

Central Administrative Tribunal, Principal Bench

Original Application No. 500 of 1998

New Delhi, this the 7th day of September, 2000 (11)

Hon'ble Mr.Kuldeep Singh, Member(Judicial)
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

Naginder Singh, S/o Shri Bachan Singh, R/o
B-381, Sonia Vihar, Delhi-92. - Applicant

(By Advocate Shri H.P.Chakravarti)

Versus

1. Union of India through the Chairman, Railway Board, Principal Secretary to Govt. of India, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Divisional Railway Manager, 1 State Entry Road, New Delhi.
4. Sh. Kali Charan, Son of Sh.Ram Parkash, Coupen Clerk/ Loco Shed Canteen, N.Rly. New Delhi. - Respondents

(By Advocate Shri O.P.Kshatriya)

O R D E R

By Mrs.Shanta Shastry, Member (Admnv)-

The applicant in this case is aggrieved that his name has not been placed on the provisional panel for the post of Assistant Manager Grade Rs.950-1500 against the 50% quota.

2. The applicant was initially posted as a Salesman in the Divisional Manager's Office Canteen, New Delhi from 21.12.1972. Thereafter, he was granted the status of Railway servant with effect from 20.10.1980 in pursuance of the judgment of the Hon'ble Supreme Court on 22.10.1980. Thereafter he has been continuing in the post of Salesman ever since. The next higher grade post is that of Assistant Manager in the scale of Rs.950-1500 to which promotions are made on the basis of seniority. In the year 1996-97, after promotion of some of the Assistant Managers, vacancies arose in the cadre of

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Assistant Manager. Therefore, the respondents held a selection for the post of Assistant Managers through a written test on 26.7.1997. The applicant also appeared in the written test and was declared successful. The applicant had then to undergo viva voce test but he apparently could not clear the viva voce test. When the results were declared, he found that his name was not in the impugned panel dated 19.1.1998. The applicant has, therefore, prayed to quash the impugned order dated 19.1.1998 and to direct the respondents to consider his case for promotion to the post of Assistant Manager by invoking the provisions of Para 219(1) of Indian Railway Establishment Manual, Vol.1, 1989 and the Restructuring Scheme of 1993 on substantive basis.

3. The applicant contends that he is the senior most person eligible for promotion to the post of Assistant Manager. He did not receive a single promotion during all the 25 years of his service. He has rendered satisfactory service. The respondents have ignored the Railway Board's circular dated 19.3.1976 (Annexure-A-7) wherein it has been laid down "[P]anels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment".

4. The applicant states that he has not only been functioning as an Assistant Manager for more than 2-1/2 years but he has even worked as Manager in the absence

of Manager. He should not, therefore, have been failed in the viva voce test. The learned counsel for the applicant has cited a number of cases including the judgment of the Hon'ble Supreme Court dated 3.11.1995 in Civil Appeal arising out of SLP (C) No.9866/1993 in the case of R.C.Srivastava Vs. Union of India and another. In this judgment the Hon'ble Supreme Court held that the circular dated 19.3.1976 does not run contrary to any statutory rule but only gives guidance in exercise of power by the selection committee while considering the suitability at the stage of interview. In the light of this, the Hon'ble Supreme Court allowed the SLP by setting aside the judgment of the Tribunal dated 11.6.1993 and declaring that the appellant should be considered to have been selected for the post of Law Assistant. The other decisions cited are decision dated 15.10.1996 in OA 810/96 (Shri Vir Sen Vs. Union of India); decision dated 23.9.1999 in OA 15/97 (Gurpreet Singh and another Vs. Union of India and others); decision dated 1.2.2000 in OA 812/96 (Shri Satish Chander Khare Vs. Union of India), in support of the claim that those employees who were working on adhoc basis prior to the selection should not be denied selection only because they could not be successful in the viva voce on the basis of the circular dated 19.3.1976.

5. The learned counsel of the respondents submits that the applicant was considered for selection. He cleared the written test but could not be successful in the viva voce test held on 23.10.1997. The selection was held to fill up one vacancy against 50% quota by open selection and not by promotion. Therefore, the

candidate who secured the highest mark in the written test and in the interview has been selected on merits. The learned counsel further controverts the applicant's claim that he was put to work on adhoc basis as Assistant Manager. According to the respondents the applicant was put to work on adhoc basis as Assistant Manager by the Canteen Manager without obtaining permission from the competent authority and, therefore, it is not a valid arrangement. Since no competent authority has issued any orders of adhoc appointment or adhoc promotion of the applicant as Assistant Manager, the applicant has no case and he is not entitled to any relief as prayed for.

6. We have heard the learned counsel for the applicant as well as the respondents and have also perused the various judgments/ decisions cited by the applicant. There is no denial that the Railway Board circular dated 19.3.1976 is in force and is applicable wherever employees who had worked on adhoc basis are to be considered for selection even if they fail in the viva voce test. This is upheld by the Hon'ble Supreme Court in the case of R.C.Srivastava (supra). It is clear from the pleadings that though the applicant claims to have been working as Assistant Manager, there is no order issued by any competent authority promoting him on adhoc basis. This being so, the circular of 19.3.1976 is not applicable in the case of the applicant. In all the judgment/decisions on which the applicant has relied upon, the applicants had all been promoted on adhoc basis. Thus, the present applicant's case is distinguishable from those of the applicants in the judgment/ decisions cited supra. The applicant has

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not produced any authentic material to show that he had been promoted on adhoc basis. In the absence of any such document, we are of the view that the applicant's case is devoid of merit. Accordingly, the OA is dismissed. No costs.

S. Chaturvedi

(Mrs. Shanta Shastry)
Member (Admnv)

K. Singh

(Kuldeep Singh)
Member (Judicial)

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