

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

Reserved on: 29.08.2019
Date of Order: 05.09.2019

C O R A M

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

I. O.A./050/00009/2016

1. Sonali Roy, D/o Mithilesh Kumar Sinha, Resident of Village- Goriyatoli, Post- GPO, PS- Kotwali, Dist.- Patna, at present posted as Senior Booking Clerks, Patna Junction.
2. Himanshu Kumar, S/o Hakim Singh, resident of Village- Ramnagar, P.O.- Bhaluahi, District- Rohtas, Bihar, Presently posted as Senior Booking Clerk, Gulzarbagh, Patna.
3. Vishal Kumar, S/o Late Ram Padarath Singh, resident of Village- Chamraha (West Tola), P.O.- Mahnar Road (Railway Station), P.S.- Mahnar, Dist- Vaishali. Presently posted as Senior Booking Clerk, Patna Junction.
4. Vivek Kumar, S/o Ramakant Singh, resident of Village- Chamraha (Naya Tola), P.O.- Mahnar Road (Railway Station), P.S.- Mahnar, Dist.- Vaishali. Presently, posted as Senior Booking Clerk, Patna Junction.
5. Surendra Pal, S/O Gaya Prasad, Resident of Kali Asthan, P.O.- Begampur, P.S.- Chowk Thana, Dist.- Patna. Presently posted as Senior Booking Clerk, Khusarupur.

.....Applicants.

By Advocate: - Mr. S.N. Madhuvan

-Versus-

1. The Union of India, through the General Manager, East Central Railway, Hazipur.
2. The Divisional Railway Manager, East Central Railway, Danapur.
3. The Senior Divisional Commercial Manager, East Central Railway, Danapur.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
5. Mr. Kaushal Kishor Singh, Senior Booking Clerk, Ara.
6. Mr. Uday Kumar Senior Booking Clerk, RH (NPC), Barh.
7. Mr. Manmohan Krishna Senior Booking Clerk, Badahiya Railway Station.
8. Mr. Raju Kishku Senior Booking Clerk, Jamui.
9. Mr. V.K. Choudhary, Senior Booking Clerk, Patna.
10. Mr. Raj Kumar Paswan, Senior Booking Clerk, Bihiyan.
11. Smt. Rani Kumari, Senior Booking Clerk, Patna.
12. Mr. Awadhesh Kumar, Chief Commercial Clerk, Patna.

13. Smt. Neelu Devi, Chief Commercial Clerk, Rajendra Nagar, Patna.
14. Mr. N.K. Gond, Chief Commercial Clerk, Rajendra Nagar, Patna.
15. Mr. Lal Kishor Sah, Chief Commercial Clerk, Patna.
16. Mr. Amit Ranjan, Chief Commercial Clerk, Danapur.
17. Mr. Binod Kumar, Chief Commercial Clerk, Khusarupur.
18. Mr. Durga Singh, Senior Booking Clerk (retired), Patna City.
19. Mr. Shyam Kishor Prasad, Senior Booking Clerk, Rajgir.

..... Respondents.

By Advocate(s): - Mr. S.P. Singh

II. OA/050/00809/2016

Sunil Kumar, son of Sri Janardan Prasad Yadav, resident of Village- Bhawanipur, PO- Dighri, P.S.- Suryagarha, District- Lakhisarai, at present posted as Senior Booking Clerk, Patna Junction.

..... Applicant.

- By Advocate: Mr. S.N. Madhuan

- Versus -

1. The Union of India, through the General Manager, East Central Railway, Hazipur.
2. The Divisional Railway Manager, East Central Railway, Danapur.
3. The Senior Divisional Commercial Manager, East Central Railway, Danapur.
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9. Mr. V.K. Choudhary, Senior Booking Clerk, Patna.
10. Mr. Raj Kumar Paswan, Senior Booking Clerk, Bihiyan.
11. Smt. Rani Kumari, Senior Booking Clerk, Patna.
12. Mr. Awadhesh Kumar, Chief Commercial Clerk, Patna.
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14. Mr. N.K. Gond, Chief Commercial Clerk, Rajendra Nagar, Patna.
15. Mr. Lal Kishor Sah, Chief Commercial Clerk, Patna.
16. Mr. Amit Ranjan, Chief Commercial Clerk, Danapur.
17. Mr. Binod Kumar, Chief Commercial Clerk, Khusarupur.
18. Mr. Durga Singh, Senior Booking Clerk (retired), Patna City.
19. Mr. Shyam Shankar Prasad, Senior Booking Clerk, Rajgir.

.... Respondents.

By Advocate(s): - Mr. Vinay Kumar

ORDER

Per Dinesh Sharma, A.M:- In OA/050/00009/2016, applicant Sonali Roy, along with four others, have prayed for quashing the E. Office order No. 858/2015 dated 21.12.2015 so far as it relates to private respondents and to revise the promotion list, place the applicant in the list of final list of promotion and for granting them promotion to the post of Chief Commercial Clerk at par with effect from the date of promotion to their Juniors with all consequential benefits. They have challenged the aforesaid order mainly on the following grounds:

- a) Applicant Sonali Roy joined the East Central Rly before private respondents 5&6 and should therefore, have been kept above them.
- b) 5 respondents(respondents no 12 to 16) were already promoted and therefore should not have been mentioned in this order so as to occupy 5 seats and adversely affect the chance of applicants.
- c) Respondents No. 7 to 11 have been included, though being junior to the applicants. This is wrong since no benefit of reservation can be give on promotion.
- d) Some other respondents (Nos 17 to 19) have been included in the list, whose name should not have occurred since they are already retired/compulsory retired/have cases pending against them.

2. In OA/050/00809/2016, the applicant Sunil Kumar has made the same prayer as mentioned above, on the same grounds. Since the cause of action and the relief sought in both the OAs are the same, these two OAs are being disposed of with this common order.

3. The official respondents, in both the OAs, have denied the claims of the applicant(s) except that of Applicant Sonali Roy in OA/050/00009/2016. They have accepted the inadvertent mistake made in her case and have corrected it by giving her the place in the seniority list and the promotion as requested by her. The respondents(official) have stated that the impugned order was issued by way of restructuring of staff and giving promotions as per the rules and guidelines in RBE No. 102/2013 dated 8.10.13. Since all the applicants (except Smt. Sonali Roy) are juniors to those promoted under these orders under various reserved/unreserved categories, their claims are not admissible. They have explained the reason for mentioning the names of persons who were already promoted since this was necessary in order to fulfil the requirements of cadre restructuring done under para 4.4 of RBE no 102/13. They have also justified the need for reservation in promotion as it was resultant on restructuring and required to maintain the stipulated amount of reservations at all levels of vacancies (as per para 9 of Cadre restructuring). About the retired /case pending employees, they have been given promotion as per their status on 1.11.2013, the date w.e.f. the restructuring has been done.

4. The applicants have filed a rejoinder in which they have reiterated their earlier claim while making detailed general comments (mostly rhetorical) about why the explanations given by the official respondents with respect to restructuring and about appointment of compulsory retired/ case pending employees under should not be accepted. They have also mentioned that “it is a settled principle of law that juniors

cannot be given benefit of promotion depriving seniors only for the sake of SC/ST until and unless there is any proceeding against the seniors.”

5. We have gone through the pleadings and heard the learned counsels of both the applicants and the official respondents. It is clear that the grouse of the applicants is mainly against reservation on promotion. Other issues, promotion of some persons who should not have been promoted due to pending cases/being already retired, mentioning in the promotion list names of persons already promoted, and the mistake in not promoting applicant no 1 in OA/050/00009/2016, are issues joined with this main issue, in making their case against the impugned order a common case. This clearly amounts to mis-joinder of issues and of parties. However, we intend to overlook this in the interest of avoiding multiplicity of litigation.

6. In their written statement, the official respondents have very clearly explained the reasons for mentioning the names of four persons already promoted, as it was part of a restructuring exercise, and the applicants have not been able to controvert it in their rejoinder except by way of general sermonising. The respondent’s explanation, for including those who were in service and had no case pending on the date of restructuring, also stands to reason. The applicants’ counter to this reasoning by quoting various other cases and giving their own advice about how the respondents should have gone about it does not help their case.

7. This leaves us with the issue of reservation on promotion. Here, we cannot agree with the argument of the applicants that it is a settled principle of law that seniority cannot be overlooked on promotion only on ground of reservation for SC/ST. The learned counsel for the applicant argued that it was so at the time of filing this application since a matter, about reservation in promotions, was pending before the Hon'ble Apex Court. It is no longer so. It is now settled that there can be reservations in promotions. The applicants, in this case, have challenged the promotion stating that there cannot be any breach of seniority on account of reservations. This premise is fundamentally flawed and no relief can be granted on that premise alone.

8. Since the applicants have failed to establish any legally maintainable grounds for challenging the impugned order and the official respondents have given valid reasons for the restructuring and promotions done by them in which they have not discriminated amongst equals, the OA is not allowed and is hereby dismissed. No costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member