

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2698 of 2015**

R. V. V. M. Naidu S/o Shri R. M. Naidu Aged About 33 years R/o 550/2
Rts Colony Ps Tarbahar, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Union Of India Through The Secretary, Ministry Of Railways, Rail Bhawan Raisena Road, Ps Parliament Street Road New Delhi
2. General Manager, South East Central Railway, Bilaspur Division, Ps Torwa, Bilaspur, Chhattisgarh
3. Chief Personnel Officer, South East Central Railway, Ps Torwa Bilaspur, Chhattisgarh
4. Senior Personnel Officer, South East Central Railway, Ps Torwa, Bilaspur, Chhattisgarh
5. Assistant Personnel Officer, South East Central Railway, Ps Torwa, Bilaspur, Chhattisgarh
6. Rajneesh Samuel Presently Working As Commercial Inspector-Ii Under Senior Divisional Commercial Manager, South East Central Railway, Ps Torwa, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner:-

Shri AV. Sridhar, Advocate.

For Respondents:-

Shri Abhishek Sinha, Advocate.

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

Order on Board**Per Navin Sinha, Chief Justice****03/08/2015**

1. The writ application assails order dated 8.8.2014 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter called 'the Tribunal') dismissing O. A. No.732 of 2010. The Tribunal declined to interfere with the seniority granted to Respondent No.6 on 30.7.2008 with effect from 12.12.2015 as Senior Commercial Clerk (Booking).
2. Learned Counsel for the Petitioner submits that his name was included

in the panel of Senior Commercial Clerks (Booking), eligible to be considered for the next superior post of Commercial Inspector-II in the unreserved category on 12.12.2005. The Petitioner cleared the promotional examination held on 8.3.2010. The Respondents had not published any final seniority list of Senior Commercial Clerks (Booking) till 22.3.2010. The Petitioner therefore was not aware that Respondent No.6 had been granted proforma promotion as Senior Commercial Clerk (Booking) on 30.7.2008 with retrospective effect from 12.12.2005. There was no occasion for him to challenge the order dated 30.7.2008 including Respondent No.6 in the panel of Senior Commercial Clerks (Booking) eligible to be considered for the next superior post of Commercial Inspector-II as the Petitioner was not made aware of the same. It was only after the Respondents have granted promotion to Respondent No.6 on the superior post of Commercial Inspector-II above the Petitioner that he became aware of the wrong done to him. Even if Respondent No.6 has been brought in the panel of eligible Senior Commercial Clerk (Booking) on 30.7.2008, he has not completed two years service on that post and was therefore not eligible to be considered for promotion under the Establishment Rule No.190/2006 read with Para-215(a) of IREM, Vol.-1, 1989. It was next submitted that the panel of eligible Senior Commercial Clerks (Booking) prepared on 12.12.2005 remained valid for two years i.e. till 11.12.2007. Any correction in the same after that by inclusion of Respondent No.6 could be made by the Railway Board only and not at the local level. It was lastly submitted that Respondent No.6 belongs to the reserved category of Scheduled Tribe and could not have been appointed on an unreserved post.

3. Learned Counsel for the Respondents submitted that no objection was raised by the Petitioner before the Tribunal regarding Respondent no.6 being ineligible for the general category post because of his reserved category

status. Without prejudice to the same, it was next submitted that if promotions to the post of Commercial Inspector-II was to be based on an examination, there is no pleading that Respondent No.6 did not secure higher marks than the Petitioner and qualified on merit independent of his reserved category status. It was next submitted that the provisional seniority list of Senior Commercial Clerk (Booking) as on 1.4.2009 published on 13.5.2010 reflects that Respondent No.6 was appointed in service on 19.7.1995 while the Petitioner was appointed on 26.2.2002. This fact has not been disputed or denied by the Petitioner.

4. The non-inclusion of Respondent No.6 in the panel of eligible Senior Commercial Clerks (Booking) on 12.12.2005 was not for any reason attributable to Respondent no.6. It was a wrong done to him due to the fault by the authorities by not producing his service records hindering the consideration of his eligibility. Respondent No.6 having been appointed in service earlier to the Petitioner, the mistake committed by the authorities was only corrected by issuance of the order dated 30.7.2008 as his juniors had been promoted in the meantime.

5. We have considered the submissions on behalf of the parties.

6. The submission on behalf of the Petitioner that in absence of a final seniority list, there was no occasion for him earlier to challenge the grant of retrospective seniority to Respondent No.6 as Senior Commercial Clerk (Booking) does not impress us. Even if the Respondents on 13.5.2010 had published only a provisional seniority list as on 1.4.2009, it would lead to no fundamental change in the situation on what are undeniable facts. Even if that ground is taken into consideration, it would be an exercise in futility based on admitted facts. The Petitioner does not dispute and cannot deny the fact that while he entered service on 26.2.2002, Respondent No.6 entered service on

19.7.1995. That admittedly makes Respondent No.6 senior to the Petitioner.

7. It is not the case of the Petitioner that after having entered service before him, Respondent No.6 suffered any infirmity or disqualification under the service Rules to be included in the panel of Senior Commercial Clerks (Booking) on 12.12.2005. It is the specific case of the Respondents, not denied by the Petitioner, that this omission was due to inadvertence on part of the authorities to lay the service records of Respondent No.6 before the authorities concerned in time.

8. If it is an admitted position that Respondent No.6 entered service earlier than the Petitioner, he became eligible to be considered for inclusion as Senior Commercial Clerk (Booking) also earlier. His name was not included in the panel on 12.12.2005 for no fault of his but for reasons attributable to the Respondents alone. We therefore do not see any wrong committed by the Respondents in rectifying the error or mistake that they made by inclusion of Respondent No.6 in the panel of Senior Commercial Clerks (Booking) on 30.7.2008 with effect from 12.12.2005. The submission that the panel had a life of two years only and after which, the Railway Board alone could direct insertions also does not appeal to us as it was not any new inclusion done by the Respondents on merits but only the rectification of a mistake committed by them for which Respondent No.6 could not be allowed to suffer.

9. Once Respondent No.6 was included in the panel of Senior Commercial Clerks (Booking) from 12.12.2005, the wrong done to him was remedied. The contention that Respondent no.6 on facts had not completed two years of service as Senior Commercial Clerk (Booking) on the date of promotion merits no consideration also and the Tribunal has rightly considered Para-215(a) of IREM Vol.-1 1989 which in the relevant extract

provides as under:-

“.....If by virtue of the above rule, a junior is eligible for promotion, his senior will also be eligible for such promotion, even though he might not have put in a total service of two years or more, (if stipulated in particular category in the lower grade)”.

10. The contention that Respondent No.6 belongs to the reserved category was not raised before the Tribunal and therefore we are not inclined to go into that question for the first time when selection was made based on competitive examination and it is not the case of the Petitioner that Respondent No.6 was competing in the category of a reserved category candidate and had not obtained marks on merits equivalent to that of a general category candidate.

11. We find no merit in the writ petition.

12. The Writ Petition is dismissed.

Sd/-
(Navin Shiha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE