

Reserved
(On 07.02.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **05th** day of **March** 2019

Original Application No 330/00076 of 2019

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Raja Ram, S/o Sri Bhikhari, R/o Village Devipur Post – Sardarnagar Distt. Gorakhpur, presently working as Asstt. Commercial Manager (TC) N.E. Railway, Gorakhpur.

. . . Applicant

By Adv: Sri S.K. Om

V E R S U S

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Secretary, Railway Board, Rail Bhawan, New Delhi.
3. Principal Chief Personnel Officer, N.E. Railway, Gorakhpur.
4. Dy. Chief Personnel Officer (Gazetted) N.E. Railway, Gorakhpur.
5. Principal Chief Commercial Manager, N.E. Railway, Gorakhpur.
6. Jagtara Sangam, S/o Sri Hardev, Chief Ticket Inspector, N.E. Railway, Varanasi Division, Chhapra.

. . . Respondents

By Adv: Sri Pramod Kumar Rai

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present OA has been filed by the applicant, Raja Ram seeking quashing of order dated 23.01.2019 (Annexure No. 1) and order dated 16.01.2019 directing removal of name of the applicant from the panel prepared for the post of Group

'B'. He has also sought direction to the respondents not to revert him from the post of Assistant Commercial Manager (ACM) to the post of Chief Commercial Inspector (CCI).

2. The case of the applicant is that the applicant was initially appointed as Commercial Clerk in the respondents' department on 28.02.1997 and was promoted as Commercial Inspector in the year 2007. The respondents department issued notification dated 31.08.2017 / 01.09.2017 (Annexure No. 2) inviting application for 3 posts of ACM against 30% quota for Limited Departmental Competitive Examination (LDCE) in Group 'B' category. Of these 3 posts, 2 posts were earmarked for general category and 1 post for SC category. The applicant belongs to SC category and he appeared in the written examination on 11.02.2018. He was declared successful as per result dated 04.05.2018 (Annexure No. 3) with his name at Sl. No. 15. The applicant appeared in the interview on 25.06.2018 and vide respondents letter dated 26.06.2018 (Annexure No. 4), he was empanelled at Sl. No. 3. This panel was duly approved by the General Manager vide his order dated 26.06.2018. Vide letter dated 04.07.2018 (Annexure No. 5), the respondents' department posted the applicant as ACM/Ticket Checking in Headquarter Office at Gorakhpur. The applicant joined on 06.07.2018 and has been working there continuously.

3. The applicant has stated that suddenly vide impugned order dated 23.01.2019, the applicant was ordered to be reverted from the post of ACM to that of CCI purportedly on the ground that panel dated 26.06.2018 was erroneously drawn as respondent No. 6 had secured higher marks than the applicant, though in the panel his name did not figure. The applicant has stated that in the said order, it is alleged that the mistake was detected due to RTI query made by respondent No. 6 and, thereafter, the matter was referred to respondent No. 2 who vide order dated 16.01.2019 had directed the name of the applicant to be removed and substitute the same by respondent No. 6. The applicant has also stated that though the order dated 23.01.2019 refers to another order dated 16.01.2019, but this order has not been annexed or issued to the applicant. It is also stated that this order is arbitrary and in violation of principles of natural justice as it is a settled principle that any order detrimental to an employee and having civil consequences cannot be passed without affording him an opportunity of hearing. Besides, the applicant has alleged that impugned order is cryptic and non-speaking as it does not disclose the nature of mistake and how the same has been detected on the basis of RTI query. It is also stated that the Selection Committee for selection in question consists of 3 members of the level of Principal Head of Department and hence it is not expected that such a mistake will be committed by this Committee and none of the members could detect the same. The applicant

has also alleged that respondent No. 6 was trying hard for some manipulation in the answer sheets and it appears that he succeeded and almost 3 months afterwards, he filed an RTI application seeking his answer sheets as well as the marks secured by him. However, for 3 months since 26.06.2018 (i.e. the date of issue of original panel), respondent No. 6 'did not raise any little figure'. The applicant has stated that the post of ACM is in Group 'B' category and so such type of mistake cannot be expected in this an examination. He has therefore contended that the impugned order is arbitrary, illegal and in violation of principles of equity and fair play; as the same has been issued without affording any opportunity of hearing and without issuing any show cause notice to the applicant. Further, the applicant has stated that even after selection in question, there exist at least six substantive vacancies for the post of ACM and even assuming that respondent No. 6 has secured higher marks than the applicant, the applicant could be considered against a vacant post in view of his satisfactorily working as ACM in pursuance to the panel dated 26.06.2018. He has also stated that there is no justification for his reversion as there is no fault on his part. The applicant has also stated that he made a representation to this effect on 24.01.2019 (Annexure No. 7), but there has been no fruitful result. Hence, this OA.

Finally, the applicant has pleaded that the order dated 23.01.2019 has not been given effect to till date of filing of OA and as such the same be stayed.

4. The case was first heard by this Tribunal in Single Bench on 25.01.2019 and directions to issue notice were given. Also, the learned counsel for the respondents was directed to seek instructions from the department by 30.01.2019. Further, the operation of the impugned order dated 23.01.2019 was stayed till 30.01.2019, if not implemented already and the case was listed on 30.01.2019. The applicant was responsible for service of notice upon respondent No. 6 prior to 30.01.2019 and also copy was to be given to learned counsels for both the parties.

5. Now, vide Misc. Application No. 215/19, the applicant has stated that immediately after passing of order dated 25.01.2019, the applicant sent fax message to the respondents whereby learned counsel for the applicant informed the respondents about the order dated 25.01.2019 passed by this Tribunal with undertaking that the order of the Tribunal would be sent to them immediately after receiving the same. Annexure No. 1 to the MA is annexed in support of this contention. According to the learned counsel for the applicant, order dated 23.01.2019 was not given effect to till then as no order / letter was issued to this effect and the same was also not issued to the applicant. Further, the

applicant was on sanctioned leave with outstation permission on 24.01.2019 and 25.01.2019 (Annexure No. 2 to the MA). Despite this, vide order 25.01.2019 (Annexure No. 3 to the MA), respondent department has relieved the applicant with effect from forenoon of 25.01.2019. Further, vide charge report dated 25.01.2019, the respondent no. 6 has taken over charge as ACM/TC/HQ in the forenoon of 25.01.2019 (Annexure-4 to the MA). The applicant has alleged that order dated 25.01.2019 is fabricated due to malafide intentions to the authorities. It is also alleged that there is 'overwriting on 24.1.2019 as well as on the word "को पूर्वाहन में"' in the chargesheet. According to the applicant, there was a deliberate attempt on the part of the respondents to defy the order of this Tribunal.

6. During arguments, respondents' side stated that there is no malafide and there is no manipulation on record. The order dated 25.01.2019 was in fact passed by the respondents department prior to their receiving intimation about the order of this Tribunal. The respondents' department has further stated that the applicant was already relieved prior to receipt of information by the respondent department about the direction of the Tribunal.

7. We have carefully gone through the records made available by the applicant's side. We observe that the applicant's counsel sent intimation about the said order dated

25.01.2019 of this Tribunal by post only on 27.01.2019. However, fax report regarding this intimation was sent on 25.01.2019, but time on one of the two sending reports is 5:04 PM with start time as 05:01 PM. In second fax report, start time is 5:10 PM with the report generated at 5:14 PM. We also observe that as stated by the applicant, he was on sanctioned outstation leave on 24.01.2019 and 25.01.2019. Regarding departments' order and charge report dated 25.01.2019 (Annexure No. 3 and 4 to the MA filed by the applicant), we could not observe any overwriting in date in any of these documents. We also could not observe any overwriting in these documents with regard to the words "को पूर्वाह्न में" as alleged by the applicant's side. We also note that in Annexure No. 4 to the MA, which is taking over charge report by respondent No. 6 Jagtara Sangam, another order dated 24.01.2019 is referred to, but this order has not been annexed in the MA. We also observe that order dated 24.01.2019 is also referred to in Annexure No. 3 to the MA which is the order dated 25.01.2019 addressed to the applicant ordering his relieving in the forenoon with immediate effect. We thus believe that some order was already issued on 24.01.2019 (that is prior to issue of order of 25.01.2019 by this Tribunal) by the respondents department which is referred both in Annexure No. 3 and 4 to the MA.

8. In view of the above evidence, there is no proof about manipulation of official records. In addition, the fact is that

the intimation regarding order of this Tribunal was faxed to the respondents department by the applicant's counsel only after 5 o'clock on 25.01.2019. Hence, we do not believe that the respondents department has deliberately disobeyed the order of this Tribunal or has manipulated the record to ensure that the order is not implemented. In any case the order of this Tribunal itself states as under:-

"The operation of the impugned order dated 23.01.2019 is stayed till 30.01.2019, if not implemented already."

As such, we do not find any ground to change the present position of the case and the MA is accordingly dismissed.

9. Regarding the OA, we observe that it is true that the applicant's name was initially included in the select panel prepared by the respondents department for the post of ACM. This is clear from their order dated 26.06.2018. However, the respondent department has in their short counter reply stated that after preparation of select panel, the respondent department came to know that due to inadvertent mistake name of respondent No. 6 was not included in the select panel. Respondents have also annexed their order dated 24.01.2019 (Annexure No. 2 to short counter reply) which details the circumstances compelling the department to change select panel and to include the name of eligible candidate i.e. respondent No. 6 and to revert the applicant to his original post. We observe that this order is quite detailed.

As per this order, the respondent department has admitted its mistake in ignoring the eligible candidate i.e. respondent No. 6 in the select panel. Both respondent No. 6 and the applicant belong to reserved category and both appeared in the same written examination and respondent No. 6 secured higher marks than the applicant in the written examination. As such, there was no reason for not including the name of respondent No. 6 in the call list for viva voce test. Accordingly respondent No. 6 was called for interview and secured 203.8 marks against only 180.7 marks secured by the applicant. As such, he was included in the final select list.

10. We also note that once the mistake is noticed by the respondents, it should be able to correct the same and not to perpetuate the injustice done to the other candidate. We are of the view that in the circumstances explained by the respondent department, the applicant was ab-nitio not eligible for appointment as ACM and hence no injustice has been caused to him. Therefore, there is no basic requirement for issue of show cause notice or for hearing him on the issue before making correction. We also observe that despite the above position, respondent department did issue order dated 01.11.2018 (Annexure No. 1 to short counter reply), intimating the applicant about the mistake and likely change in the select panel.

11. We also note that claim of the applicant that he be selected against six substantive posts of ACM still vacant is

not fully justified as these posts were not advertised and the LDCE was held only for 3 posts. As such, it would not be appropriate for this Tribunal to order enhancement of number of posts beyond the number of posts already advertised. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution of those persons who acquired eligibility for the post in question in accordance with statutory rules subsequent to the date of notification of vacancies. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and is thus, not permissible in law. The above view has also been considered by the Apex Court in the case of Union of India & Ors. Vs. Ishwar Singh Khatri & Ors. – (1992) Supp 3 SCC 84 and catena of other judgments.

12. In view of the above observations, we find no merit in the OA.

13. Hence, both the OA and the MA are dismissed being devoid of merit. No costs.

(Rakesh Sagar Jain)
Member – J

(Ajanta Dayalan)
Member – A

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