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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1646 of 1994

New Delhi, this the 4th day of December, 1998

HON'BLE MR. A.V. HARIDASAN, V.C.(J)
HON'BLE MR. R.K. AHOOJA, M (A)

Sh. Pradeep Kumar, Head Clerk, Employee
No. 251894, Stores Deptt. Tilak Bridge,
R.C.F., Northern Railway, New Delhi. --APPLICANT.

(By Advocate Sh. Ramesh Gautam)

Versus

1. Union of India through The General Manager, Rail Coach Factory, Kapurthala (Punjab).
2. The Controller of Stores, Rail Coach Factory, Tilak Bridge, New Delhi.

--RESPONDENTS.

(By Advocate -Sh. P.S.Mahendru)

O R D E R

By Hon'ble Mr. R.K. Ahooja, M (A)

The applicant was appointed on 02.01.1986 as Lower Division Clerk (LDC) in the Railway Minister's Personal Establishment on conterminus temporary basis. On 18.03.1986, he was appointed as a senior Clerk in the office of Chief Project Administrator, Central Organisation for Freight Operations Information System. On 11.03.1987, the General Manager, Railway Coach Factory (for short R.C.F.), Kapurthala, Punjab was informed that since the applicant and some others were rendered surplus, they may be adjusted against his requirement, if any. The applicant claims that after the interview he was taken on duty by R.C.F. vide notice dated 12.5.1987. On 20.12.1988, he was promoted to the post of Head Clerk on adhoc basis. He claims that on 7.5.1990 the seniority list was issued placing him at Sr. No.4 of the Senior

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Head Clerk. According to the applicant, the R.C.F. started the process of regularisation of his services in 1990 and ACRs and Vigilance Clearance were asked for this purpose. His grievance is that though two others similarly placed, namely, S/Sh. Vinod Verma and Shukkad Singh were regularised as Head Clerk, the applicant was not so regularised and on the contrary the respondents proposed to revert him.

2. When the matter came for admission on 18.08.1994, the applicant sought a direction by way of interim relief that his order of reversion may be kept in abeyance. On that day, an ex-parte order was issued by directing the respondents to file a short reply on the question of interim relief within two weeks and meanwhile the respondents were directed not to revert the applicant pending adjudication of his prayer for interim relief. The Tribunal vide its order dated 16.09.1994 vacated the said interim stay. The applicant is now working as a junior Clerk in R.C.F.

3. We have heard Sh. Ramesh Gautam, learned counsel for the applicant and Sh. P.S. Mahendru, learned counsel for the respondents.

4. Sh. Ramesh Gautam, has argued at considerable length that the applicant, with his long service in Railways, has acquired a prescriptive right and is entitled to work as Head Clerk and to be considered for promotion to the post of Office Supdt. on the basis of his merit and seniority. He further contended that the initial appointment of the applicant was in the office of

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the Railway Minister and was co-terminus with the tenure of the Minister or till such time his services were required whichever may be earlier. He pointed that even after the Minister demitted office the applicant was continued in the service of Railway, having been appointed as Sr. Clerk in the Freight Operations Information System (for short F.O.I.S.). When F.O.I.S. itself was being wound-up, the applicant was adjusted in the R.C.F. as Sr. Clerk. There not only his name was exhibited in the seniority list but in keeping with his seniority, he was promoted to the post of Head Clerk. He also submitted that the records of the respondents would show that a decision had been taken to regularise applicant's services and to that end the respondents had called for his ACRs and also Vigilance Clearance. He further pointed out that the respondents had regularised the services of other persons who were also initially recruited through the Ministers' office w.e.f. 1991 but for some reason the applicant was discriminated against and not only his services were not regularised but he was reverted by two steps from the post of Head Clerk to that of a junior Clerk. It was his case that keeping in view applicant's service for such a long period showing his name in seniority list, giving him promotion and by regularising the services of similarly placed persons, the Railways had, in fact, proceeded on the basis that his services were regular and in these circumstances his reversion, without notice, was contrary to law and natural justice and was, therefore, liable to be set aside.

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5. We have considered the matter carefully and find that the applicant has no case. As contended by the learned counsel for the respondents, the name of the applicant having been included in the seniority list by administrative error, they had issued an amendment for deleting his name. Aggrieved by this, the applicant had filed an OA No.943 of 1994 before this Tribunal. The reliefs claimed by the applicant in that OA were as under:-

- "(1) On the basis of the selection held on 12.5.1987, the applicant be declared as an employee of the R.C.F.;
- (2) He should be made eligible for regularisation and promotion like any other employee of the R.C.F. similarly situate; and
- (3) The order dated 28.9.1993 may be quashed."

6. The Tribunal in its order dated 11.5.1994 concluded as follows:-

"8. Having considered the matter with the care it deserves, we are of the opinion that the applicant cannot derive any advantage from the aforesaid two documents, as his case stands fully answered by the letter dated 28.9.93 of the General Manager. According to the applicant's own case, he entered the Railways through back-door, as a nominee of the Minister, on purely temporary basis. No order has been shown to us regularising the services of the applicant as a Lower Division Clerk. The applicant is not entitled to any relief."

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7. It is clear that the plea of the applicant for being treated as a regular employee, even in the absence of an ~~common~~ order regularising his services, has already been considered in the above OA and rejected. Therefore, the contention of the respondents that the applicant has no right to be considered ^{for} and being retained as Head Clerk because his promotion has not been regularised, is valid. We also agree with the learned counsel for the respondents that the applicant has not come with clean hands before the Tribunal.

8. The explanation of Sh. Ramesh Gautam, learned counsel the reliefs sought for by the applicant are different in the present OA is not tenable. In the present OA, all the reliefs sought for in regard to retention in the post of Head Clerk and grant of seniority and promotion on par with his juniors, relate to a declaration for his regularisation in the service of Railways. This declaration sought for by him in OA 943/94 was declined, as already been pointed out, in Tribunal's order dated 11.5.1994. It is, therefore, essential that he should have drawn the attention of the Tribunal to its earlier order dated 11.5.1994 while filing this present OA No. 1646/94 filed on 4.10.94. The conduct of the applicant thus detracts even further from the veracity of his claim.

9. Sh. Gautam, learned counsel for the applicant has sought to establish that even after the order of this Tribunal on 11.5.94 further developments enhance his present claim, in as much as there are notings available

on the record of the respondents that the services of the applicant should be regularised. Although, the relevant records could not be produced before us, we are of the view that it makes little difference to the case of the applicant; on the contrary the conduct of the applicant cancels whatever good that may have come out of such a decision on the part of the respondents. It is conceded by the learned counsel for the applicant that the respondents had fixed a date for holding a test on 25.7.1994 to ~~adjudicate~~ the suitability of the applicant for his regularisation. The applicant, however, failed to appear in this test. Counsel for applicant submitted before us that the applicant firstly could not appear because of his illness and secondly because he would have lost in seniority list viz-a-viz his juniors who had been regularised w.e.f. 1991. We find, however, that respondents' ~~assertion~~ ascertain that the applicant failed to appear in the test without giving any intimation, stands un-contested. Secondly, the appearance in the test was not for fixing his seniority since, it was open to him to contest that question after his regularisation. Thus, even if the decision had been taken to regularise the services of the applicant, his option not to appear in the test scheduled for 25.7.1994 takes away whatever benefit such a decision might have given him.

10. Learned counsel for the applicant has also cited before us two judgements of this Tribunal, namely, OA 1566 of 1992 and OA 783 of 1998. We ^{have} ~~are~~ perused these two orders but find that they are not relevant to applicant's case. The petitioners in these two OAs, were

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regularly appointed to Grade IV posts in the Railways and their grievance related to their regularisation to a higher post to which they were promoted on adhoc basis. The applicant herein, however, had not been regularised to any post whatsoever in the Railway establishment.

11. In the light of the above discussions, we, therefore, conclude that the applicant's case has no merit whatsoever. The OA is, therefore, dismissed. No order as to costs.

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

AVH
(A.V. HARIDASAN)
VICE CHAIRMAN (J)

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