

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00004/14**

Reserved on: 28.01.2019
Pronounced on: 20.02.2019

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

S.D.S. Yadav, Son of Shri Kashi Nath Singh, Senior Section Engineer/TRS (Electrical), East Central Railway, Head Quarter, Hazipur(Bihar).

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
4. The Deputy Chief Personnel Officer (Gazetted), East Central Railway, Hajipur, District- Vaishali (Bihar).
5. The Chief Electrical Engineer, East Central Railway, Hajipur, District- Vaishali (Bihar).
6. Sri Amar Nath Prasad, Senior Section Engineer, Electrical/TRD (Construction), East Central Railway, Mahendrughat, Patna.

..... Respondents.

- By Advocate(s): - Mr. S.K. Griyaghey for official respondents.
Mr. G. Bose for R-6.

O R D E R

Per Dinesh Sharma, A.M.:- The case of the applicant is that he is senior to respondent no. 6. However, the respondents are giving undue favour to respondent no. 6 and are trying to put his name above in the seniority list and have kept one UR vacancy unfilled citing dispute in seniority in the panel

published by order dated 24.09.2013 (Annexure A/1 of the OA). He has also requested for having his name put in this panel against the post kept vacant. Since during the pendency of this application the respondents issued another order, dated 09.06.2014, under which they have put the name of respondent no. 6 at a position above that of the applicant in the seniority list, the applicant requested for amending the OA to include a request for quashing this order (dated 09.06.2014) too. According to the applicant, the claim of respondent no. 6 is not maintainable at this stage since respondent no. 6 had joined the post of Section Engineer (Electrical) on 19.03.1999 while the applicant had joined on 05.02.1999. In various earlier published seniority lists (where respondent no. 6 was shown below the applicant) no representation had been made by respondent no. 6 and therefore he cannot raise this dispute now in the year 2013.

2. The official respondents have denied the claim of the applicant. They have accepted that one post was kept vacant following the process of selection that commenced on the basis of written test dated 29.06.2013. This was on account of discrepancy in the seniority position. After taking into consideration the representation of respondent no. 6 they found that he should be placed above one Shri Janardan Kumar and Raju Hembram. This correction was in accordance with Rule 303 and 306 of the IREM and therefore the applicant has no right to question this. It is also pleaded in the written statement that the application is bad due to non-joinder of necessary parties (Shri Janardan Kumar and Shri Raju Hembram) who were directly affected by this change in seniority position.

3. The respondent no. 6 also filed a written statement in which he alleged that as per para no. 306 of the IREM, candidates selected for appointment at an earlier selection shall be senior to those selected later, irrespective of the date of posting or joining. According to him, the reason for his delayed joining was the delay in the clearance by the medical Board. For this reason, he cannot become junior to those selected by a later selection process. Therefore, the correction made in the seniority position following his request is as per the rules and the applicant has no right to question this.

4. The applicant, in his rejoinder, has questioned the claim of the respondent no. 6. Besides other reasons, the main objection is on the ground of this respondent not having raised any objection to the earlier published seniority list.

5. The respondent no. 6 has replied to the rejoinder reiterating his earlier position that he was selected on the basis of selection test held by the RRB vide RRB dated 11.07.1997 and the applicant was selected against the RRB selection dated 03.10.1997. Regarding his not having made the representation earlier, the respondent stated that he had started making representations against his wrong fixation since 2003 itself when the applicant was not in Danapur Division. There is no bar for the government to rectify their mistake.

6. After having gone through the pleadings and hearing both the parties, we find that the only issue that needs to be settled is about whether respondent no. 6 can be put above the applicant because of his having been

selected under a selection process held before the selection process under which the applicant was selected. The respondents have quoted Rule 303 and 306 to support their case. A correction based on rules, however later, cannot be found fault with. Here, the fact of respondent no. 6 being an earlier selectee is not in denied. The only reason the applicant has been strongly agitating against it is because he considers that respondent no. 6 is estopped from making this claim at this point of time as he did not object to the seniority list published earlier. In this case the Department is convinced about the correctness of the claim of the respondent no. 6. Even if not raised earlier, the issue has been raised by the respondent no. 6 at a time when it really mattered (when the issue of promotion arose). Thus, apparently, there can be no estoppel against the Department for correcting an error. The OA is, therefore, dismissed being devoid of merit. No order as to costs.

**[Dinesh Sharma]
Administrative Member
Srk.**

**[Jayesh V. Bhairavia]
Judicial Member**