

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.503 of 1997

New Delhi, this the 14th day of October, 1998


Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Madan Pal Singh, ..Applicant
(By Advocate Shri P.M. Ahlawat)

Versus

Union of India & Others ..Respondents
(By Advocate Shri B.S. Jain)

1. To be referred to the Reporter or not? YES
2. To be circulated to other Benches of the
Tribunal? NO


(Dr. A. Vedavalli)
Member (J)

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Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

Madan Pal Singh,
S/o Shri Balbir Singh,
Vill & Post Office Sikander Pur,
Tehsil Bawani Khera,
Distt. Bhiwani (Haryana)

...Applicant

(By Advocate Shri P.M. Ahlawat)

Versus

Union of India through,

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.

2. The Chief Administrative Officer (Constn.),
Northern Railway,
Kashmiri Gate,
Delhi-110006.

3. The Chief Engineer,
Northern Railway,
Baroda House,
New Delhi-110001.

...Respondents

(By Advocate Shri B.S. Jain)

ORDER

By Dr. A. Vedavalli, Member (J):

The applicant Madan Pal Singh, who was working as an ad hoc Vehicle Driver under DCE (Constn.) in N. Railway, Hissar, is aggrieved by his posting/reversion to a lower grade, i.e., Gangman under AEN/DE after screening. He has impugned the order No.1-E/GC/HSR dated 21.9.96 (Annexure A-1) in this connection.

2. The facts of this case, briefly stated, are as under:



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2.1 The applicant was initially appointed as a casual labourer w.e.f. 15.3.83 and was posted under IOW (C) Surat Garh, under the Chief Administrative Officer (Constn.) Northern Railway, Kashmiri Gate, Delhi (Respondent No.2). He was given scale rate of pay after six months and was subsequently appointed as Vehicle Driver in the grade of Rs.260-400(RS)/Rs.950-1500(RPS) on ad hoc basis w.e.f. 2.4.84 till 22.9.96. He was regularised as Gangman in the scale of Rs.775-1025 (RPS) after screening and was posted under PWI-I Hisar under Divisional Railway Manager, Bikaner as per A.E. Sirsa letter dated 11.10.96 (Annexure A-3). He was spared by the impugned order dated 21.9.96 (Annexure A-1). It appears from the said order that after screening at Bikaner Division as Gangman his lien was fixed under AEN/DE and he was asked to report for duty there after he was transferred by an order dated 19.9.96 though he did not want to go as per the remarks made by him on the LPC. The aggrieved applicant submitted an application dated 9.10.96 (Annexure A-4) to DSE/Bikaner requesting for cancellation of his posting as Gangman and for appointment as Driver keeping in view the selection of three of his juniors working in the Bikaner Division as Drivers who were relieved and promoted whereas he was reverted in spite of repeated letters from Deputy CPO (Constn.) to Senior DPO/Bikaner for arranging his suitability test for the post of Driver. Earlier a trade test for him was conducted on 28.1.87, 29.1.87 and 30.1.87 and he was found suitable for the post of Driver grade Rs.260-400 as

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per the letter dated 17.9.97 from Senior Divisional Engineer/Construction-I Northern Railway, Surat Garh to DCE/Construction, Northern Railway, Bhilwani (Annexure A-5). The applicant had also submitted a representation to AE (Open Line) Northern Railway, Sirsa, requesting for being considered for a vacancy of Driver under his control (Annexure A-6/1). He had also given a representation for being included in the list of candidates to be called for the suitability test for the post of Vehicle Driver to be held on 19.5.94 as his juniors were called for the same whereas his name was excluded as seen from the letter dated 18.5.94 from Dy. C.P.O. (Constn.) HQ to Senior DPO Bikaner (Annexure A-6).

2.2 The main relief sought by the applicant is for quashing of the impugned order at Annexure A-1 and for a direction to the respondents to treat him continuously as a Driver with all consequential benefits.

2.3 The main grounds on which the aforesaid relief is sought by the applicant are that the principles of natural justice were violated as he was not given a notice and an opportunity of being heard before the impugned order was passed by respondent No.2, particularly when his case for promotion as Driver was pending and he could have been saved from his reversion by his retention as as hoc Driver till his case is decided and since his junior was working as a Driver in the Sirsa Sub Division and vacancies are also available for his adjustment.

[Signature]

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2.4 Another ground raised by the applicant is that since he had already passed the trade test and had been found suitable for the post of Driver in 1987 itself (Annexure A-5) he should have been appointed to that post on joining Sirsa Sub Division as a junior to him who had not passed the said test is working as an ad hoc Driver there he should not have been reverted to a lower post as Gangman.

3. The respondents have contested the OA and have filed their counter reply.

4. A preliminary objection has been raised by the respondents in their reply as to the maintainability of the present OA. They have submitted that the applicant is posted at Hissar and is residing at Bhiwani and hence the OA falls under the territorial jurisdiction of the Central Administrative Tribunal, Chandigarh Bench and is not within the jurisdiction of the Principal Bench.

5. In reply to the aforesaid preliminary objection, the applicant in his rejoinder has submitted that he has claimed his relief for issue of a direction regarding the cancellation of the impugned reversion order and since the said order has been issued on the basis of the decision of respondent No.2 and cause of action has arisen in Delhi, the present OA is within the territorial jurisdiction of the Principal Bench of the Tribunal. In the written submissions filed on behalf of the



applicant on 21.7.98 in response to the Tribunal's order dated 15.7.98 it was submitted, inter alia, that the Construction Organisation is headed by the Chief Administrative Officer (Constn.) of Northern Railway (respondent No.2) at Kashmiri Gate, Delhi and that the staff is to be posted according to the requirements of the construction work irrespective of any divisional and sub divisional jurisdiction as in the case of open line. Administrative work including posting, transfer, promotion reversion etc. is being done by the Deputy Chief Personnel Officer (Constn.) in consultation with respondent No.2 and hence due to this reason also the OA is within the territorial jurisdiction of the Principal Bench, since the cause of action has arisen in Delhi, as is clear from the Annexure A-2.

6. Learned counsel for the applicant argued that in view of the above position, the preliminary objection as to the territorial jurisdiction of Principal Bench regarding the OA is devoid of any merit and deserves to be rejected.

7. Learned counsel for the respondents could not refute the above factual position and stated that he is not pressing the aforesaid preliminary objection.

8. Another preliminary objection raised in the counter-affidavit is as to the non-joinder of necessary parties. But this objection also was not

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pressed during hearing by the learned counsel for the respondents in view of the submissions made in the rejoinder and also the written submissions. 26

9. In view of the above, there is no need to adjudicate upon the said preliminary objections and accordingly we proceed to deal with the OA on merits.

10. Learned counsel for both the parties have been heard. Pleadings, material papers and the documents placed on record have been perused. Matter has been considered carefully.

11. Re the ground raised by the applicant as to the violation of the principles of natural justice as he was not given a notice and opportunity before the impugned order was passed, the learned counsel for the respondents urged that the applicant has himself filled up the requisite forms (Annexure R-3) for being screened as Gangman. As he has a lien in the Bikaner Division, he was transferred to the said division by the impugned order after his success in the screening test and was appointed as Gangman by the order dated 11.10.96 (Annexure R-4). He would be considered for promotion as per Rules in his channel as per his seniority as and when a vacancy occurs there. He submitted that in view of the above position, there is absolutely no violation of any principles of natural justice and the action of the respondents is not illegal, discriminatory or malafide.

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12. It is obvious that the applicant has voluntarily and willingly given his consent for being screened for the post of Gangman by filling up the requisite forms (Annexure R-3). He is aware of the consequences that will follow if he is successful in the concerned screen test. He has also not impugned the appointment order dated 11.10.96 appointing him as temporary Gangman (Annexure R-4) and also the earlier order dated 5.8.96 (Annexure R-1) placing him on the panel for Gangman after his success in the screening test at Bikaner and the order dated 13.9.96 (Annexure R-2) fixing his lien under AEN/DE.

13. In view of the above position, we are of the considered opinion that the aforesaid ground regarding violation of the principles of natural justice by not giving notice or opportunity of being heard to the applicant in the facts of the present case is devoid of any merit or justification. The said ground is, therefore, rejected.

14. Re the second ground urged by the applicant with reference to his success in the trade test for Drivers conducted in the year 1987 it was submitted by the learned counsel for the respondents that the applicant was trade tested for the post of Driver only for a particular project and even though he has continued thereafter in that post in the other projects also he cannot mix up staff and vacancies in the construction organisation and the open line. He contended that the construction organisation is a

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temporary one and does not have any permanent staff and consequently it is manned by the surplus staff in the open line offices. As Bikaner Division is short of staff the applicant has been transferred as Gangman there and he will be considered for promotion as Driver as per rules in his channel as per his seniority and as and when there is a vacancy.

15. The learned counsel for the applicant refuted the above arguments made by the learned counsel for the respondents vehemently and submitted that there is no rule which requires that a person who had already passed the trade test in one project should pass in any other project to which he is transferred also to be considered for promotion and there were enough vacancies between the year 1987 when he passed the trade test at Surat Garh (Annexure A-5) in the year 1997 when he has filed the present OA and he could have been promoted as a Driver on regular basis as he had worked for several years as an ad hoc Driver in a number of projects. He had relied upon the decisions of this Tribunal in Sh. Sri Ram and Others vs. Union of India & Others (1994 (2) ATJ 139 CAT (PB)) and submitted that as the applicant had already acquired temporary status in a class III post, screening test for Group 'D' post cannot adversely affect his position as per the ratio laid down in the aforesaid case. He has also relied upon the decision of the Apex Court in State of Haryana Vs. Piara Singh and Others (AISLJ 1992 (3) SC 34 where the issue of regularisation of ad hoc temporary employees and casual labourers, daily

wagers etc. who were engaged with reference to PSC, SSC or Employment Exchange was considered. He had also cited the decision of the Hon'ble Supreme Court in Dr. Krishan Chander Sahu and Others vs. State of Orissa & Others (1996 (1) AISLJ 116) where the selection of Teachers by the Selection Board for Homeopathy Colleges was found defective and certain directions were given to continue those persons on ad hoc basis till fresh selection is made and the rules are amended.

16. Learned counsel for the respondents submitted that the aforesaid decisions are not applicable to the facts of the present case. He relied strongly on the case of Union of India vs. Moti Lal and Others (1996(7) SCC 481) wherein it was held by the Apex Court, inter alia, that the acquisition on temporary status in the higher promotion post ipso facto does not confer any right of regularisation on the employee in the said post and he can be absorbed or regularised only as per the relevant rules.

17. During the course of arguments and also the written submissions filed by the applicant on 21.7.98 a reference was made to a notice/order No.939/E/7/Const/Driver dated 24.4.98 by the Deputy CPO appointing the applicant who was working as a Gangman at Bikaner as a Vehicle Dirver in the grade of Rs.950-1500 (RPS)/Rs.3050-4590 at Udhampur after his passing the trade test. The applicant submitted that he had joined as Driver in the Construction

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Organisation at Udhampur on 3.5.98, a copy of the said notice/order produced for our perusal has been taken on record.

18. Learned counsel for the respondents submitted that the applicant passed the trade test on 17.4.98 and was appointed as Driver in the Construction Organisation at Udhampur on 24.4.98 and stated that as the applicant has joined the said post also on 3.5.98 the OA has become infructuous and deserves to be rejected.

19. We have considered the rival submissions and contentions of the parties on the aforesaid second ground urged by the applicant. The applicant has not given any valid or tenable reasons as to why he had subjected himself to the screening test in the year 1996 for Gangman and the trade test for the post of Vehicle Driver in the year 1987 at Surat Garh after the latest test in 1998 and has been working in the said post also without moving the competent judicial forum for redressal of his grievances at the appropriate time. The preset OA has been filed in the year 1997. He has also not been able to establish any enforceable legal right with supproting rules/documents/materials to get the relief sought for in the OA on the basis of the second ground also. Moreover, the decisions of the Apex Court and of this Tribunal relied upon by the applicant, we find, are distinguishable on facts to those in the present OA and do not help his case. He has not been able to indicate any illegality or

violation of any legal right in the impugned order. We are, therefore, of the opinion that the second ground also is not valid and tenable in the eye of law. Hence the said ground is also rejected.

20. In the facts and circumstances of this case and in view of the aforesaid discussion we are of the considered opinion that the OA is devoid of any merit and there is no justification for interfering with the impugned order.

21. In the result, the O.A. is dismissed.

No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

N. Sahu

(N. Sahu)
Member (Admnv)

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