

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1938 of 1996

New Delhi, this 8th day of March, 2000

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

G.P. Verma
S/o Slate Shri M.S. Verma
working as Section Controller
under D.R.M. Northern Railway
Moradabad.

... Applicant

(By Advocate Shri B.S. Mainee - not present)
(Shri Deepak Verma appears as proxy for him.)

versus

Union of India, through

1. The General Manager(P)
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
Moradabad.

... Respondents

(By Advocate Shri B.S. Jain - not present)
(Shri H.P.Chakravory appears as proxy for him)

ORDER(oral)

By Smt. Shanta Shastry, M(A)

Shri Deepak Verma appears as proxy for
Shri B.S. Mainee, counsel for the applicant and
Shri H.P. Chakravory appears as proxy for Shri
B.S. Jain, counsel for the respondents, but they
are not prepared to argue the matter on the
ground that advocates are abstaining ^{from} courts.
Since the matter is of 1996, we proceed to
dispose of the same on merits.

2. The applicant who was appointed as a
Guard in the grade of Rs.1200-2040 on
compassionate ground with effect from 1.6.1982
alleges that he was put to work as Section

Controller in the grade of Rs.1400-2600 with effect from 26.12.1986. He has further claimed that he was continuously working from 25.12.1986 on ad hoc basis. The applicant applied for regular selection for the post of Section Controller when the applications were called for from the eligible employees in April 1993. He was called for appearing in the written examination which was fixed to be held on 30.1.1994 and 6.2.1994. He appeared in the examination and was successful and was informed accordingly on 19.4.1994. The viva voce test was fixed on 25.4.1994 in which the applicant appeared. Thereafter however without announcing the results, the respondents held a fresh written examination in August 1994. The applicant appeared in the said examination and failed. The respondents initiated another fresh selection in 1995 vide letter dated 3.1.1995 calling for applications. The applicant also applied for the same and was given a serial number. However due to serious emergency the applicant who was sanctioned leave for 11 days could not appear on the date fixed for written examination, i.e. 22.4.1995. Immediately after resumption from leave, he submitted a representation requesting for a supplementary test as he could not appear due to unavoidable circumstances. No supplementary test was held. According to the applicant he was allowed to

16

continue to work as a Section Controller even after the declaration of the results of the said examination. Thereafter the applicant applied for 20 days leave from 29.8.1996. After he went on leave he learnt that Senior D.O.M. had taken a decision to revert him from the post of Section Controller to the post of Guard although no order of reversion had been communicated to the applicant till then.

3. It is the case of the applicant that the ^{cancellation of} selection the 1st selection wherein the applicant had appeared and been successful was arbitrary on the part of the respondents. It is wrong to have initiated a fresh selection process without declaring the results of the earlier selection and without giving any reasons. The applicant had sent a representation on 25.7.1994 to the D.R.M. protesting against the arbitrary action of cancelling the first selection. He sent another representation on 8.11.1994. He also submitted an appeal to the Chief Personnel Officer on 7.5.1996. However he did not receive any reply. The applicant has stated that even otherwise he should have been regularised in the post of Section Controller in terms of a letter dated 19.3.1976 wherein instructions were issued by the Railway Board for protecting the ad hoc services of the employees. In the said letter, the Railway Board had advised, "all the Railway

16

panels should be formed for selection post in time to avoid ad-hoc arrangement and care should be taken to see while forming panel that employees who have been working in the post on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. Also any employee reaching the field of consideration should be saved from harassment." According to the applicant since he had been working on ad hoc basis as Section Controller for more than 18 months, he should have been granted regularisation as Section Controller. Further the applicant has also mentioned that he is discriminated against because in identical case six Assistant Station Masters of Moradabad Division who had been working as Section Controller on ad hoc basis for more than three years were regularised provided they passed P-16 course from zonal Training School, Chandausi. Similarly respondent no.1 also directed D.R.M. Jodhpur to regularise Shri Ram Chand and Shri Kishan Chand as Section Controllers without subjecting them to selection. The applicant has prayed that orders passed by the respondents dated 14.7.1994 be quashed as also the decision to revert him from the post of Section Controller to the post of Guard and to direct the respondents to regularise the services of the applicant as Section Controller.

14

4. The respondents in their counter have categorically denied that the applicant had been continuously working as Section Controller since December 1986 as claimed by the applicant. The applicant was appointed as a Guard in the grade of Rs.1200-2040 on compassionate grounds. It has been denied that he was put to work as Section Controller from 26.12.1986 as alleged. The applicant is still working as Guard in his parent cadre. The applicant was never promoted or posted as Section Controller. Therefore the question of his reversion from the post of Section Controller to the post of Guard does not arise at all nor have any reversion orders been therefore issued to the applicant. The applicant was being simply utilised in the Control Office against casualties. Even as per the channel of promotion, there is no provision for Guard in grade Rs.1200-2040 for ad hoc promotion as Section Controller in grade Rs.1400-2600. The respondents have further denied that the first selection process was cancelled with the intention of giving undue favour to some of the candidates or to deliberately keep the applicant away from the test. The applicant did not appear in the examination for selection of Section Controller held in 1995. So he could not find a place in the final panel. In the notification dated 27.3.1995 calling employees for selection for the post of Section Controller it was

clarified that if any employee fails to appear in the written examination to be held on 22.4.1995, it would be his responsibility and no supplementary test would be held. Even as per rules and notification dated 27.3.1995, there is no provision for supplementary written test. Since the applicant did not appear in the examination held on 22.4.1995, he could not be considered for the post of Section Controller.

5. We have gone through the pleadings carefully. The respondents have raised the point of limitation. The applicant has filed MA.No.1846/96 for condonation of delay on the ground that he had submitted representations on 25.7.1994, 8.11.1994, 30.4.1995 and appeal on 7.5.1996 and he had not received any reply. The respondents have submitted in reply that they did not receive any of the representations or the appeal. The applicant has given no reasons for the delay except that he has been making representations and according to the respondents none of the representations was received by them. The applicant has impugned the order dated 14.7.1994 by which the selection process was cancelled. The cause of action, therefore, arose on that date. Even if six months' time is permissible after making a representation, still the application of the applicant which is filed on 4.9.1996 goes beyond the limitation period.

7. permissible under Section 21 of the Administrative Tribunals Act. The applicant made his first representation on 25.7.1994. the applicant's reason for condonation of delay not being satisfactory, cannot be accepted. The delay cannot, therefore, be condoned.

6. In the facts and circumstances of the case, the application needs to be dismissed on the ground of limitation alone.

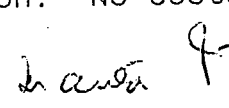
7. On merits, the applicant has relied upon a Fax dated 30.3.1993 wherein C.P.T.M.-I Head Quarters Office, New Delhi of the Northern Railway was informed that Shri G.P. Verma, i.e. the applicant was working as Section Controller since 25.12.1986 on ad hoc basis by the Moradabad office (designation not legible). This was in reply to a Fax message calling for information regarding number of Section Controllers working on ad hoc basis for more than three years. The respondents have denied categorically that the applicant was working continuously as Section Controller. Occasionally his services were utilised in the Control Office.

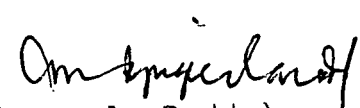
8. We note that there is no formal order issued by the respondents appointing the applicant on ad hoc basis as Section Controller. This ~~by itself does not confer any right to be~~

regularised in the said post. The applicant has relied upon the judgement in Civil Appeal in the case of R.C. Srivastava Vs UOI & Anr wherein the appeal was allowed and it was declared that the appellant should be considered to have been selected for the post of Law Assistant in the selection for the said post as per the panel. In this case Shri R.C. Srivastava had been appointed as Law Assistant on ad hoc basis. The hon'ble Supreme Court held that the applicant was entitled to the benefit of the direction contained in the circular dated 19.3.1976 of the Railway Board granting protection to ad hoc employees working continuously. According to the applicant his case is covered by this judgement. We have perused the judgement and we find it cannot be said to be applicable in the case of the applicant because Shri R.C. Srivastava was actually appointed as Law Assistant on ad hoc basis by an order dated 2.5.1990. There is no such order of ad hoc appointment issued in the case of the applicant. Therefore, the applicant's case is distinguishable from that of the case of Shri R.C. Srivastava. Further, merely current duty charge of a higher post or assignment to an officer without promoting him to that post does not confer any enforceable right. The post of Section Controller is a selection post and is to be filled after a written examination and a viva voce test. Therefore, the

instructions of the Railway Board do not apply when an employee fails in a written test prescribed for promotion. It has been held so in the case of S.R. Pooniah Vs UOI [1987(4) ATC 321(CAL)]. It was held in this case that no protection can be given to those who have been officiating for more than 18 months of ad hoc basis without passing the prescribed test or without undergoing prescribed selection process. Since the applicant could not get through the selection process for the post of Section Controller and he was not appointed even on ad hoc basis, he cannot claim any right to continue in the post of Section Controller. The applicant has no case.

9. The OA therefore, fails and is dismissed on the ground of merit as well as on limitation. No costs.


(Mrs. Shanta Shastry)
Member(A)


(V. Rajagopala Reddy)
Vice Chairman(J)

dbc