

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00173/2015

Date of Order: 28.03.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Smt. Archana Kumari, w/o Shri Avinash Kumar, resident of Mohalla-Nayatola Saguna, PO & PS- Danapur Cantt., District- Patna, Ex- Substitute Commercial Clerk, EC Railway, Danapur.

.... **Applicant.**

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The General Manager (Personnel), E.C. Railway, Hajipur.
3. The Divisional Railway Manager, East Central Railway, Danapur.
4. The Addl. Divisional Railway Manager, EC Railway, Danapur.
5. The Divisional Railway Manager (P), EC Railway, Danapur.
6. The Senior Divisional Commercial Manager, EC Railway, Danapur.

.... **Respondents.**

By Advocate: - Mr. Mukundjee, Sr. Panel counsel for Railways
Mr. R.B. Awasthi, Id. Counsel for respondents.

O R D E R
[ORAL]

Per Dinesh Sharma, A.M:- This application is against the order of the DRM(P), EC Railway, Danapur dated 12.09.2014 whereby it has been refused to recommend the name of the applicant to the Railway Board for further extension/engagement as Substitute Commercial Clerk. According to the applicants, this is against the spirit of the order dated 13.05.2014 passed by this Tribunal in OA 129/2011. The applicant was engaged as

Substitute Commercial Clerk for a period of six months vide letter dated 18.07.2008 issued by the office of General Manager (P), EC Railway, Hazipur. Following this, she was sent for training and subsequently was posted as Substitute Commercial Clerk at Danapur Station vide order dated 25.11.2009. She was also granted temporary status vide letter dated 14.05.2010 and was given facilities of privilege pass, medical etc. However, all of a sudden, her services were discontinued after 24.05.2010 though the post on which she was working was still vacant. The applicant filed OA 129/2011 which was disposed of vide order dated 13.05.2014 with a direction to the respondents to consider the case for extension of her engagement in accordance with the rules and instructions if the post against which she was working was still vacant and the requirement of job permits and if similarly placed persons have been allowed such benefits. In pursuant to this order of this Tribunal the DRM(P) has passed the impugned order dated 12.09.2014 expressing inability to recommend her case for extension to the Railway Board. This, according to the applicant, is in violation of the spirit of the direction of this Tribunal in OA 129/2011. They have also alleged that on seeking information under the RTI they have found out that there are a large number of vacancies of Reservation Clerks and Commercial Clerks in Danapur Division (Refer Annexure/14 of the OA).

2. The respondents have denied the claim of the applicant. They have alleged that her engagement was for a period of six months or till regularly selected candidate was appointed, whichever happened earlier. The concerned authority did consider her case on direction from this

Tribunal in OA 129/2011 and passed the impugned speaking order giving clear reasons why her case could not be recommended. It has been made clear in this order that there were no vacancies available at Danapur Junction. They have also stated that the vacancies mentioned in the information sought through RTI are against the promotional quota of Commercial Clerks i.e. Commercial Clerk against different quota and against the direct recruitment quota of the concerned apprentice and not for the vacancies of Commercial Clerk. The applicant was working at Danapur Junction and there was no vacancy against the direct recruitment quota at Danapur Division so far as the vacancies reflected in Annexure/14 is concerned which deals with overall vacancies of the Danapur Division.

3. The applicant has filed a rejoinder in which while reiterating her earlier claim she has alleged that a substitute is appointed against a vacancy and not against a vacancy of a particular quota. She has asserted that non availability of vacancy at Danapur Junction cannot be a ground to reject the claim of the applicant since there are ample vacancies of Commercial Clerks in Danapur Division.

4. We have gone through the pleadings and heard the learned counsels of both the parties. It is not denied that the order issued by Divisional Railway Manager, ECR, Danapur was in compliance of this Tribunal's order in OA 129/2011. Apparently, if that was not the case, the applicant would have gone for seeking appropriate remedy against such non-compliance. Since the applicant has not chosen to pursue that action, she cannot now raise the same matter which has already been adjudicated by this Tribunal

in OA 129/2011. If, as the applicant now alleges, that there were a number of vacancies available in Danapur Division against which she should have been considered, this would be going beyond what this Tribunal had directed in the above-mentioned OA. The order very specifically mentions that "if the post against which the applicant was working is still vacant". This cannot be interpreted to mean any of the posts anywhere else in the same Division. The engagement of the applicant was clearly a temporary arrangement for a temporary period and her selection was not done following any established procedure. Since our order has been sufficiently complied with by the speaking order dated 14.09.2014 and since we do not find any new cause of action, the OA is dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member