

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2225 of 2016**

Biplab Day S/o Shri Bilash Dey, Aged About 27 Years, Quarter No. 473/1, New Loco Colony, P. S. Sirgitti, Bilaspur (Chhattisgarh), PIN 495004.

---- Petitioner**Versus**

1. General Manager, South East Central Railway, G M Office, Railway Settlement, Bilaspur (Chhattisgarh) 495004.
2. Chief Personnel Officer, S E C R, G M Office/ S. E. C. Railway, Bilaspur 495004.
3. Divisional Railway Manager, South East Central Railway, D R M / Office / Bilaspur (Chhattisgarh) 495004.
4. Deputy Director, Establishment (Sports) & Railway Board, Rail Bhawan, New Delhi 110001.
5. Senior Personnel Officer (H Q) & De Facto A P I O, Personal Department, South Eastern Central Railway, Bilaspur (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Shivraj Singh, Advocate
For Respondents	:	Shri H.S. Ahluwalia, Advocate

**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice &
Hon'ble Shri Justice Pritinker Diwaker**

Order on Board**Per Thottathil B. Radhakrishnan, Chief Justice****20/03/2017**

(1) This writ petition is filed by an employee of South East Central Railway; for short 'SECR'. He was initially a Porter and was classified as Group D employee. In terms of the extant rules and norms which we

would refer to hereunder, he was eligible to be considered for promotion to Group C category, on out-of-turn basis, on the ground that after joining the Railways, he has fulfilled the criteria for such promotion by acquiring the requisite sports achievements. When the Establishment issued communication dated 29.10.2009 refusing to grant him such relief stating that the matter has been examined and it has been decided that the case has become old and the candidate should acquire the qualification for getting out-of-turn promotion, the employee moved the Central Administrative Tribunal. The employee's claim was rejected by the Tribunal on the ground that the application was belated. This is under challenge in this writ petition under Article 227 of the Constitution of India.

(2) Heard the learned counsel for the writ petitioner who was the applicant before the Tribunal and the learned standing counsel for the Railways. They have taken us through all the relevant documents which are exhibited and placed before us for consideration. Submissions were made, also based on the relevant dates and the category to which the petitioner was initially recruited and the category to which he aspired for out-of-turn promotion on the basis of sports achievement.

(3) In supersession of the instructions contained in its earlier order dated 20.06.2006 and all clarifications/corrigendum issued thereto, the Railway Board issued revised instructions for recruitment of sports persons, sports quota, norms and procedure for recruitment, incentives and out-of-turn promotion to sports persons in Indian Railways. That was issued as per Railway Board's letter No. E(Sports)/2007/Policy/3, dated 30.03.2007 and the instructions issued thereby were to be

applicable from 01.04.2007. It is not disputed that the Petitioner was holding a Group 'D' post as on 30.03.2007, the date of issuance of those instructions and on the succeeding day i.e 01.04.2007, the date on which those instructions would become applicable. The said letter dated 30.03.2007 and the instructions contained therein are hereinafter referred to as 'Instructions', for short.

(4) Paragraph 9 of the Instructions deal with incentives. Of them, paragraph 9.5 deals with promotion from Group 'D' to Group 'C' and paragraph 9.6 enumerates that NOTE (for Para 9.4 and 9.5). Having regard to the facts of the case and the contentions, it is apposite to quote paragraph 9.5 and sub-paras (a) to (c) of paragraph 9.6, which are relevant for the purpose of this case. They read as follows:

"9.5 Promotion from Group-D to Group-C:

9.5.1 Sportspersons recruited in Group-D categories, may be considered for promotion to Group-C, on out-of-turn basis, subject to fulfilling the following criteria and acquiring the sports achievements after joining the Railways:-

(i) Sportspersons acquiring the extant sports norms for recruitment to Group-C

OR

(ii) Represented Indian Railways in the National Championship on two occasions

OR

(iii) Gold Medal winning performance in any Championship, as mentioned in Category-C under Para-3.

9.5.2 Promotion from Group-D to Group-C shall not be considered as out-of-turn promotion for the purpose of counting the number of out-of-turn promotions. Similarly, for such promotion, the condition regarding minimum period of service in the existing grade, also need not be insisted upon.

9.5.3 The provisions as mentioned in para 9.5.1

& 9.5.2 for promotion from Group-D to Group-C, shall be read alongwith para 9.6 (Note).

9.6 NOTE (for Para 9.4 and 9.5):

(a) *If a sportsperson acquires the sports norms from out-of-turn promotion within Group-C or promotion from Group -D to Group-C, but does not possess the minimum educational qualification, the Railway Administration may recommend such promotion cases to Railway Board, for relaxation in the minimum educational qualification. Depending upon the merit, such cases shall be considered by the Railway Board with the proviso that sportsperson has to acquire the required minimum educational qualification within a period of three years, from the date of such promotion.*

In Artisan Category, for promotion from Group-D to Group-C on sports account, if a sportsperson acquires the sports norms but does not possess the minimum educational qualification, he/she may be promotion on provisional basis and allotted a trade and given on job practical training for a period of two years, on the expiry of which sportsperson shall be subjected to trade test. Subject to their passing the trade test, the provisional promotion of such sportsperson shall be regularised.

(b) *If the sportsperson promoted in accordance with Note(a) above, is not able to acquire the minimum educational qualification or unable to pass the Trade Test; within three years, as the case may be, he/she would be reverted to the original grade.*

However, in exceptional cases, where after such promotion, sportsperson continues to excel in the National Championships and/or participates in the International Championships mentioned under Para-3, case may be referred to Board, after GM's recommendation for extension in the time limit for acquiring the minimum educational qualification or for passing the Trade Test.

(c) *Out-of-turn promotion within Group-D to Group-C to the sportsperson shall be given as soon as he/she fulfills the above mentioned criteria. However, in order to ensure the benefit from sports achievements, if his/her immediate junior in his/her cadre gets the promotion in the*

normal course within the period of one year from the date on which he/she fulfills the criteria for promotion on sports account, then the sportsperson is entitled to be considered for the next higher grade. For calculation of one year's period, the concluding day of the championship shall be taken into the account."

(d) xxx xxx xxx"

(5) The eligibility of the Petitioner on the basis of the fact that he represented the Indian Railways in the national championship on two occasions, is not in dispute. The records show that Deputy Chief Personnel Officer (Headquarters), on behalf of the Chief Personnel Officer, had forwarded a letter dated 29.02.2008, on 19.08.2009, to the Director Establishment (Sports), Railway Board for out-of-turn promotion of the Petitioner. The Deputy Chief Personnel Officer is also shown to have addressed a letter dated 20.07.2009 which specifically states that the Petitioner was a Swimmer and he was appointed in the SECR in Group 'D' category against the sports quota and that he has represented Railways in Senior National Sports Championship during two consecutive years in 2005 and 2006 and it was therefore that his application was processed for out-of-turn promotion in terms of the extant instructions.

(6) Paragraph 9.6 of the Instructions is the NOTE which applies, *inter alia*, to promotions from Group 'D' to Group 'C' governed by paragraph 9.5. Sub-para (a) of the NOTE (paragraph 9.6) enjoins that if a sports person acquires the sports norms for out-of-turn promotion, *inter-alia*, Group 'D' to Group 'C', but does not possess the minimum educational qualification, the Railway administration may recommend such promotion cases to Railway Board for relaxation of the minimum educational qualifications. It further prescribes that depending upon the

merit, such cases shall be considered by the Railway Board with the proviso that sports person has to acquire the minimum educational qualifications, within a period of three years from the date of such promotion. This provision in the Instructions demolishes the stand of the Railways that the Petitioner had to acquire the qualification for getting out-of-turn promotion. The requirement of paragraph 9.6(a) that a person who does not possess the minimum educational qualification shall be promoted by imposing the conditions provided in that sub-para, is further strengthened by the contents of the first sub-para of paragraph 9.6(b) of the Instructions which provide that if the sports person promoted in accordance with Note (a), is not able to acquire the minimum educational qualification; within three years, he/she would be reverted to the original grade. The second sub-para of Note (b), which is unnumbered, even provides for an extension of time limit for acquiring minimum educational qualification in exceptional cases, described therein on the basis of achievements. 'Trade Test' referred to in Note (b) is relevant only to Artisan Category mentioned in the unnumbered paragraph in Note (a). Note (c) in paragraph 9.6 of the Instructions mandates that out-of-turn promotion to sports persons, *inter-alia*, from Group 'D' to Group 'C' shall be given as soon as he/she fulfills the criteria. The conjoint effect of Notes (a) and (c) in paragraph 9.6 of the Instructions is that if a sports person acquires the sports norms for out-of-turn promotion, *inter-alia*, from Group 'D' to Group 'C', such persons shall be promoted as soon as he fulfills such criteria and such promotion shall be conditional on the said person acquiring the required minimum educational qualification, within a period of three years, from the date of such promotion. This view is fortified by the

prescription of reversion to the original grade as enjoined in Note (b), in cases where the sports person so promoted is not able to acquire the minimum educational qualification within three years.

(7) In the case in hand, the reason given by the Railway Board for rejecting the Petitioner's request for promotion is that the case has become old and that the candidate should acquire qualifications as per norms prevalent on the date for getting out-of-turn promotion. The second limb of such reasoning is actually superfluous inasmuch as the NOTE takes care of all those persons who do not have the prescribed educational qualification and it directs that such persons shall be promoted and by requiring that the promotees shall acquire the prescribed educational qualification within a period of three years from the date of promotion. On the basis of material on record we are also unable to countenance the stand of the Railway Board that the case has become quite old and therefore the Petitioner is not entitled for out-of-turn promotion. For one thing, as already noted, the requirement to acquire the educational qualification becomes relevant and the period within which the qualification has to be acquired commences to run, only from the date of promotion. Therefore, no delay can be mulcted on the Group 'D' employee to obtain higher qualification. The revised Instructions were issued on 30.03.2007. The sports quota preference to the Petitioner was recommended at least on 29.02.2008. That stood with a delay of more than or nearly 1 ½ year to be forwarded in an intra institutional movement of documents in the Establishment of the Railway Board to ultimately reach the Director, Establishment of the Railway Board. Under such circumstances, we are unable to take the view that there was any lawful reason whatsoever for the Railway

Board to have ultimately said that the claim of the Petitioner has become old. If at all it had become old, the aging was on the table of governance of the Railways and not attributable to any conduct of the Petitioner.

(8) For the aforesaid reasons, the only conclusion that was available is that the Petitioner was entitled to be granted promotion and if he did not possess the requisite educational qualification, such promotion ought to have been effected with the rider that he shall acquire such qualification within the time prescribed as per NOTE (paragraph 9.6) of the Instructions. The learned Tribunal did not consider any of the relevant issues though the case in hand could have been decided on the basis of the facts which are admitted or available on record and by applying the Railway Board's Instructions issued on 30.03.2007. Failure to do so has resulted in manifest miscarriage of justice. The Tribunal had the requisite jurisdiction in terms of the provisions of the Administrative Tribunals Act, 1985 to interfere in the matter and grant relief to the Petitioner as against the unlawful and arbitrary refusal of the Establishment to grant out-of-turn promotion to the Petitioner from Group 'D' to Group 'C'. The impugned decision of the Tribunal having been rendered otherwise, is jurisdictionally and legally infirm and cannot stand scrutiny on judicial review under Article 227 of the Constitution of India. There is nothing more to be adjudicated or decided by the Tribunal than what we have considered hereinabove. The relief to which the Petitioner is eligible is therefore to be handed down by this Court, also for the reason that further delay in the matter has to be avoided. We therefore proceed to do so.

(9) In the result, this writ petition is allowed setting aside the impugned order of Central Administrative Tribunal. Consequently, the decision (Annexure R-3) of the Railway Board dated 29.10.2009 is set aside and it is declared that the petitioner is entitled to be promoted to Group 'C' category from Group 'D' category with effect from the date on which he would be entitled to such promotion in terms of the Railway Board's Instructions dated 30.03.2007. Requisite consequential order in terms of Clauses 9.5 and 9.6 of the Instructions dated 30.03.2007 shall be issued by the Respondents within a period of two months from the date of receipt of a certified copy of this order.

(10) This writ petition is allowed accordingly with an order of cost of Rs. 5000/- (Rupees Five Thousand Only) payable by the SECR to the Petitioner.

Sd/-

(Thottathil B. Radhakrishnan)

Chief Justice

Sd/-

(Pritinker Diwaker)

Judge