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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO.2728/2003

New Delhi, this the 24th day of May, 2006

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

Shri Vinod Kumar Srivastava,
Clerk,
Under Dy. Chief Commercial Manager (Claims),
Northern Railway,
Varanasi ... APPLICANT
(By Advocate : Shri B.S. Mainee)

VERSUS

Union of India : Through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi
2. The Dy. Chief Commercial Manager (Claims),
Northern Railway,
Varanasi ... RESPONDENTS
(By Advocate : Shri V.S.R. Krishna)

ORDER

By Mukesh Kumar Gupta:

Validity of orders dated 15.1.2003 & 22.11.2002 have been challenged in the present OA. Direction to respondents is sought to consider his claim keeping in view the judgments in **Shinder Singh's** case as well as of **Smt. Neerja Bala Grover's** case with consequential benefits.

2. The factual matrix of the case is as under:

Applicant was appointed as Clerk on 3.10.1991 in Jodhpur Workshop, and transferred to Claim Office, Varanasi in the year 1993. Respondent No1 initiated a general selection process for Eight

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posts of Hindi Assistant Grade-II (6 General, one each for SC/ST) vide letter dated 2.2.1995. 26 candidates, including applicant herein, were called for written test, which was held on 25.2.1995. The said selection was open to eligible candidates of all branches and units. Panel was issued on 18.4.1995 and accordingly candidates who had qualified the selection were placed on the panel after taking into consideration 15 marks earmarked for the seniority. One post meant for ST remained unfilled and therefore, vide Office Order dated 19.4.1995, seven officials, including applicant, were promoted to the said post in pay scale of Rs. 1400-2300. One of the unsuccessful candidate namely Sh. Parimal Singh, who could not be empanelled challenged the said selection process vide OA No 552 of 1996 contending that if the marks assigned under the head of Seniority were ignored, he would have been successful. Several candidates, who had been shown successful, had secured lesser marks than him under heads other than the one for seniority. Finding his claim valid and covered by a judgment of Hon'ble Supreme Court, the said OA was allowed vide Order dated 19th Jan, 2000, quashing the said selection & directing the respondents to reconsider the selection without considering the marks assigned under the head of seniority.

3. Pursuant to aforesaid directions, a review of the selection process was carried, and the applicant who was at Sl. No 6 in the original panel, was relegated to Sl. No 10. Neerja Bala Grover, who was earlier at Sl. No 5 was pushed to Sl. No 8. Similarly Manoj Kumar who was at Sl. No 4 was relegated to position No 11. Aforesaid three officials, who were promoted vide order dated



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19.04.1995 thus not only lost their position in the reviewed panel, their promotions were also cancelled after issuing show cause notices.

4. Initially, Neeraj Bala Grower filed OA No. 449 of 2002 challenging Memorandum dated 06.2.2002 proposing her to revert from post of Hindi Assistant Grade-II. Respondents resisted the said claim stating that said action had been taken in purported compliance of this Tribunal's order in Parimal Singh's (supra). However, the said OA was partly allowed vide order dated 05.09.2002 directing Respondents to issue fresh show cause notice and to consider the same, by passing detailed and speaking order. During the interregnum period she was allowed to continue as Hindi Assistant Grade-II. Thereafter, Respondents issued second show cause notice dated 10.10.2002 and she submitted her reply on 23.10.2002. Since respondents failed to take a decision thereon, she preferred another OA No.166/2003 contending that respondents should consider the fact that number of vacancies had arisen after the panel of 1995 was drawn in the said grade and further that in a similar case of **Shinder Singh vs. Union of India** OA 425/1999 decided on 28.10.2001 as well as Railway Board's letter dated 14.2.1983, circulated by Northern Railway in October 1984, were relevant to her case, the same be taken into consideration. The said OA was disposed of vide order dated 26.05.2003 directing Respondents to pass a detailed and speaking order keeping in view the aforesaid decision in Shinder Singh and Railway Board's instructions.

5. The grievance raised in the present OA is that respondents reverted him vide impugned order dated 22.11.2002 (A/1) without considering the fact that Smt. Neeraj Bala Grover was adjusted and had not been reverted as well as the fact that three persons who had been included in the revised panel of 1995 vacated their position held by them in the subsequent panel. Therefore, applicant could have been adjusted against said vacancy, without facing reversion. Moreover, the show cause noticed dated 6.2.2002 had been quashed by this Tribunal vide OA No.449/2002. Shri B.S. Mainee, learned counsel, forcefully contended that applicant was not even put to proper show cause notice before passing the impugned order. He lost chance to appear in the selection held in the year 1997 as by that time he had already been promoted and, therefore, he should not be made to suffer. In Shinder Singh's case also, respondents were directed to retain his name by enlarging the panel. His case being similar to Neeraj Bala Grover and Shinder Singh, he be accorded similar benefit.

6. Respondents contested the claim laid raising preliminary objections about limitation as well as not approaching this Tribunal with clean hands and suppressing material facts. On merits, it was stated that a panel of 7 candidates (6 general and 1 SC) was prepared in the year 1995. Since Parimal Singh challenged the said selection successfully vide OA No. 552/1996 decided on 19.01.2000, panel was reviewed and recasted and it was found that three officials, namely, Manoj Kumar, Neeraj Bala Grover and applicant herein were not finding place in the modified panel, and accordingly they were depanelled. As per revised criteria Shri

Parimal Singh, Ms. Nandini Kapoor and Sushil Kumar qualified for inclusion in the said revised panel in place of aforesaid officials.

7. A show cause notice dated 06.02.2002 was issued, which was not answered. Similarly, Shri Manoj Kumar also did not react to such a show cause notice. Ultimately impugned order dated 22.11.2002 had been passed. Smt. Neeraj Bala Grover had submitted a representation in terms of order dated 05.09.2002 passed in OA No.449/2002. While considering her representation, it was noticed that one of the officials, namely, Shri Sushil Kumar, who was empanelled as per revised criteria laid down by this Tribunal in **Parimal Singh** (supra) had given his refusal for posting as Hindi Assistant and said Smt. Grover was next candidate at serial No.8 in the revised panel, she was adjusted against the slot of Shri Sushil Kumar and, therefore, continued to function as Hindi Assistant Grade-II. Applicant's case is not comparable with the facts of Smt. Grover. Since the panel was recasted pursuant to direction of this Tribunal, therefore, there was no scope to implement the principle of natural justice as the said principle was a useless formality theory.

8. Reliance was placed on 2003(3) SCALE 220 **Canara Bank & Ors. vs. Shri Debasis Das and Ors.** to support the aforesaid contention. No prejudice was caused to applicant, contented learned counsel for respondents. Unless failure of justice occasioned or that it would not be in public interest to dismiss such a petition on the factual situation of the case, the Court can refuse to exercise its jurisdiction. In present case, even if a fresh show cause notice was to be issued before taking the impugned

action, situation would not have been any other except the one which existed and issuance of show cause would not have made any difference at all.

9. Respondents also pressed the principle of estoppel and contended that applicant was put on notice of the proposed action and he was having ample opportunity to represent if aggrieved, which he chose not to do. The Judgments on **Shinder Singh** as well as **Neeraj Bala Grover** were rendered in different facts and circumstances and have no application in the facts and circumstances of present case. Applicant, in fact, had submitted representation dated 17.10.2003 after the impugned action, which had been duly considered.

10. Applicant filed a detailed rejoinder controverting the plea raised by Respondents and stated that little bit fairness and justice would have persuaded the Respondents to place him at least in the panel of the year 1997, if not in the panel of 1995 itself, after enlarging the same against the slot vacated by Smt. Nandni Kapoor instead of reverting him.

11. We heard learned counsel for either side at length and perused the pleadings including record of the Review Selection Committee produced by Respondents.

12. As noticed hereinabove, admitted facts of the case are that 8 vacancies were notified (6 for general and 1 each for SC/ST). Applicant being a general candidate could claim only against the six posts. It is also an admitted fact that in the review proceedings, he lost his placement from serial no.6 to serial no.10. Amongst general candidates, since he was at serial no.6 earlier, he

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was promoted to post of Hindi Assistant Grade-II. When his position was relegated, he was placed at serial no.10 against 7 vacancies including one for SC candidate and, therefore, he could not have either been appointed or adjusted against the panel of the year 1995.

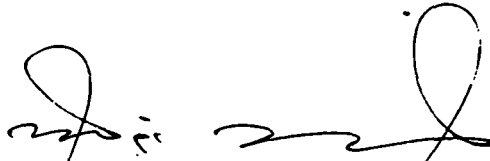
13. Smt. Neeraj Bala Grover was adjusted as Sh. Sushil Kumar, who was included pursuant to review proceedings, refused to accept the post as Hindi Assistant. In these circumstances, we hold that applicant's case is not comparable with Smt. Neeraj Bala Grover. Similarly, on perusal of Shinder Singh's order dated 29.10.2001 in OA425/1999, we find that Railway Board's instructions issued in October 1984, deals with enlargement of such panel due to "procedural irregularities or other defects", is not applicable in the present case. Review undertaken by respondents in compliance of orders and directions issued by judicial authority cannot be termed "procedural irregularities or other defects", under which circumstances the said instruction alone would be applicable.

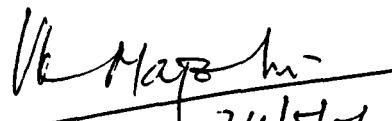
14. On bestowing our careful consideration to OA, facts narrated therein as well as grounds urged, we find that applicant had not raised a contention as raised in the rejoinder that he should have been adjusted against the alleged slot vacated by Smt. Nandini Kapoor. If such was the case, applicant ought to have made a representation to the competent authority and pleaded such facts before it, which admittedly had not been done either in the representation made on 02.02.2003 (Annexure A/10) or in the representation dated 17.10.2003 (R/1). The impugned order dated



22.11.2002 vide which he was reverted, was indeed issued in compliance of the direction issued by this Tribunal in **Parimal Singh's** case and therefore, the same cannot be allowed to be challenged in present proceedings. The impugned order dated 15.1.2003, which was a consequential to aforementioned order dated 22.11.2002, only placed him in pay scale of Rs.3050-4590/- with immediate effect. As already observed, the aforesaid order was a consequential to the reversion order dated 22.11.2002. We also do not find any justification in the contention raised by applicant on account of fairness and justice. In our considered view, there is no illegality, arbitrariness or malafides in passing the aforesaid order. It was neither arbitrary nor was in derogation of the principles of natural justice.

15. In view of the discussion made hereinabove, we find no merit in the present OA and the same is accordingly dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)


24/5/06
(V.K. Majotra)
Vice Chairman (A)

/PKR/