

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T. No. 2101 /1994 Decided on : 9-12-94

Applicant(s)

Chet Ram

(By Shri G.D. Bhandari, Advocate)

versus

Respondent(s)

U.O.I & anr

(By Shri R.L. Dhawan, Advocate)

CORAM

THE HON'BLE SHRI

K.M. AGARWAL, CHAIRMAN

THE HON'BLE SHRI

R.K. AHOOJA, MEMBER(A)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches of the Tribunal ?

km
(K.M. AGARWAL)
- CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A. No. 2101/94.

(2)

NEW DELHI, THIS THE 9th DAY OF DECEMBER, 1997.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN

HON'BLE MR. R.K. AHOOJA, MEMBER (A).

Chet Ram,
S/o Shri Shiv Charan,
R/o Village Jhanjharpur,
P.O. Harthalia (Sonakpur)
Distt. Moradabad.

....

APPLICANT

(BY ADVOCATE SHRI G.D. BHANDARI)

Vs.

1. Union of India
through the General Manager
Northern Railway
Baroda House,
New Delhi.

2. The Divisional Railway Manager
Northern Railway,
Moradabad.

RESPONDENTS.

(BY ADVOCATE SHRI R.L. DHAWAN)

O R D E R

JUSTICE K.M. AGARWAL:

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has mainly claimed two reliefs; one for injunction against his apprehended reversion and another for regularisation of his services as Shunting Jamadar.

2. Briefly stated, the applicant joined his services as Porter/Khalasi on 24.7.1975, promoted as Shunting Porter on 22.12.1978 and further promoted on ad hoc basis as Shunting Jamadar on 3.6.1986. It appears that for the post of Shunting Jamadar, it was necessary for the applicant to pass certain written and viva voce tests conducted in 1986 or in subsequent years. In 1986, he had cleared the written test, but could not clear the

Yours

(3)

viva voce test and, therefore, given the ad hoc promotion to the post of Shunting Jamadar. In subsequent years 1989, 1990 and 1993, he failed in both written and viva voce tests, but was allowed to continue to hold the post of Shunting Jamadar on ad hoc basis. In 1994 by the impugned letter dated 26.9.1994, Annexure A-3(a), he was informed that if he failed in the notified written and viva voce tests to be conducted in October 1994, he was likely to be reverted to the post of Shunting Porter. In these circumstances, apprehending his reversion and/or failure to face the tests, he filed the present application for the said reliefs.

3. After hearing the learned counsel for the parties and perusing the record, we are of the view that without passing the suitability tests, the applicant cannot ordinarily claim regularisation of his service as Shunting Jamadar, or get any injunction against reversion to his substantive post, which cannot be said to be punitive in nature, particularly when the post is admittedly a selection post. The decision of the Supreme Court in BHIKARI SINGH V. UNION OF INDIA, Civil Appeal No.4047/91, dated 27.9.1991 relied on by the learned counsel for the applicant is of no help to him, because in the case before the Supreme Court, it was found that the appellants therein "were promoted on the definite understanding that they would not be reverted unless found unfit. They, thus, had a legitimate expectation to be retained in the higher post on a regular basis unless found unfit." This does not appear to be the case in the present case. In ASHWANI KUMAR V. STATE OF BIHAR, AIR 1997 S.C. 1628, it was held:

"In this connection it is pertinent to note that question of regularisation in any service including

Yours

(X)

any Government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for a long period of time with or without any artificial breaks and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the concerned employees can give their best by being assured security of tenure. But this would require one pre-condition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the concerned incumbent. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case back door entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could even be effected. Such an entry of an employee would remain tainted

Yours

5

from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be." (Emphasis supplied).

In the present case, it may be assumed that the ad hoc appointment of the applicant as Shunting Jamadar was against an available sanctioned vacancy, but it cannot be assumed that it was by following the rules and regulations governing such entry. The vacancy was required to be filled on the basis of the recommendations of the Selection Board and the procedure to be adopted by the Selection Board is given in paragraph 219 of the Establishment Manual of the Railway Board. Clause (g) of Paragraph 219 of the Manual provides:

"(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the factors to be taken into account and their relative weight are laid down below:

		Maximum Marks	Qualifying marks
(i)	Professional ability	50	30
(ii)	Personality, address, Leadership and academic qualification	20	-
(iii)	A record of service	15	-
(iv)	Seniority	15	-

NOTE (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from the examining CRs and other relevant records.

(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being

Yours

(b)

placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination."

The learned counsel for the respondents submitted that in the suitability test held in 1986, the marks for various heads or fields of test were as follows:

For written test	...	35 marks
For viva voce	...	15 marks
For professional ability	...	15 marks
For Personality, address, leadership & academic	...	20 marks
For service record	...	15 marks
For seniority	...	15 marks

It was not disputed that the applicant had cleared the written test but it was argued that he could not be cleared in viva voce test. What were the results of other tests, are not clear to us. The fact remains that the applicant was given ad hoc promotion and was allowed to hold the post continuously till the date of application and is continuing in the post till the date of this order, though he was not successful in subsequent suitability tests held in 1989, 1990 and 1993. Under these circumstances, the question is: if he was not competent for the post, or could not be selected by the Selection Board after taking into consideration the various factors mentioned in Paragraph 219 (g) of the Manual, why he was allowed to continue on the post for such a long time? Under these

17

circumstances, we are of the view that the respondents may be directed to consider the case of the applicant for his regularisation against the post of a Shunting Jamadar in the light of the said facts and such other facts as may be considered relevant for that purpose.

4. In the result, this application succeeds and the respondents are hereby directed to consider if the applicant can be regularised as a Shunting Jamadar in the context of the facts hereinbefore mentioned and such other facts as may be considered relevant and necessary in that regard. This may be done by a reasoned order and communicated to the applicant, as far as possible, within a period of four months from the date of receipt of a copy of this order. No costs.

Kan

(K.M.AGARWAL)
CHAIRMAN

R.K.AHOOJA
(R.K.AHOOJA)
MEMBER (A)