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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1537/2001

This the 18th day of December, 2001.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Tek Ram S/O Sri Chand,
Ad hoc Goods Guard,
Northern Railway,
Railway Station, Jind.

... Applicant

(By Shri B.S.Mainee, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents

(By Shri R.P.Agarwal, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has challenged Annexure A-1 order dated 29.5.2001 issued by respondent No.2 requiring the applicant to show cause why he should not be reverted to his substantive post of Cabinman.

2. The learned counsel of the applicant stated that the applicant was promoted to officiate as Goods Guard on 18.3.1993 in the grade of Rs.1200-2040 on ad hoc basis, and continued as such. The respondents initiated the process of selection for the post of Goods Guard vide Annexure A-4 dated 21.3.1995. The applicant having completed five years of service as Cabinman appeared in the written examination held in pursuance of Annexure

A-4. Whereas he passed the written examination, he was not declared successful in the selection after taking into consideration his performance in the viva voce. The learned counsel contended that in similar circumstances, the applicant's other colleagues, namely, S/Shri Ram Pal Singh, Om Singh, Madan Pal and Jagdish Rai were regularised in the post of Goods Guard in terms of the judgment dated 2.9.1999 of this Tribunal in OA No.2168/1995 : Ram Pal Singh & Ors. v. Union of India & Ors. (Annexure A-9). The learned counsel also relied on the respondents' circular dated 19.3.1976 (Annexure A-7) whereby the authorities were required not to declare the employees who have been working in the posts on ad hoc basis quite satisfactorily, as unsuitable in the interview while forming panels. This circular came up for consideration before the Hon'ble Supreme Court in the case of R.C.Srivastava v. Union of India in a Civil Appeal arising out of SLP (C) No.9866 of 1993. The Apex Court vide order dated 3.11.1995 held that the directions contained in the circular are not inconsistent with any statutory rules and the respondents were directed to consider the appellant to have been selected in the selection for the relevant post as per the related panel. The applicant has sought quashing of Annexure A-1 and a direction to the respondents to consider his empanelment on the same lines on which his colleagues like Ram Pal Singh etc. were considered and empanelled.

3. The learned counsel of the respondents stated that the applicant appeared in the selection for the post

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of Goods Guard (written test followed by viva voce) in 1995 but could not be placed in the panel as he failed to qualify in the above selection, as per Annexure A-6 dated 21.9.1995. The applicant appeared in the selection once again in 1997. This time he failed to qualify even the written test. Since the applicant could not qualify the selection for the post of Goods Guard, he was served the show cause notice Annexure A-1 for reversion to the substantive grade of Cabinman. The learned counsel contended that this application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, as the applicant has challenged his non-inclusion in the panel declared on 21.9.1995 while the present application has been made on 15.6.2001. The learned counsel stated that orders/judgments in other cases do not give any fresh cause of action. He relied on State of Karnataka v. S.M.Kotrayya, 1996 SCC (L&S) 1488; S.S.Rathore v. State of M.P., (1989) 4 SCC 582; Union of India v. K.L.Babu, (1999) 1 SCC 729; and Bhoop Singh v. Union of India, JT 1999 (3) SC 322.

4. The learned counsel of the applicant relied on K.C.Sharma & Ors. v. Union of India & Ors., 1988 (1) SLJ 54 (SC) in which it was held that application filed by similarly placed persons should not be rejected for bar of limitation.

5. The instructions contained in circular dated 19.3.1976 (Annexure A-7) read as follows :

"2.2. Panels should be formed for selection posts in time to avoid adhoc promotions. Care should be take to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employees reaching the field of consideration should be saved from harassment."

6. The Hon'ble Supreme Court in the matter of R.C.Srivastava (supra) held the above circular to be in order and this Tribunal in the case of Ram Pal Singh (supra) directed the respondents to include the names of applicants therein in the select panel as they had appeared in the viva voce. It was also held that they would be entitled to all consequential benefits. Whereas in our view, too, similarly placed cannot be treated differently and should be extended the benefit of judgments of courts and tribunals, but in the instant case, the facts are distinguishable. The applicant had participated in the selection conducted in 1995. Whereas he had passed in the written test, he could not qualify in the selection on the basis of viva voce. Similarly placed colleagues of the applicant, namely, Ram Pal Singh etc., - had challenged the 1995 selection on the basis of the aforesaid circular wherein the authorities had been asked to empanel the candidates who had been serving on ad hoc basis satisfactorily and were not to be declared unsuitable in the interview. Instead of challenging the 1995 selection at the appropriate time like his colleagues had, the applicant chose to appear in the subsequent selection held in 1997 wherein he failed in the written test itself and was not called for the interview. His non-challenge to the 1995 selection and

participation in the 1997 selection in which he failed at the threshold is nothing but acquiescence of his right, if any. The inordinate delay on the part of the applicant in challenging the 1995 selection has become uncondonable. As such, his case cannot be considered for empanelment on the basis of the aforesaid circular on the lines the case of Ram Pal Singh etc. was considered.

7. So far as the applicant's challenge to Annexure A-1 is concerned whereby he has been asked to show cause why he should not be reverted to his substantive cadre post of Cabinman, we find that the applicant had been appointed to officiate purely on ad hoc basis as Goods Guard grade Rs.1200-2040 vide orders dated 17.8.1993 and 7.2.1994. It was clearly indicated therein that his ad hoc promotion as Goods Guard was purely temporary and does not confer upon him the right for regular promotion as Goods Guard in future. Under the terms of appointment he was liable to be reverted as soon as selected and empanelled staff became available for posting as Goods Guard. It is not the applicant's case that he is being replaced by some other ad hoc appointees. Obviously he is being replaced by regularly selected and empanelled staff. The consequential reversion of the applicant, therefore, cannot be faulted with.

8. Having regard to the facts and circumstances of the case and above discussion, we do not find any fault with the action of the respondents in putting the applicant on notice for reversion through Annexure A-1

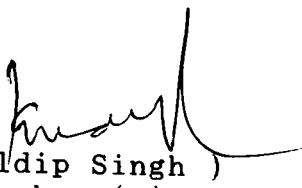
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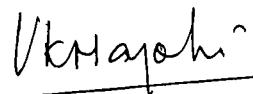
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and also not empanelling the applicant in the selections for the post of Goods Guard held in 1995 and 1997.

9. Accordingly, this application is dismissed. No costs.


(Kuldip Singh)
Member (J)


(V. K. Majotra)
Member (A)

/as/