

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00202/16**

Reserved on: 25.09.2019  
Date of Order: 27.09.2019

**C O R A M**

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

Sunil Singh, Son of Sri Sheo Balak Singh, Resident of Mohalla- Chankypuri Colony, MIG-20, Road No. 4, Block C, Gaya , District- Gaya (Bihar).

.... **Applicant.**

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, Central Railway, Mumbai- 400001.
2. The Chief Personnel Officer, Central Railway, Mumbai- 400001.
3. The Senior Divisional Personnel Officer, Central Railway, Nagpur.

.... **Respondents.**

By Advocate: - Mr. S.K. Ravi

**O R D E R**

**Per Dinesh Sharma, A.M:-** The instant application is against the speaking order dated 28.10.2013 by which the respondents have denied the applicant alternative posting as Inquiry-Cum-Reservation Clerk on account of his medical unfitness for the post of Apprentice Permanent Way Supervisor. The applicant has alleged that such rejection, on the sole ground that the scheme of alternative appointment has been abolished by the Railway Board from 25.05.2009, is illegal, arbitrary, unjust and against the principles of promissory estoppel. The applicant has also alleged that the respondents have also filed a misleading statement before this Tribunal (during the contempt proceedings) where the applicant's name has been

shown against Employment Notice No. 01/2004 wherein the applicant had been selected against the Employment Notice No. 01/2003 (Annexure A/7 showing a number of persons who were given/not given alternative appointment). The applicant had approached this Tribunal in OA 387 of 2010 and this Tribunal had directed, by the order dated 23.09.2011, to consider the case of the applicant for alternative appointment taking into account the decisions of the Tribunal and the Hon'ble High Court and Supreme Court quoted in that decision. On their failure to pass a favourable order, this Tribunal had, in CCPA No. 61/2012, by an order dated 11.07.2013, again directed the concerned authorities to consider the case of the applicant as there was a clear direction of this Tribunal. The applicant has also quoted OA No. 430/2009 filed by one Avinash Kumar which was decided by this Tribunal on 30.11.2010 and was confirmed by the Hon'ble High Court of Patna on 28.04.2015 following which the respondents have given an alternative appointment to this person (Shri Avinash Kumar). The applicant has also informed that though the CCPA No. 61 of 2012 was finally dropped by this Tribunal the Tribunal did make an observation that " The speaking order is a matter to be adjudicated within the parameters of an original application for the purpose of this contempt proceeding it would suffice to say that there has been substantial compliance. "

2. The respondents have filed their written statement in which they have denied the claim of the applicant. They have stated that no vested right was created in favour of the applicant to get an alternative employment on his being found medically unfit for the category for which

he was selected. His name was put in the register for alternative appointment in the equivalent grade. However, no vacancy was available in his category (OBC) upto 24.05.2009. The scheme for providing alternative appointment was abolished by Railway Board by their letter dated 25.05.2009. As per the available records between the year 2006-2009 the applicant was considered twice along with other similarly placed candidates but could not be offered alternative appointment for want of vacancy in OBC category in the equivalent grade. The last OBC candidate who was considered and offered alternative appointment was much senior to him (from Employment Notice of 1/2001 while the applicant belongs to a selection process following Employment Notice of 1/2003). The respondents have admitted that the mentioning of Employment Notice 01/2004 against the applicant's name in the statement filed by them before this Tribunal (in the contempt proceeding) was by way of a typographical error. The respondents have also quoted a number of judgments by the Hon'ble Apex Court according to which case of alternative appointment becomes binding on the respondents only if a vested right is created in favour of persons under any statute. The respondents have categorically stated that there were still 58 candidates senior to the applicant who could not be offered alternative appointment for want of vacancy/post for the said grade.

3. The applicant has filed a rejoinder reiterating the case of Avinash Kumar and the earlier orders of this Tribunal.

4. We have gone through the pleadings and heard the arguments of learned counsel of both the parties. There is no major dispute regarding the facts in this case. This Tribunal had in OA No. 387 of 2010 directed the respondents to consider providing alternative appointment to the applicant. However, they did not do so citing their decision dated 25.05.2009 by which the scheme was dropped. In spite of another interim order issued by this Tribunal in CCPA No. 61/2012 the respondents have remained stuck to their guns and have stated that the applicant cannot be given alternative appointment since there were no vacant post in the equivalent category till the date the scheme was dropped and there were many other candidates similarly or even better placed than the applicant who had to be denied alternative appointment under the earlier scheme because of lack of vacancies till the scheme ceased to exist. The reasoned order passed by the respondents was finally found to be in sufficient compliance of this Tribunal's order in OA 387/2010. The applicant's claim is mainly on ground that, though the speaking order might not have been considered as a sufficient ground for an action under laws relating to contempt of court, it did not amount to actually complying with the direction of this Tribunal. A more serious argument taken by the learned counsel for the applicant is about the alternative appointment given to one Avinash Kumar following a similar decision by this Tribunal (OA 430/2009) which was confirmed by Hon'ble High Court and following which the contempt action in that case was dropped by the Tribunal. The learned counsel argued very forcefully that not granting the relief claimed by the

applicant in this case would be in violation of this Tribunal's own orders and principles accepted in the decision in the case of Avinash Kumar in OA No. 430/2009. The learned counsel for the respondents, on the other hand, cited a number of judgments of the Hon'ble Supreme Court in (i) AIR 2006 SC 2652: **Kuldeep Singh Vs. Govt. of NCT of Delhi**, (ii) (2014) 13 SCC 583: **MGB Gramin Bank Vs. Chakrawarti Singh**, (iii) (1995) 1 SCC 745: **Chandigarh Administration and Another Vs. Jagjit Singh and Anr.** and (iv) AIR 1996 SC 1175: **Gurusharan Singh and Others Vs. New Delhi Municipal Committee and Ors.** to support their arguments that the guarantee of equality before law is a positive concept and an illegality or irregularity committed in favour of any individual cannot by way of right be claimed to be extended to others (AIR 1996 SC 1175, (1995) 1 SCC 745). The other two decisions are with respect to discontinuance of an old scheme which cannot be allowed to be applied except in cases where a vested right is created.

5. After going through the pleadings and hearing the arguments it is clear that, after this tribunal has dropped the action for contempt, the only ground on which the applicant can claim some relief is the fact of the respondents having given alternative appointment to a person similarly placed following an action similar to that taken by the applicant to have his grievance redressed. It may appear that if this Tribunal had not dropped the contempt action the respondents would perhaps have been compelled to give appointment to the applicant also. However, on going through the decision in Avinash Kumar's case and comparing with that of the applicant in this case we find that there is sufficient justification to distinguish these

two cases. We produce here the operative portion of the order passed in the case of Avinash Kumar:-

“ 7. In the result, the OA is allowed and the respondents are directed to consider the case of the applicant for alternative appointment to the post of ECRC for which he had applied and was found successful, or to the post of Sr. Clerk on which Shri Nirupam Biswas was appointed, and on his alternative appointment he would be entitled to seniority vis-à-vis the other co-appointees of the aforesaid advertisement notice. Respondents are directed to pass order in this regard within a period of three months from the date of receipt/production of a copy of this order. No costs.” (Emphasis added)

6. In the case before us it is nowhere alleged that the applicant had applied for the post of ECRC or was found successful for that. The applicant here had only applied for the post of Apprentice Permanent Way Supervisor and was found medically unfit for that job. Hence, even if we were not to consider the case of Avinash Kumar as one of illegality or irregularity which cannot be forced to be committed again, there appears to be no force in the argument of the applicant claiming similarity of treatment with the case of Avinash Kumar. The respondents have very clearly established that there were a large number of persons in the OBC category who stood higher than the applicant and who could not be appointed because of lack of vacancy till the discontinuance of the scheme. We have also noticed that the judgments of the Hon’ble Supreme Court where it is directed for application of any scheme only prospectively the Court has mentioned that a new scheme should apply only for vacancies arising after the coming into force of a new scheme. In the present case, the

respondents have considered the case of the applicant for vacancies which arose till the discontinuance of the scheme and they could not give him employment because there was no available vacancy in the equivalent grade. In the absence of any vested right for alternative appointment the applicant cannot claim to have his case considered as and when the vacancy arises whether the scheme is in force or not. Therefore, we are constrained not to accept the prayer of the applicant. The OA is, therefore, dismissed.

No order as to costs.

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

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