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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 2421 of 2013

R.K.Sah S/O Shri Pachanan Sah Aged
About 38 years R/O Shivanandan Nagar,
Sector 3, Raipur, Dist Raipur, Cg

---- Petitioner

Versus

1. Union Of India And Ors. S/o Ministry Of
Railway Through The General Manager,
South East Central Railway, Bilaspur, Dist
Bilaspur, Cg
2. Chief Personnel Officer Headquarter
Officer, South East Central Railway,
Personnel Department, Bilaspur, Dist
Bilaspur, Cg
3. Shri Omprakash Commercial Inspector-1,
Office Of Senior D.C.M. South East Central
Railway, Bilaspur, Presently Posted As
Assistant Commercial Manager, South East
Central Railway, Nagpur, Dist Nagpur, Ms

---- Respondents

For Petitioner:	Shri Amrito Das
For Respondent Nos.1 &2	Shri HS. Ahluwalia
For Respondent No.3	Shri Srinivas Rao

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Acting Chief Justice

05/03/2015

1. We have heard Learned Counsel for the Petitioner and the Respondents.
2. The controversy involved relates to a dispute between the Petitioner and Respondent No.3 for promotion from Group-C to Group-B post.

3. In view of the nature of the order that we propose to pass, it is not considered necessary to notice the entire facts of the case except to the extent necessary.

4. Suffice it to observe that Respondent No.3 was issued a warning on 28.02.2006 in a vigilance case. The Respondent/Railways published a notification on 17.11.2009 for selection and formation of a panel for the post of Assistant Commercial Manager, a Group-B post. The written examination was conducted on 28.8.2010 and results published on 7.10.2010. On 30.11.2010, Respondent No.3 was placed under suspension on the ground of another vigilance case. The suspension was recalled on 5.1.2011 and ultimately, after issuance of charge on 8.3.2011, Respondent No.3 was exonerated in the departmental proceedings on 18.2.2013. The General Manager (Vigilance) was not agreeable with the exoneration and a revision has been preferred by the Vigilance Department before the General Manager under Rule-25 of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules') pursuant to Clause 2.1.3 of the notification dated 19.07.2006 providing for the procedure for dealing with DAR cases against Group-C and D staff arising out of vigilance investigation.

5. In the meantime, Respondent No.3 has been promoted and posted on the post of Assistant Commercial Manager (Goods), Nagpur, SECR.

6. Learned Counsel for the Petitioner submits that the vigilance is pursuing matters only with regard to the exoneration pursuant to charge sheet dated 8.3.2011. The Disciplinary Authority had differed



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with the indictment of the private Respondent by the Inquiry Officer with regard to charge-III. There is yet another aspect of the matter. The Master Circular on instructions governing promotions dealing with the selection procedure at Clause-10B provides (record of service and Viva-Voce) for 25 marks each under Viva-Voce and record of service. The qualifying mark is 30 with at least 15 marks to be obtained under the head 'record of service'. The service records, which includes confidential reports of the previous 5 years, under Clause 11 (assessment of record of service), were required to be seen. The DPC was apprised of the punishment for warning given on 28.2.2006 which fell within the 5 year period. Quite apart from what the vigilance may be contending in the revision case, this is also an important factor to be considered which may render Respondent No.3 completely ineligible. It does not appear that it was brought to the attention of the DPC or considered by it properly.

7. Learned Counsel for Respondents/Railway submits from the record of the DPC that the entire service record of the past 5 years of Respondent No.3 was placed before the DPC and which has awarded him marks appropriately under Clause 11.2. The deliberations state that there was no major penalty proceedings pending which implies that the minor punishment had already been seen by the DPC. It was not a case where materials were not placed before the DPC.

8. Learned Counsel for Respondent No.3 has supported the arguments made on behalf of the Railways.

9. In view of the fact that a revision case has already been filed by the Vigilance before the General Manager under Rule 25(III) of the Rules and as informed by Learned Counsel for the Railways, General



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Manager is already in seisin of the matter, notice has also been issued to Respondent No.3, any adjudication by us may amount to pre-judging the revision case to the prejudice of either the Petitioner or Respondent No.3.

10. We therefore refrain from any order/observation on merits and direct the General Manger to dispose the revision at an early date preferably within a maximum period of four months from the date of receipt of production of copy of this order before him if not earlier.

11. Liberty is granted to the Petitioner to participate in the revision proceedings, and make submissions.

12. The Writ Petition is disposed with the aforesaid directions but without prejudice with the rights of the aggrieved further in accordance with the law.

13. The appeal stands disposed.

**Sd/-
Acting Chief Justice**

**Sd/-
P. Sam Koshy
Judge**