has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) An order be passed by quashing and/or setting aside of the decision dated 10.09.2015 duly received on 14.09.2015 passed by the Sr. Personnel Officer (W&IR), E.Rly, on behalf of CPO, E.Rly;

b) Direction be given upon the concerned respondent more particularly the respondent no.2 to grant officiating pay along with all consequential benefits in favour of the applicant to the post of Senior Canteen Manager situated at Koilaghat namely Santusthi on and from the responsibilities shoulding by the applicant and also recommended by the recognized Union on 24.08.2015;

ci) Direction be made upon the respondents more particularly respondent nos. 2 & 3 to regularize the applicant to the post of Sr. Canteen Manager in accordance with the guideline of the Railway Board when the applicant shouldering the responsibilities to the posts of Sr. Canteen Manager beyond 18 months i.e. not less than 4 years;

d) To regularize the applicant to the post of Sr. Canteen Manager on regular basis in a clear vacancy and fixing the pay of the applicant accordingly along with arrears in such post on and from the responsibilities shouldering by him after retirement of Shri G.C.Ghosh on 29.04.2011;

e) Such other order and/or orders, direction and/or directions be made as to the Hon'ble Court may think fit and proper."

(Extracted as such)

2. This case has been remitted back by the Hon'ble High Court, Calcutta vide order dated 13<sup>th</sup> October, 2015 in WPCT No. 189 of 2015.

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3. The case in brief, is that the applicant submitted that he (Shri Raghunath Banerjee) was initially appointed as a Wash Boy in the year 1972 and subsequently he was promoted to Salesman Grade I within the stream Vendor-I. A vacancy was subsequently created in the line of promotion, for the post of Assistant Canteen Manager in the department due to the retirement of one Shri G.C.Ghosh Senior Canteen Manager on April 29, 2011. The applicant was asked to discharge the duties and responsibilities of the said post in an officiating capacity. He preferred representation raising his grievance that on the said post he may be regularised and also be paid salary. The said representation was rejected and being aggrieved the applicant has preferred an Original Application along with an application for interim relief for payment of salary for discharging higher duties and responsibilities from 2011. The applicant approached the CAT on several occasions in OA No. 1559 of 2014 disposed of on 09.12.2014 and OA No. 934/2015, disposed of on 15.09.2015 and ultimately, the order of remand by the Hon'ble High Court was passed on 13<sup>th</sup> October, 2015 with direction that the Tribunal should decide the OA as expeditiously as possible preferably within a period of six months from the date of presentation of the certified copy of the order.

4. The serious contention of the applicant is that against the provision of Recruitment Rules, though he was eligible for promotion to the post of Assistant Canteen Manager, ultimately, Respondent No.6 ( Shri Rajesh Biswas), though he was not on direct line of promotion,

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was selected for the post. Allegedly Shri Biswas was also junior to the Applicant.

5. Per contra, it is the contention of the Respondent authorities that to fill up one post of Assistant Canteen Manager under the promotion quota, selection was conducted amongst the eligible staff on two occasions i.e one on 31.3.1999 and thereafter on 13.03.2003. But the outcome of the selection was that none of the candidates was found suitable to fill up the said post including the applicant. Thereafter based on existing circumstances and administrative constraints, as a onetime relaxation, with the approval of the General Manager, the post of Assistant Canteen Manager was filled up by making all Canteen employees working in Headquarters Unit eligible to sit in the selection. In the said selection, the applicant along with Respondent No.6 i.e. Rajesh Biswas appeared. AS an outcome of that selection, the Respondent No.6 was declared suitable for promotion to the post of Assistant Canteen Manager and consequently he was empanelled for the post of Assistant Canteen Manager w.e.f. 16.10.2006. It has been stated that as the selection was made as per due procedure, such promotion of Respondent No.6 was legal and, therefore, this OA should be dismissed being devoid of any merit.

6. The Respondent No.6, Shri Rajesh Biswas did not file any reply.

LWC

7. The point of issue is can the promotion by selection to the post of Assistant Canteen Manager be made de hors the Rules?

8. Heard both parties substantively. Consulted the records.

9. The Annexure-A/1 gives a Chart showing the line of promotion to the various posts of Canteen Staff of Eastern Railway. It is extracted as such:

<p>Safaiwala, Cleaner, Wash boy, Tea/Coffee maker, Vendor-III, Kitchen Asst.II, Scale Rs. 2550-3200/- (Direct Recruitment)</p> <p>Vendor-I Scale Rs.2650-4000/- <u>Non selection (Oral)</u></p>	<p>Asst. Cook, Asst. Halwai-II Scale Rs.2650-4000/- Non selection(Aptitude test-Viva voce) <u>50% DR &amp; 50% By promotion</u></p> <p>Salesman-I Scale Rs.2750-4400/- <u>None Selection (Oral)</u></p>	
<p>Store Keeper-II, Jr. Clerk, Asst. Manager II, Clerk, Cashier, Asst. Manager-I Scale Rs.3050-4590/- Selection(Written and Viva voce) <u>50% DR &amp; 50% by promotion</u></p>	<p>Cook II, Asst. Halwai-I Rs.3050-4590/- Selection (Aptitude test-Viva- voce) 331/3%DR &amp; 662/3% by <u>Promotion.</u></p>	
<p>Store Keeper I, Manager II Accountant Scale Rs.3200-4900/- Non selection(Written) (50% DR &amp; 50% by promotion)</p>	<p>Cook, Halwai-II, Halwai-I, in scale Rs.3200-4900/- Non selection (Aptitude test)</p>	
<p>Sr. Manger in scale Rs.5000-8000/- Non selection (Written)</p>	<p>*Senior Cook in scale Rs.4000-6000/- Selection (Aptitude test Viva-voce) Master Cook, in scale Rs.5000-8000/- Non selection (viva voce)</p>	
<p>Head Manager, scale Rs.5500-9000/- Non Selection (Written).</p>		

- The classification of the post of Sr. Cook in scale Rs.4000-6000/- has been modified vide letter No.E.178/10/Estt./91/Pt.I dt.04.10.05 as non selection.

Sd/-(P.D.Das,  
For Chief Personnel Officer"

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It is evident that the applicant who earlier held the post of Salesman Grade I occupied the feeder post for promotion to the post of Assistant Canteen Manager. On the contrary, the Respondent No.6 who was Assistant Cook could not be directly promoted to the post of Assistant Canteen Manager without occupying the feeder post of Salesman Grade I.

10. The selection for the post of Assistant Canteen Manager, in relaxation of Recruitment Rules started as per the letter dated 14<sup>th</sup> February, 2006 which is extracted below:

**"EASTERN RAILWAY**

No. E.178/W/Estt./91/Pt.II

Kolkata 14<sup>th</sup> February, 2006

The Sr. Canteen Manager/F.P.Canteen Eastern Railway/Kolkata

Sr. Material Manager(Depot)  
Howrah Genl. Store Cant  
E.Railway/Howrah.

The Manager/K.G. Canteen,  
E. Railway/Kolkata.

Sub: Selection for the post of Asstt. Canteen Manager, in scale Rs.3050-4590/- (RSRP) in HQ Unit (N/S) Canteen – vacancy 01 – UR.

A selection for the post of Asstt. Canteen Manager in scale Rs. 3050-4590/- (RSRP) is going to be held very shortly. Options are invited in the following proforma from all the Canteen staff (Non statutory) in Head Quarter's Unit who is presently working in scale Rs. 3050-4590/- and below.

This is an one time relaxation. Options should be exercised within 15 days from the date of notification.

This may be given wide publication amongst the staff working under you and arrange to forward their option filled in all respect so as to reach CPOMWelfare section latest by 01-03-06.

Sd/- (A.T.Das)  
Sr. Personnel Officer (IR)  
For the Chief Personnel Officer  
FORMAT

1. Name
2. Father's name
3. Designation

20/2/06

4. Pay and scale of pay
5. Date of entry in the grade;
6. Date of birth
7. Date of appointment
8. Educational qualification

Signature of the applicant

Date:

Forwarded please

Signature of the forwarding official"

11. The result of the selection was that Shri Rajesh Biswas who was not in the direct line of promotion as per the Recruitment Chart (A/1) was empanelled for promotion on 16.10.2006. The Office Order dated 16<sup>th</sup> October, 2006 is extracted here in below:

**"EASTERN RAILWAY**

No.E.178/W/Estt./91/Pt.II, Kolkata 16<sup>th</sup> October, 2006.

**Office Order**

The following order is issued with the approval of the competent authority to take immediate effect.

Sri Rajesh Biswas, Asstt. Cook/Fairlie Place Canteen in scale Rs. 2650-4000/- (RSRP) has been declared suitable for the post of Asst. Canteen Manager in scale Rs. 3050-4590/- (RSRP). His name is therefore placed in the panel of Asstt. Canteen Manager in scale Rs. 3050-4590/- (RSRP).

Consequent on being empanelled for the post of Asstt. Canteen Manager in scale Rs. 3050-4590/- (RSRP), Sri Rajesh Biswas is retained at Fairlie Place Canteen and put to officiate as Asstt. Canteen Manager against an existing vacancy.

Charge report of Sri Rajesh Biswas may be sent in due course.

Option may also be obtained in terms of Sl.No. 178/81, if he desires so.

Sd/- (R.B.Mishra)  
Asstt. Personnel Officer (W)  
For Chief Personnel Officer.

Copy to :1) CAO (E)/E. Railway/Kolkata, 2) OS/Pay bill/E. Railway/Kolkata.  
3) Sr. Canteen Manager/FP Canteen, 4) Staff Concerned, 5/SR.

Sd/- (R.B.Mishra)  
Asstt. Personnel Officer (W)  
For Chief Personnel Officer. "

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12. Much later i.e. after about five years, on 29.04.2011 when Shri G.C.Ghosh, the Senior Canteen Manager retired, the applicant was given to hold the charge of the post of Canteen Manager temporarily. The relevant extracts are cited below:

"EASTERN RAILWAY  
No. E.178/W/Estt./91/Pt.II, Kolkata, dated 29.04.2011

Sr. Canteen Manager  
SANTUSHTI  
Koilaghat Staff Canteen,  
Eastern Railway,  
Kolkata.

Sub: Handing over Charge of Koilaghat Staff Canteen.

Sri G.C.Ghosh, Sr. Canteen Manager, 'SANTUSHTI' Koilaghat Staff Canteen will retire from Railway Service from 30.4.2011. Since Sri R.N.Banerjee, Salesman Gr.I of the Canteen have been assisting the Manager for day to day work of the Canteen with the advice contained in the minutes (resolution) of the meeting of Koilaghat Canteen Advisory Committee since long, Sri Ghosh may hand over charge to Sri Banerjee to manage the canteen temporarily till such time a Manager is selected and posted in the canteen.

Sd/-(S.S.Roy)  
Asstt. Personnel Officer (W&PC)  
For Chief Personnel Officer."

And also the following extract namely: -

"Eastern Railway  
No.KG Canteen, Staff/Misc./04/11-12 Date:29.4.2011

The Chief Personnel Officer (W & PC),  
Eastern Railway, Koilaghat Canteen,  
Kolkata-1.

Sub: Handing over charge of Koilaghat Staff Canteen.

As per order of CPO/E.Rly, Vide No. E. 178/W.Estt./91/Pt.II dt. 29.4.2011 the charge of Koilaghat staff canteen is handed over to Sri R.N.Banerjee (Salesman Gr.I) on 29.4.2011.

Sd/-(G.C.Ghosh)  
Sr.Manager Koilaghat Canteen

The following like as cash bank balance and fixed deposit certificate are handed over: -

1. Cash in hand as on 29.4.2011 :Rs. 479.35.

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2. Cash t Bank as on 06.05.2011:Rs.85, 197.00 only SB A/c.No.SB/GEN/26846.
3. Fixed deposit with ERECB :FD No. 002518, A/C No. 4067 (N); For Rs. 57,105 & 001609, A/C, No.4068 (N) for Rs.44, 500/-, FD No.5180 Rs.95, 486/-
4. Other materials/ Assets of Canteen is as wherein basis.

Sd/- (G.C.Ghosh)  
Sr. Manager, Koilaghat  
Canteen"

13. The Applicant who was Salesman Gr.I holding the additional charge of Senior Manager, Koilaghat Canteen was ultimately promoted to the post of Assistant Canteen Manager on 11.02.2012. The Office order dated 11<sup>th</sup> February, 2012 is extracted below:

"EASTERN RAILWAY  
No. E. 178/W/Estt./91/PT.II Kolkata, 11<sup>th</sup> Feb.,/2012

#### OFFICE ORDER

On being found suitable for the post of Asst. Canteen Manager in PB-I with GP-1900/- (05200-20200) the following staff is appointed to officiate as Asstt. Canteen Manager on regular basis with immediate effect and posted in the Koilaghat Canteen against an available vacancy.

Name	Designation	Office where working presently with PB & GP etc.	Promotional posting under PB & GP etc on regular basis with immediate effect.
Raghunath Banerjee	Salesman Gr.I	KG Canteen in scale Rs. 5200-20200/- in PB I GP Rs. 2000/- (under MACP)	KG Canteen as Asstt. Canteen Manager in scale Rs. 5200-20200/- in PB I, GP Rs. 1900/- (Regular promotion)

There will be no change in his pay as he is already enjoying higher pay and GP under the provision of MACP. His present designation i.e. Salesman Gr.I to be changed as Asstt. Canteen Manager consequent upon his posting as such.

Sd/- (P.C.Tudu)  
Sr. Personnel Officer (CW&MPP)  
For Chief Personnel Officer

Copy forwarded for information & necessary action to : -  
1. CAO (E)/Kolkata, 2. OS/Paybill/CPO's Office/Kolkata/3.  
Canteen Manager/HQ Unit,.

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4. Staff concerned., 5 S.R.

Sd/- (P.C.Tudu)  
Sr. Personnel Officer (CW&MPP)  
For Chief Personnel Officer

Shri Rajesh Biswas, Respondent No. 6 was promoted to the post of Assistant Canteen Manager on 16.10.2006.

14. To analyse the selection process the following Rules are being cited.

As per para 215 of IREM, Vol.I, revised edition 1989, the provision of selection of post reads as under:

**"215. Selection Post -**

(a) Selection post shall be filled by a positive act of selection made by Selection Boards, from amongst the staff eligible for selection. The positive act of selection shall consist of a written test and/or viva-voce test; in every case viva voce being a must. **The staff in the immediate lower grade with a minimum of two years service in that grade only will be eligible for promotion.** The service for this purpose includes service, if any, rendered on ad hoc basis followed by regular service without break. The condition of two years service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration.

(b) The selection for promotion to a selection post shall be made on the basis primarily of merits.

(c) Promotion to selection post shall be made by the competent authority in accordance with the recommendations of a Selection Board in the manner detailed in paragraph 216 below. If, in any case, such authority is unable to accept the recommendation, a reference shall be made to the General Manager, who may if necessary constitute a fresh Selection Board at a higher level and whose decision in the matter shall be final.

(d) The Railway Board may adopt a procedure other than the one laid down in para 216 below while deciding individual cases of hardship.

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(e) Eligible staff upto 3 times the number of staff to be empanelled will be called for written and/or viva voce test. The staff employed against fortuitous short term or stop gap promotion to the immediate lower grade in the manner otherwise than in accordance with the regular approved method of promotion will not be eligible for consideration. It is desirable to hold written test as part of a selection in respect of all initial selection grade post in the different channels of promotion, but in every case a viva voce test shall be held. If a written test is proposed to be held, advance initiation shall be given to all eligible candidates.

**216 - Ad hoc promotion against selection and non selection posts:-**

(i) Ad hoc promotion should be avoided as far as possible both in selection and non-selection posts and where they are found inescapable and have to be made in exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. The ad hoc promotion should be ordered only from amongst senior most suitable staff. As a result a junior should not be promoted ignoring his senior."

Also in the Guideline of Railwaymen on Establishment Rules, it is laid down that normally staff in the **grade immediately below the selection grade should only be considered**. The zone of consideration will include the persons willing and eligible according to seniority. If the requisite number of staff cannot be found in the immediate lower grade it would not be permissible to go down to second grade lower except in cases of selection of staff in general posts like Welfare Inspectors etc. For which candidates from different categories are called (RB's No. E (NG) 1-96/PMI/19 of 21.10.97 (RBE No. 141/97), Sl. No. SE 160/97, RB's Nos. E (NG) 1-65/PMI/13 (RRC) of 19.2.87, 4.11.87, 4.11.89, Sl. No. ER 260/87/SE321/87.

J.D.Y.

Hence it is very clear that the selection procedure followed for the selection of Assistant Canteen Manager has not been made as per Rules as Respondent No.6 who was selected did not belong to immediate lower grade of Salesman Grade I but was assistant Cook.

15. The Learned Counsel for the Respondents had cited para 114 of IREM, Volume I (Revised Edition-1989) First Reprint Edition, 2009 to further his case. But we find that para 114 is deleted. The Learned counsel for the Respondents has drawn our attention to paragraphs 123 and 124 of the Indian Railway Establishment Code, Volume I (Fifth Edition, 1985) (Third re print Edition, 2008) which reads as under:

"123. The Railway Board have full powers to make rules of general application to Group C & Group D railway servants under their control.

124. The General Managers of Indian Railways have full powers to make rules with regard to railway servants in Group C & D under their control **provided they are not inconsistent with any rules made by the President or the Ministry of Railways.**"

The Recruitment Rules are framed by definite procedure and are finalized in consultation at several levels. Such Recruitment Rules cannot be modified or altered even for a single instance by the General Manager acting at a single level. In this case, the Recruitment chart shows that the immediate lower feeder post of the Assistant Canteen Manager was held by the applicant while Respondent No.6 did not occupy the immediate next below feeder post

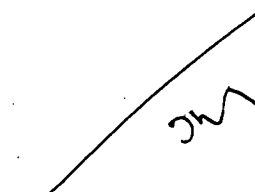
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of the Salesman Grade-I at all. He was in other hand, Assistant Cook i.e. one stage below the post of Salesman Grade I.

The Hon'ble Apex Court in the case of **State of Gujarat and others Vs Arvindkumar T.Tiwari and Another**, reported in (2012) 9 Supreme Court Cases 545(at para 10) held as under:

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that **the rules empower the authority to relax such eligibility in general**, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for **justifiable reasons and it must not be exercised arbitrarily, only to favour an individual**. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide: State of Haryana v. Subhash Chandra Marwah & Ors., AIR 1973 SC 2216; J.C. Yadav v. State of Haryana, AIR 1990 SC 857; and Ashok Kumar Uppal & Ors. v. State of J & K & Ors., AIR 1998 SC 2812).

16. Going by the above rulings of the Hon'ble Apex Court and the Rules of the Railways, cited supra we are of the firm view that relaxation of the recruitment rules by the General Manager acting in a single level so as to make a person, who was not even holding the feeder post of promotion, eligible for promotion is not legal in any manner. Hence, the promotion of Respondent No.6 to the post of Assistant Canteen Manager is held to be illegal and is accordingly



quashed/set aside. As a consequence, all the subsequent orders of promotion of Respondent No.6 to Canteen Manager Gr.II, Canteen Manager Gr. I and Senior Canteen Manager are quashed and set aside. Resultantly, the post of Canteen Manager, Gr.II will fall vacant on 28.09.2010, Canteen Manager Gr. I on 22.4.2013 and Senior Canteen Manager on and around 22.4.2015.

17. We think justice would be met, if accordingly, the Respondents are directed to consider promotion of the Applicant to the posts of Canteen Manager, Gr. II and Grade I strictly as per Rules provided he <sup>is</sup> found eligible.

Also as the applicant was looking after the responsibility of Shri G.C.Ghosh, Senior Canteen Manager from 29.4.2011, the Respondents shall also consider whether additional remuneration s per rules may be given to him. The ACP and MACP benefits are not additional remuneration. Obviously if he gets the promotions then as per Rules, the grant of ACP/MACP benefits will stand modified.

The entire exercise shall be completed within a period of four weeks from the date of receipt of a certified copy of this order as the applicant is due to retire on 30.04.2017.

18. This OA is accordingly partly allowed. There shall be no order as to costs.

(Ms. Jaya Das Gupta)  
Member (Admn.)

(Justice V.C.Gupta)  
Member (Judl.)