

Central Administrative Tribunal, Principal Bench

Original Application No. 198 of 1996

New Delhi, this the 10th day of November, 1999

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (Admnv)

1. Shri Jaipal Sharma, s/o Shri C.P. Sharma, Section Controller, Northern Railway, Tundla
 2. Shri Dilip Saraswat, s/o Shri R.C. Saraswat, Section Controller, Northern Railway, Tundla. - Applicants
- (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, Allahabad. - Respondents

(By Advocate Shri O.P. Kshatriya)

O R D E R (Oral)

By Mr. R.K. Ahooja, Member (Admnv) -

The applicants who are Assistant Station Masters in Allahabad Division of Northern Railway are aggrieved by their non-selection to the post of Section Controller.

2. The case of the applicants is that they had been appointed as Section Controllers on adhoc basis since 1987. They had also been recommended for regularisation and a decision to that effect had also been taken by the Divisional Railway Manager in 1991. However, the said decision was not implemented but later the respondents decided to conduct an examination against the 75% promotion quota for filling up the posts of Section Controller from amongst Assistant Station Masters, Guards and Yard Masters. The applicants also

decided to appear in that examination. Initially, their application for appearing in the examination was not accepted. But, as some similarly placed adhoc Section Controllers approached the Allahabad Bench of this Tribunal and their OA for appearing in the supplementary examination was allowed, the respondents also allowed the present applicants to appear in the supplementary examination. The applicants submit that they had passed the written examination. However, when the final result after the viva voce was notified vide Annexure-A-1 dated 4.10.1995, their names were not seen in that list. The applicants also submit that there is a circular from the General Manager dated 19.3.1976, in which it has been stated that 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. On that basis the applicants seek a direction that their names should be included in that list for regularisation as Section Controller.

3. The learned counsel for the respondents submits that under the rules the applicants can only be regularised as Section Controller if they pass the examination both written as well as interview. The respondents submit that the applicants are far down in the seniority list and were not entitled to be considered for promotion as Section Controller.

4. We have heard the counsel. It is an admitted position that the applicants have been officiating on adhoc basis as Section Controller since 1987. They had

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also been allowed the pay of the Section Controller with effect from 1.9.1987. The examination for regularisation was conducted in 1994. They had thus already put in 7 years service on adhoc basis. There is no allegation that service rendered by them as Section Controller was not satisfactory. It is also the contention of the applicants that when they were appointed as Section Controllers on adhoc basis none of their seniors had raised an objection nor ~~was~~ ^{they were} offered a promotion to the post of Section Controller. We find that in a similar case (P.C.Srivastava's case) which had come before the Tribunal, the Tribunal had decided that the instructions of the General Manager dated 19.3.1976 could not be applied as Railway rules require that only such persons who pass the examination should be included in the panels. However, the Hon'ble Supreme Court in SLP (C) No. 9866 of 1993 (P.C.Srivastava Vs. Union of India and another) decided on 3.11.1995 held that "[I]t is no doubt true that a circular of the Railway Board cannot override a statutory rule but a Circular, which is in the nature of administrative direction, can certainly supplement the rules on which the rules are silent". It was further held that the circular dated 19.3.1976 only gives guidance in the matter of exercise of the power by the Selection Committee while considering the suitability at the stage of interview. The Apex Court on that basis held that the direction in the circular dated 19.3.1976 was not inconsistent with the statutory rules.

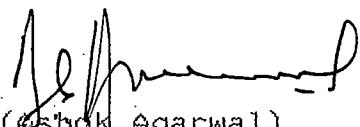
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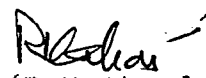
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5. Considering that the applicants herein had rendered satisfactory adhoc service for a period of more than 7 years, we find they are also entitled to the benefit of the aforesaid circular dated 19.3.1976. Admittedly, they have passed the written examination and it is only on the basis of the interview ^{that} they were ~~placed far down~~ ^{included} in the panel and not found suitable on the basis of the merit position. In terms of the aforesaid circular they should not have been declared as failed in the interview. Following the ratio of the Supreme Court in P.C.Srivastava's case (supra) we find that the applicants are entitled to be declared successful in the examination and for inclusion of their names in the impugned order dated 4.10.1995 (Annexure-A-1).

6. In the result, the O.A. is allowed. The respondents are directed to interpolate the names of the applicants in the panel declared by them vide Annexure-A-1 dated 4.10.1995 as per their merit position. No costs.


(Ashok Agarwal)
Chairman


(R.K. Ahooja)
Member (Admnv)