

15

Central Administrative Tribunal, Principal Bench

OA No. 2080 of 1995

New Delhi this the 12th day of October, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

1. P.C. Sharma S/o Shri R. C. Sharma
JIT (CIT Off), Amritsar.
 2. Balwinder Singh S/o Shri Pala Singh
JIT Ludhiana (CIT Off)
 3. Lal Chand S/o Shri Pyare Lal S
JIT Ludhiana (CIT Off)
 4. Madan Lal S/o Shri Boota Ram
JIT CIT Ludhiana
 5. C.M. Mehta S/o Diwan Chand
JIT CIT Ludhiana
 6. Darshan Singh S/o Shri Piara Singh
JIT CIT Ludhiana
 7. Darshan Singh S/o Shri Shangar Singh
LIT CIT Ludhiana
 8. Smt. Suman Lata W/o Shri P.K. Gupta
JIT CIT Ludhiana
 9. R.K. Mehta S/o Mangal Dass
JIT CIT Amritsar
 10. C.M. Chadha S/o Shri Lahori Mall
JIT CIT Amritsar
 11. Soin Das S/o Shri Kaka Ram
JIT CIT Ludhiana
 12. Raghbir Singh
LIT CIT Ludhiana
 13. K.L. Narula S/o Shri Chaman Lal
JIT CIT Amritsar
 14. Mohanjit Singh Bhalla S/o Navrattan
JIT CIT Amritsar
 15. J.L. Kapoor S/o Shri Bhagat Ram
JIT CIT Amritsar
 16. Gurdeep Singh S/o Shri Hansraj Singh
JIT CIT Ludhiana
 17. Prem Paljit S/o Shri H. Ram
JIT CIT Pathankot
 18. Dewan Chand S/o Shri Udho Dass
JIT CIT Ludhiana
- fu

19. R.K. Sood S/o Shri T.C. Sood
JIT CIT Jalandhar
20. Ram Pal Joshi S/o Shri Baboo Ram
JIT CIT
21. Dhanu Ram S/o Shri Deen Ram
JIT CIT Pathankot

..... Applicants

(All the above applicants are working as Junior Inspector of Works)

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Ferozepur.
3. Shri Hakam Singh
Junior Inspector of Tickets,
Ludhiana.
4. Shri Jaspal Singh
Junior Inspector of Tickets,
Amritsar.
5. Shri Ashok Kumar
Junior Inspector of Tickets,
Jalandhar City.
6. Shri Surjeet Singh
Junior Inspector of Tickets,
Jalandhar City.
7. Shri Parvesh Chander
Junior Inspector of Tickets,
Ludhiana.

Respondents

(By Advocate: Shri P.S. Mahendru)

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

P.C. Sharma and others have filed this OA impugning the seniority list which was circulated vide Annexure A-1 dated 16.9.93. They have also challenged an order dated 11.10.1995 passed by the Senior Divisional Personnel Officer, Northern

Ku

Railway, Ferozepur. Vide Annexure A-2, the respondents wanted to conduct the test for the post of CIT grade Rs.2000-3200.

2. Facts in brief are that the applicants were appointed as Ticket Collectors initially in the grade of Rs.260-400. Thereafter, they were promoted as Senior Ticket Collectors in the grade of Rs.330-560 which was converted to grade Rs.1200-2040. Then they were promoted as Head Ticket Collectors in the year 1986 on ad hoc basis in the grade of Rs.1400-2300. It is stated that though the applicants were appointed as ad hoc Head Ticket Collectors, but, in fact, there existed regular vacancies and they could not have been appointed as a stop-gap arrangement/ad hoc and they have further passed a test called P-6A course from the Zonal Training School, Chandausi.

3. It is further pleaded that for several years the respondents did not hold the selection and the applicants continued to work as Head Ticket Collectors on ad hoc basis. Selection was ultimately held in the year 1992 and they were regularised on 23.12.1992.

4. Thereafter, seniority list was circulated vide Annexure A-1. On the perusal of the same the applicants found that respondents No.3 to 7, who were junior to them, have been shown senior to the applicants although their date of appointment as Ticket Collectors was much earlier. Respondents No 3 to 7 are shown to have been promoted in the year 1983, 1984 and 1985. A representation against the seniority list was made vide Annexure A-5, but no reply was ever received nor the seniority list was modified.

ku

5. It was further stated that the enquiries made revealed that respondents No.3 to 7 have been given promotion by virtue of their being sportsmen. This action of the respondents is again illegal as no promotion could have been given to a sportsmen on a post for which no direct recruitment is permissible. Since the post of Head Ticket Collectors can be filled only by means of promotion, so the respondents No.3 to 7 could not have been promoted to the post of Head Ticket Collectors.

6. It was prayed that since the applicants were holding the post of Head Ticket Collectors from 1986, so they should be assigned seniority from 1986 as regular vacancies were available at that time and the applicants should not have been appointed as ad hoc Head Ticket Collectors.

7. It is also prayed that promotion of respondent Nos. 3 to 7 be also quashed.

8. Respondents contested the OA but admitting that the applicants were promoted as ad hoc Head Ticket Collectors. It is further pleaded that regular selection could not be conducted due to case filed by Shri Karnail Singh and others vide OA 425/86 which was decided by the Chandigarh Bench on 18.9.1987. The O A. was decided in favour of the applicants therein and the respondents were directed to revise the seniority list by withdrawing the benefit of accelerated promotions drawn by SC/ST candidates. Against that order/judgment of the Chandigarh Bench of the Tribunal, an SLP was filed but the same was also dismissed and in the circumstances seniority list was prepared as per the judgment of the Chandigarh Bench of the Tribunal.

ln

9. As far as 5 respondents i.e. respondents no. 3 to 7. are concerned, they were promoted on out of turn basis vide Railway Board's letter dated 25.11.1976, Annexure R-2, because of their being sportsmen of National and International level.

10. It is further stated that as per rules, a person promoted against a selection grade post is to get seniority from the date of actual promotion and since the applicants had qualified the selection on 10.12.1992, so they were rightly regularised in December, 1992.

11. It is denied that any representation was received from the applicants challenging the seniority list. So it is prayed that the OA merits dismissal and the same be dismissed.

12. We have heard the learned counsel for the parties and have given a thoughtful consideration to the matter.

13. The learned counsel appearing for the applicants submitted that as per Indian Railway Establishment Manual Volume I - 215, the Railway authorities are required to hold the selection for the post in question regularly and in case they do not hold the selection regularly, they cannot take a person on ad hoc basis particularly so when vacancies are available. So the applicants should be deemed to have been holding the post since 1986.

14. In reply to this, the learned counsel for the respondents stated that in this case the department had to resort to the ad hoc appointments because of a litigation pending before

km

the Chandigarh Bench and the appointment letters placed on record by the applicants themselves show that they were appointed to officiate in the grade of Rs.425-640 on ad hoc basis and that too at their respective stations and further it was a provisional officiating ad hoc appointment. So this does not confer any right on the applicants to hold the post since 1986.

15. The fact that they were allowed to remain on the respective stations, itself shows that it was a stop-gap arrangement since the respondents were unable to conduct a regular selection because of the litigation pending before the Chandigarh Bench. We are also in agreement with the counsel for the respondents that in this case the applicants were appointed to officiate on ad hoc basis and that too 'provisionally' which clearly shows that it was a stop-gap arrangement. Besides that for making an ad hoc appointment there is an enabling provision in Indian Railway Establishment Manual Volume I - 216. 216(c) particularly says that ad hoc promotion does not confer any right in regular promotion and his promotion is to be treated as provisional. So we are of the considered opinion that the applicants have no right to claim seniority from the year 1986.

16. The applicants have also challenged the promotion of respondent Nos. 3 to 7 in the sports quota. The applicants have stated that no sports person could be promoted to a post where there is no direct recruitment quota and promotion given to the outstanding sportsmen should always be counted against the direct requirement quota.

17. In reply to this, the counsel for the respondents

A

referred to the letter of the Railway Board annexed as Annexure R-2, which reads as follows:-

As far as possible the out of turn promotion should be to a grade where there is a direct recruitment quota and this promotion should be counted against this direct recruitment quota. The G.M. will however, have discretion to relax this provision in special cases.

18. The learned counsel for the respondents stated that under the sub clause of the letter Annexure R-2 produced above shows that the General Manager has the discretion to relax this provision in special cases and in this case special permission has been taken from the General Manager to give promotion to respondent Nos. 3 to 7. Thus we find that the applicants are also not able to challenge the promotion given to the respondents, who are respondents No.3 to 7 in this case.

19. The learned counsel for the applicants has also relied upon the judgment reported in Current Service Journal (Vol.2) page 420 - Rajbir Singh and Others Vs. U.O.I. and others wherein it was held that ad hoc working on substantive post followed by regularisation has to be taken into account for reckoning seniority. That case is also of a Railway employee but on a persual of the same, we find that the applicants in that case were promoted to Class III post after holding selection tests and finding them suitable for the promoted post in the year 1975. But in the year 1986, the services of those applicants were regularised and their entire period of ad hoc service from 1975 was taken into consideration and the Hon'ble Supreme Court in that case held that since they were working in substantive

posts, so their services should be counted from 1975. However on facts, that case is distinguishable from the present case as in this case the applicants were not appointed after qualifying the test as laid down in IREM Vol.1 in Rule 215 for the post of Head Ticket Collector. They were appointed provisionally and test was conducted subsequently in the year 1992. So that is why they were regularised in the year 1992 itself after passing the test.

20 The counsel for the applicant has also relied upon the judgment of the Hon'ble Supreme Court in State of Maharashtra Vs. Jagannath Achyut Karandikar reported in AIR 1989 SC 1133, wherein it was held as follows:-

Constitution of India, Arts. 309, 311,
14 - Promotion - Departmental examination - To be passed within stipulated period - Failure of Govt to hold examination for several years - Person who has to be exhausted all his chances, could not be denied of his seniority - It is unreasonable and arbitrary to penalise such person for default of Govt. to hold examination every year.

21 On the facts, this case is also distinguishable because in this case there was failure on the part of the Government to hold selection for several years whereas in the present case the department could not hold test because of the litigation pending before the Chandigarh Bench and immediately after the test was held, the seniority list was issued.

22. The learned counsel for the applicant has also referred to another judgment reported in AIR 1989 (1) SC page 314 - Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.A.

kn

Kashyap and Others, wherein it was held as follows:-

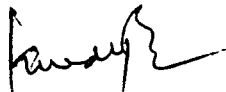
In the absence of any other valid rule for determining inter se seniority of the members belonging to the same service, the length of continuous officiation prescribes a valid principle


23. This case is also distinguishable on facts from the case in hand because in that case the incumbents of the post were given promotion on ad hoc basis in the absence of any valid rule existing at the relevant time and were later regularised. But in the case in hand it is not a case of absence of any rules for promotion. The rules did exist but ad hoc arrangement has to be resorted to because of the litigation pending before the Chandigarh Bench and when the applicants were appointed on ad hoc basis, no test had been held and they were appointed provisionally as a stop-gap arrangement. So the applicants in the present case are not entitled to be given the benefit of their ad hoc service.

24. Besides, the learned counsel for the respondents had also submitted that in this case, the applicants after having been regularised in the post of Head Ticket Collector they along with respondents No.3 to 7 appeared for the higher post of CIT and after having failed therein, they have come before this Tribunal to challenge the seniority list. So according to the learned counsel for the respondents, applicants had accepted the seniority list and on that seniority list they had appeared for the post of CIT. So now by the principle of estoppel, they are estopped to challenge the seniority list. There is no denial to this fact by the counsel for the applicants. So we are of the

considered opinion that once they having appeared in the test for higher post on the basis of the same seniority list, they are estopped to challenge the same.

25. In view of our discussion above, we find that the CA has no merit and is accordingly dismissed. No costs.


(Kuldip Singh)
Member (J)


(S.R. Adige)
Vice Chairman(A)

Rakesh