

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5687 of 2019**

- Saurabh Kumar, S/o Shri K.N. Prasad, aged about 42 years, Occupation – Jr. Clerk cum Typist, South East Central Railway, Bilaspur, R/o House No. 31/A, Sahara Vihar, Kasimpara, Near Torwa Chowk, Bilaspur (C.G.) 495005

---- Petitioner**Versus**

1. Union of India - Through the Secretary Railway Board, Rail Bhawan, New Delhi-110001
2. General Manager, 5th Floor New GM Building, South East Central Railway, Bilaspur, Chhattisgarh 495005
3. Principal Chief Personnel Officer, 1st Floor GM Office, South East Central Railway, Bilaspur, Chhattisgarh 495004

---- Respondents

For Petitioner	:	Shri A.V. Shridhar, Advocate.
For Respondents	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Order on Board****Per P.R. Ramachandra Menon, Chief Justice****31.07.2019**

1. Interference is declined by a learned Central Administrative Tribunal, Jabalpur Bench Circuit Sitting Bilaspur (for short, 'Tribunal') with regard to the challenge raised against the show cause notice issued to the Petitioner proposing a reversion to the post of Junior Clerk-cum-Typist, is put a challenge in this writ petition.

2. The sequence of events is as follows. The Petitioner was appointed as a typist in the Establishment of Railways way back on 30.05.2018. While so, a notification was issued by the Railways for promotion the post of Junior Clerk-cum-Typist and by virtue of the credentials of the Petitioner, he also made an application for promotion in that segment. At the same time, the private Respondent herein, by name Ms. Sushmita Das, who was also qualified, had made an application for selection and appointment by promotion to the post of Junior Clerk-cum-Typist. After completing the selection formalities, the 'select list' was published, whereby the Petitioner came to be ranked in front of the private Respondent, and accordingly, he was appointed as Junior Clerk-cum-Typist in the vacancy that was available.
3. The Railways proceeded with further steps in connection with the selection and appointment by promotion to similar posts and a subsequent recruitment notification was issued; pursuant to which, the private Respondent made an application. At the same, she had also made an application for revaluation of the answer papers in connection with the previous exercise. The Railways considered the said application and the answers papers were revalued; upon which it was revealed that the private Respondent Ms. Sushmita Das had scored more marks, which unfortunately was not reflected correctly in the earlier round. In the said circumstances, by virtue of the higher marks secured by a private Respondent, she was to be given appointment to the post of Junior Clerk-cum-Typist in the earlier selection exercise and this made the Railway authorities to issue a show cause notice to the Petitioner, proposing reversion.
4. When the Petitioner was required to explain the position, he rushed to the Tribunal by filing a O.A. No. 203/00586/2019 with the following prayers:

“8.1 That, the Hon'ble Court may kindly be pleased to allow the application and be pleased to make an order to quash and cancel the impugned Notice dated 05.07.2019 passed by the non applicant No. 2 (Annexure A/1).

8.2 That, the Hon'ble Court may kindly be pleased to call entire records of this matter.

8.3 Any other relief, which this Hon'ble Court may deem fit and proper, may also be passed in favor of the applicant together with cost of the application.”

5. The grievance projected by the Petitioner was considered and the Tribunal held that the cause of action projected in the Original Application was rather premature and that no reversion had actually taken place. In the said circumstances, interference was declined and the O.A. was dismissed. This order has been subjected to challenge in this writ petition, as mentioned already.
6. The learned counsel for the Petitioner points out that the show cause notice is not a 'notice' at all, as 'decision' has already been taken by the authorities concerned to revert the Petitioner. The learned counsel further points out that such a decision was taken at a higher level and the notice has now been issued only by the subordinate authority and hence the subordinate authority, in no way will go against the decision already taken by the higher authority and hence, interference is required.
7. With regard to the legal question, the learned counsel submits that the application of revaluation, if at all any, has to be submitted within 'two months' of the date of publication of selection list. The select list in the instant case had been published way back on 30.05.2018, but the application for revaluation was preferred only on 09.08.2018 and hence belated; which was not liable to be entertained, and hence, no relief could have been extended to the private Respondent under any circumstance.
8. The learned standing counsel representing the Railways submits that there is absolutely no basis for the apprehension expressed by the Petitioner insofar as the purpose of show-cause notice is to give an opportunity to explain all the relevant facts and figures and also the relevant provisions of law. Once the

representation is obtained, it will be considered by the competent authority applying the mind in a proper manner and a proper decision will be taken which will be let known to the Petitioner. No reversion has been ordered and the Petitioner will not be reverted before deciding the matter based on the facts and figures and the relevant provisions of law, submits the learned standing counsel.

9. The learned standing counsel representing the Railways also points out that the first recruitment was only in respect of the specified segment i.e. $33\frac{1}{3}$ in total number of posts which were to be filled up by the members belonging to the feeder category based on "seniority-cum-suitability", whereas the second advertisement in which the private respondent alone participated was in respect of the remaining $66\frac{2}{3}$ which was to be filled up strictly on the basis of merits.
10. In the above facts and circumstances, we are of the view that the order passed by the Tribunal is not liable to be interdicted by this Court in this writ petition. It is for the Petitioner to submit the explanation/representation, if any, in response to the show cause notice; upon which the same shall be considered by the competent authority with proper application of mind in relation to the relevant provisions of law and a speaking order shall be passed as expeditiously as possible.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge