

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~

PRINCIPAL BENCH

O. A. No.

2325/89

199

~~XXXXXXXXXX~~

DATE OF DECISION 16.5.12.91

Shri Mannu Lal Mina Applicant (s)

Shri B.S.Mainee Advocate for the Applicant (s)

Versus

The Divisional Railway Manager, Respondent (s)

Northern Railway,
State Entry Road,
New Delhi and another
Shri B.K.Agarwal

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. J.P.SHARMA, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 21.11.1989 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as a Wireman, Diesel Shed in the Northern Railway has challenged his reversion from the post of Wireman Grade III to his substantive post in accordance with the order dated 10.11.89 at Annexure R-3 and has prayed that the respondents be directed to allow him to work as a Wireman and regularise him as such.

2. According to the applicant having entered ^{the} service on 22.6.1982 as Electric Khalasi he was promoted as Wireman with effect from 14.9.1987 in the scale of Rs.260-400 after passing the necessary trade-test vide the order at Annexure A1. He was recommended (vide Annexure A-2 dated 17.5.1988) for being regularised as he was working against clear vacancies after trade

test and approval of the competent authority. However the Recruitment Rules were revised in 1988 and new categories of Khalasis were made eligible for promotion as Wireman although they were not eligible for such promotion in 1987 when the applicant was promoted. Thereafter for regular promotion as Wireman the applicant and others were invited to appear in the trade test (Annexure A3). Since the applicant had already passed the trade test he did not appear again. His name did not appear in the panel for regular promotion and by the impugned order dated 10.11.89 he was directed to be reverted to his substantive post to make room for a selected candidate. The applicant's contention is that since he was working as a Wireman against a regular vacancy after passing the trade test, he cannot be displaced by a person who passed the trade test subsequently and was not eligible in 1987 when the vacancy arose. He has cited a number of rulings of the Supreme Court and this Tribunal to urge that vacancy arising at a particular point of time cannot be filled up by the Recruitment Rules which were amended after the vacancy has arisen. His further contention is that he cannot be reverted without disciplinary proceedings.

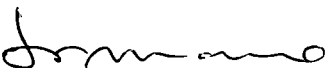
3. The respondents have stated that the applicant was promoted as a Wireman purely as a local ad hoc arrangement and the trade test was also for such an arrangement. His ^{question of} regularisation was recommended with the intention that he should be regularised on the basis of the Divisional seniority instead of getting his ad hoc officiation approved every three months. The trade test on a Divisional seniority basis was arranged through the communication dated 25.1.1989, but the applicant did not participate in the trade test. Those who passed the trade test on the basis of the Divisional seniority, were promoted on a regular basis. The applicant has to be reverted because he is far too junior in the Divisional seniority list.


4. In the rejoinder the applicant has referred to a Full Bench judgment of the Tribunal in which it was held that employees of Class ^{category} IV ^{category} working on even ad hoc basis were ^{to be} reverted ^y if they failed to

qualify in the selection in repeated opportunities.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The order dated 14.9.87 at Annexure A1 promoting the applicant as officiating Wireman clearly states that "the above staff may be warned that this is purely a local adhoc arrangement and does not confer upon them every right of such promotion over their seniors". It is true that there was a clear vacancy against which the applicant was promoted on an adhoc basis but since the promotion was merely a local arrangement and not based on Divisional seniority list, the adhoc promotion of the applicant cannot give him any title to get regularised in that very post without passing a regular trade test on a Divisional basis. When he was invited to appear in such a trade test, the applicant on his own did not participate. Even in the rejoinder he has referred to the ruling of the Full Bench of the Tribunal which clearly states that regularisation can be only after the ad hoc appointee qualifies in the selection even though after repeated attempts. Promotion based on local arrangement by a local test, cannot confer on the applicant a pre-emptive right irrespective of his seniority and merit, to be adjusted on a Divisionwise basis.

6. In the facts and circumstances we see no merit in the application and dismiss the same without any order as to costs.


(J.P.Sharma) 5.12.91
Member(J)


(S.P.Mukerji) 5.12.91
Vice Chairman

n.j.j