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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
...

OA No. 1566/98

New Delhi, this the 15th day of January, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

In the matter of:

Chet Ram s/o Shiv Charan,
Shunting Jamadar,
Northern Railway,
Moradabad.

....Applicant

(By Advocate: Shri G.D. Bhandari)

Vs.

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

...Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

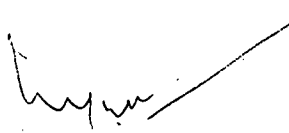
This O.A. is directed against the order dated 29.4.1998 issued by Respondent no. 2 by which the applicant is sought to be reverted from the post of Shunting Jamadar to the post of Shunting Porter and the applicant has been directed to show cause within 15 days from the receipt of the aforesaid order as to why he should not be so reverted. He further assails the order dated 17.6.1998 by which the order of reversion has been passed.

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2. The contention of the applicant is that he had appeared in the written test held for selection to the post of Shunting Jamadar the result of which was declared on 25.3.1986 in which list the applicant's name figured at serial no.20. The interview was held later on. However, since delay in issuing the final panel was apprehended and in the meantime services of ad hoc Jamadars were needed in view of the ensuing Kumbh Mela, some persons who had qualified in the written test were granted promotion by the letter dated 24.3.1986. The applicant was one of them. According to the applicant a bare perusal of the aforesaid letter would show that there were 16 clear vacancies at that time. It is further averred that the viva-voce test was held on 29.4.1986 and 1.5.1986 and a panel of 16 persons was declared on 21.5.1986, as at Annexure A-2a. However, the name of the applicant did not figure in that panel. Even so the respondents issued promotion and posting orders dated 3.6.1986 granting promotions to 16 persons including the applicant. But so far as the applicant and two other candidates, namely, Shri R.K. Giri and Shri Mangu Lal were concerned, the order stated that their promotion would be only on ad hoc basis. The applicant claims that the aforesaid panel was based upon the selection and there were no grounds for ordering promotion of these three persons, including the applicant, only on ad hoc basis.

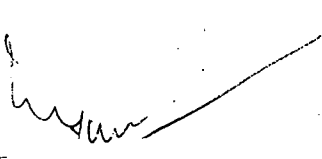
3. The applicant continued to hold the higher post of Shunting Jamadar and has been getting his periodical annual increments also. The seniority list of Shunting Porters issued by the respondents in the year



1993 also did not contain the name of the applicant which, according to the applicant, further establishes the fact that he had been promoted on regular basis.

4. The respondents, however, did not regularise the applicant in the higher post but on the other hand they issued a fresh circular calling for the names of Shunting Porters for appearing in a fresh selection and in that letter applicant's name was also shown at serial no. 42. According to the applicant he having already been promoted on substantive basis could not have been asked to once again appear in the written test as he had already qualified in the year 1986. It is further averred by the applicant that his appointment by promotion having continued for more than 18 months (for about 12 years) his promotion should be deemed to have been regularised and he could not be further subjected to another selection nor could his appointment be labelled as ad hoc promotion.

5. The applicant further takes the plea that in April, 1989 also another selection for the post of Shunting Jamadar was held but at that time the applicant was not called for written test. According to the applicant had his promotion granted earlier been only on ad hoc basis he would certainly have been called in the year 1989 to appear in the fresh selection. In the year 1993 another selection was held for filling up the post of Shunting Jamadars (Rs. 1200-1800/-) and in that selection the applicant appeared as he was shown in the list of candidates who could participate in the written test. However, the applicant's name did not find a place



in the list of selected candidates. The applicant submitted representation to the respondents but there was no response,. He accordingly approached the Tribunal and filed an O.A. The Tribunal disposed of that OA with certain directions to the respondents which, according to the applicant, the respondents failed to comply. The applicant filed a contempt petition in which notice was issued on 22.7.1998. After having received the notice, the respondents issued the impugned letter dated 29.4.1998. The applicant assails the impugned letter mainly on the ground that the applicant had actually qualified in the selection held in 1986 and has continued to work on the higher post ever since.

6. It further appears that respondents in pursuance to the impugned show cause notice later issued the order dated 17.6.1998 whereby the applicant has been reverted to the lower post. This order also, as already mentioned, has been challenged in this O.A.

7. The applicant seeks the following reliefs:-

"(i) to set aside and quash impugned orders 29-4-1998 Annex.A and 11/17-6-1998, Annexure 'C' whereby the applicant is sought to be reverted in grave violation of the directions of the Hon'ble Tribunal;

"(ii) direct order/command the respondents to comply with the directions given in para-4 of judgement order, where their Lordships have held that application succeeds and to

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consider the regularisation of the applicant as Shunting Jamadar in the context of facts observed by the Lordship in aforesaid judgement order;

"(iii) any other relief deemed fit and proper may also be granted in favour of applicant in addition to the heavy costs of the case, in the interest of justice.

"(iv) direct/order command the respondents to pay heavy costs for the prolonged chain of litigation post on the applicant, in the interest of justice"

8. During the pendency of the instant O.A. the respondents filed an additional reply bringing out the fact that the relief prayed for by the applicant has been granted to him. The respondents annexed to the additional reply a copy of the order dated 13.10.1998 granting promotion to the applicant on regular basis to the post of Shunting Jamadar.

9. The respondents accordingly prayed that this O.A. may be dismissed as having been rendered infructuous. This contention was resisted by the learned counsel for the applicant.

10. We have heard the learned counsel for the parties at length and have perused the material on record.

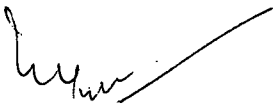
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11. The contention of the learned counsel for the applicant is that the order dated 13.10.1998 granting promotion to the applicant on regular basis to the higher grade does not state anything about the previous service rendered by him on that post. According to the learned counsel the respondents while issuing the aforesaid order should have given effect to the regular promotion of the applicant to the higher grade from the initial date of the applicant's joining the higher post.

12. Coming to the merits of the O.A. learned counsel for the applicant states that there is overwhelming evidence to prove that the appointment on promotion of the applicant in the year 1986 was on a regular basis and that the applicant had actually passed the selection held in that year. This contention is strongly refuted by the learned counsel for the respondents. The respondents have also taken a plea in the counter that at no point of time had the applicant passed the requisite selection and that his promotion alongwith the promotion of two others was granted purely on ad hoc basis though they continued to serve on the higher post for a number of years.

13. On considering the rival contentions, we find much force in the contention of the learned counsel for the respondents. The applicant according to his own showing was not appointed on regular basis. It is not disputed by him that the applicant was required to pass both in the written test as well as viva-voce. An attempt has, however, been made by the learned counsel for the applicant to show that the respondents had chosen a wrong



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method to assess the performance of the applicant in the written test and the interview. We are, however, not inclined to agree, for the simple reason that more than 12 years have passed since the examination was held and the applicant was not included in the panel. The applicant had a cause of action at that time. When the applicant was promoted on ad hoc basis while 13 other persons were promoted on regular basis a cause of action once again accrued to him. He did not choose to assail that action of the respondents at the relevant point of time. Therefore, he cannot now be heard to say that the respondents had erred in promoting the applicant only on ad hoc basis instead of regular basis.

14. Again, the applicant could have agitated the matter when in the year 1993 he participated in the selection but was declared to have failed in the same. It was at that time open to the applicant to challenge the action of the respondents on the plea that he had already passed the selection in the year 1986. We are, therefore, convinced that applicant has been guilty of laches in not raising the said claim earlier. We also do not find any merit in the applicant's contention that since he has continued to work on ad hoc basis for a long time this by itself, provides a sufficient ground for regularising his services from the back date, i.e., the date of his appointment on ad hoc basis.

15. We also agree with the learned counsel for the respondents that since the respondents have now taken a decision to regularise the applicant's services even though he had not passed the requisite selection, the O.A. would not survive.

16. The learned counsel for the applicant, however, vehemently argues that since the applicant had been granted the relief prayed for in OA 2101/94 the respondents are duty bound to grant him regularisation from the initial date of his promotion. We have carefully gone through the copy of the judgement (A-13) passed in the earlier OA and find that there was no direction given to the respondents to consider the case of the applicant for regularisation from an earlier date. The direction to the respondents was only to the extent of considering if the applicant could be regularised as a Shunting Jamadar in the context of the facts mentioned in the earlier paras of the judgement. Since the respondents, after considering the applicant's case in pursuance to the direction of the Tribunal, granted him promotion on substantive basis, the respondents cannot be held to have gone against the direction of the Tribunal in the earlier O.A. We may also mention here that in the order dated 13.10.1998 by which promotion on regular basis has been granted to the applicant there is no mention of the fact as to whether this promotion would be effective from the date of that order or from an earlier date. The applicant may, if so advised, make a representation to the respondents with the request that he be granted regularisation from some

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earlier date. But so far as this Tribunal is concerned we find no grounds to interfere with the order of the respondents.

17. For the foregoing reasons we hereby dismiss the O.A. as having been rendered infructuous. No costs.

R. K. Ahooja
(R.K. Ahooja)
Member (A)

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T. N. Bhat
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(T.N. Bhat)
Member (J)