

**Court No. - 1**

**Case :-** WRIT - A No. - 2000381 of 2005

**Petitioner :-** Mohd.Shafiq

**Respondent :-** Union Of India Through G.M.North  
Eastern Railway

**Counsel for Petitioner :-** Abhinav N. Trivedi

**Counsel for Respondent :-** A.K.Chatrurvedi,B K  
Shukla,Pankaj Kumar Awasthi

**Hon'ble Attau Rahman Masoodi,J.**

**Hon'ble Brij Raj Singh,J.**

**1.** Heard Sri Subodh Kumar Verma holding brief of Sri Abhinav N. Trivedi, learned counsel for the petitioner and Sri S.B.Pandey, learned Senior Counsel and learned Deputy Solicitor General of India assisted by Sri Anand Dwivedi, learned counsel for the opposite parties/ Union of India.

**2.** The present writ petition has been filed with prayer to quash the impugned order dated 18.05.2004 passed by Central Administrative Tribunal, Lucknow (for short 'Tribunal') whereby the relief claimed by the petitioner in Original Application No.669 of 1995 has been partly allowed against the order dated 02.08.1995 passed by opposite party no.3/ Divisional Railway Manager (P), North Eastern Railway, Ashok Marg, Lucknow.

**3.** The facts, in brief, of the present case are that the petitioner was engaged as casual labourer in the year 1981 and worked as Khalasi at Gonda and Gorakhpur for 871 days.The opposite parties notified selection for regular appointment in class IV post from the post of casual labourers.The petitioner was declared successful amongst 363 candidates for being appointed as regular class IV posts vide notice dated 01.08.1987 issued by

opposite party no.3. The name of the petitioner finds place at serial no.214 in the select list. Thereafter, medical examination was conducted and the petitioner was declared fit on 25.08.1987. Ten selected candidates were sent for being posted under the Loco Foreman, Gonda vide letter dated 10.02.1988 wherein the name of the petitioner finds place at serial no.1 of the said list but the petitioner was not allowed to join the duties without any reason whereas other candidates joined their duties. On 08.03.1988 the opposite parties again issued a list for being posted under Loco Foreman, Mailani and the name of the petitioner figured at serial no.3 but without any rhyme and reason the petitioner was not allowed to join the duties, however, juniors to the petitioners were given joining. The petitioner made several representations to the authorities concerned pointing out maltreatment and requested them to post him. The Divisional Railway Manager(P) North Eastern Railway, Ashok Marg, Lucknow/opposite party no.3 vide order dated 02.08.1995 informed the petitioner that his posting could not be given for the reason that there was no vacant post in the Mechanical Department. Aggrieved by the order dated 02.08.1995, the petitioner filed Original Application No.669 of 1995 before the Tribunal with the following relief:-

*" 1. To quash the impugned order dated 02.08.1995 passed by opposite party no.3 as contained in Annexure No. A-1 to the Original Application.*

*2.To direct the opposite parties to appoint the applicant retrospectively from the date his juniors in the select list were appointed with arrears of pay, seniority and other consequential benefits.*

*3. To direct the opposite parties to pay the costs of the*

*application.*

*4. Any other relief which this Hon'ble Court deems fit in the circumstances of the case."*

**4.** The Tribunal allowed the original application of the applicant partly vide order dated 18.05.2004 and directed the opposite parties to appoint the petitioner within three months from the communication of the order w.e.f. the date he joins the duties with rider that he would not be entitled for other benefits as claimed in Original Application. Being aggrieved against the order dated 18.05.2004 passed by Central Administrative Tribunal Lucknow, the present writ petition has been preferred by the petitioner before this Court.

**5.** It has been submitted by learned counsel for the petitioner that juniors to the petitioner were allowed to join their duties but the petitioner was ignored by adopting pick and choose method. Learned counsel for the petitioner has further submitted that after determining the vacancies, a select list was prepared and juniors to the petitioner were given joining; there was no reason to ignore the petitioner on the ground that there was no vacancy in the Mechanical Department. Learned counsel for the petitioner has submitted that while filing the counter affidavit before the Tribunal, the opposite parties had taken a new plea that the appointment of the petitioner was cancelled vide order dated 09.03.1988 but the said order was also not filed along with counter affidavit. Learned counsel for the petitioner submitted that opposite parties had taken two contrary stands; one that the petitioner could not be appointed due to non-availability of post in Mechanical Department and the second stand that the appointment of the petitioner was

cancelled on 09.03.1988.

6. Per contra, learned counsel for the answering respondents has submitted that the impugned order dated 02.08.1995 was issued inadvertently and the appointment of the petitioner was cancelled on 09.03.1988 which was not challenged by the petitioner. He also submitted that a vigilance inquiry was conducted and it was found that some irregularities were committed in the selection process and it was decided by the competent authority that those candidates who were not appointed till the vigilance inquiry, would not be appointed in future.

7. After hearing learned counsel for the parties and going through the record, we find that the opposite parties on one hand, has taken a stand in the impugned order that it was not possible to appoint the petitioner due to non-availability of vacancy in the Mechanical Department but on the other hand, the opposite party has taken a new stand before the Tribunal in Original Application that the appointment of the petitioner was cancelled on 09.03.1988 which was neither served upon the petitioner nor addressed to him. The Tribunal dealt the issue and found that a discriminatory attitude was adopted by the authority concerned while appointing the selected candidates from the select list leaving the petitioner without any reason. The relevant portion of the judgment of the Tribunal is quoted below:-

*"During arguments, it has also been contended on behalf of the respondents that since the selection was cancelled, vide order dated 2.3.88, the present O.A. filed on 14.12.95 was highly time barred and hence not maintainable even at the stage of admission. This*

contention does not find favour with us because order dated 2.3.88 was neither served on the applicant nor it was even addressed to him, therefore, the plea taken by the respondents in this respect is not acceptable. Furthermore, the conduct of the respondents themselves is contrary to admitted facts, as they had been forwarding the name of the applicant for posting at Mailani on 8.3.88 vide Annexure A-5 which is subsequent to the date of alleged cancellation of selection vide Annexure SCA-1 dated 2.3.88. The respondents have taken the plea that it was due to inadvertence in forwarding his name at Mailani also is unacceptable in view of the fact that similar plea has been taken with regard to the issuance of the letter dated 2.8.95 to the applicant who is being informed that since there was no vacancy in the Mechanical Department, therefore, he cannot be given posting order on the basis of selection made vide A-2 declaring him successful for appointment. If the applicant has not been given appointment alongwith others who were similarly declared qualified alongwith him vide A-2 or whose names were forwarded firstly to Gonda and then to Mailani, with the sole exception of the applicant, clearly smacks of discriminatory attitude being adopted by the respondents. It is also unacceptable that since a decision was taken that whosoever had been posted on the basis of selection alleged to have been cancelled, on account of irregularities found therein, the applicant was not appointed. To say that he had no right to be given posting shall be discrimination when others who were even admittedly junior to him as per the seniority list, have been appointed. We, therefore, find merit in the contention of the applicant and hence feel satisfied that in this case the action of the respondents was highly discriminatory towards the applicant who is entitled to be meted out with equality and parity with those who were similarly given posting on the basis of the selection made by the respondents.

We, therefore, allow the O.A. and direct the respondents to give appointment to the applicant within three months from the communication of the order w.e.f. the date he joins the duties but he shall not be entitled to any other benefits as claimed in this O.A. No order as to costs."

8. After perusing the aforesaid directions, we are also of the view that act of the opposite parties was discriminatory as he was not given joining whereas the

candidates junior to the petitioner were allowed to join their services. The discrimination is apparent on the face of record for which no justification has been pointed out by the answering respondents. The judgment of the Tribunal requires interference partly whereby a direction was issued that the petitioner will be given joining from the date he assumes charge and other benefits as claimed in Original Application was denied.

**9.** Once we find that the action on the part of opposite parties is discriminatory, violating Articles 14 and 21 of the Constitution of India, we are of the view that the petitioner is entitled to get the benefit of his service from the date of institution of Original Application before Central Administrative Tribunal. Thus, we hold that the services of the petitioner will be counted from the date of institution of the Original Application and his pensionary benefits will be fixed accordingly. However, it is made clear that the petitioner will not be entitled for arrears of salary.

**10.** With the aforesaid observations and directions, the writ petition is **allowed partly**.

**(Brij Raj Singh, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 6.3.2024**

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