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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 469/89

New Delhi this the 20th May 1994

Hon'ble Member Shri J.P. Sharma, Member (J)
Hon'ble Member Shri B.K. Singh, Member (A)

Shri Suresh Chandra Sharma,
Son of Shri Vishwa Nath Sharma,
Assistant Guard,
Northern Railway,
Tundla

... Applicant

(By Advocate Shri B.S. Mainee)

Versus

1. Union of India : Through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad (U.P.)

... Respondents

(By Advocate : Shri H.K. Gangwani)

O R D E R

Hon'ble Member Shri J.P. Sharma, Member (J)

The applicant started his career as a Gatekeeper in the year 1979. The applicant was eligible for promotion to the post of Assistant Guard in the pay scale of Rs.260-400 and to the written test held for selection to the post of Assistant Guard held in December 1986. The applicant passed the written test as notified by the Office of the Divisional Manager, Allahabad vide Memo dated 11.3.1987 (Annexure A-1). He was called to appear in the viva-voce test on 23.3.1987. The result of the same was declared on 19.5.1987 but the name of the applicant was not included in the panel declared by the Office Order of the Divisional Railway, Allahabad by the Memo of even date. The applicant made a representation in August 1988

and when the applicant was not furnished with any reply, he filed the present application in March 1989 and prayed for the grant of the reliefs that the applicant be regularised on the post of Assistant Guard and the respondents be restrained from reverting him from the post of Assistant Guard. The Tribunal by its order dated 7.3.1989 passed an order that the applicant be not reverted from the post of Assistant Guard which he is holding at present. That Interim direction continued. The Respondents in their reply stated that a candidate can be promoted to the post of Assistant Guard only after qualifying the written and suitability test and the grade of Assistant Guard was Rs.225-308(RS) instead of 260-400 (RS). It is stated that the applicant has failed in the viva voce test and couldn't find place on the panel. The applicant was to work on ad hoc basis against an existing vacancy. He was reverted to his substantive post on availability of selected hand, since one Shri Abdul Hamid was selected and was promoted by the order dated 20.11.1987. But since there was another vacancy was available the applicant was continued to work on that vacancy. In view of this the application is said to be devoid of merit. In the rejoinder filed by the applicant he has reiterated again the same facts averred in the original application.

2. The counsel for the applicant has also moved M.A. 568/94 placing certain more facts on record. These documents relate to the selection conducted by the respondents for the same post. The applicant qualified in the written examination vide letter dated 9.2.1990 (Annexure 'B' to M.A.). The applicant also alleged that he fared well in the interview but he has not ^{been} empanelled.

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In reply to the aforesaid M.A., the respondents have taken the stand that the applicant did not qualify in the viva voce test and so he was not placed in the panel.

3. We have also summoned from the respondents the proceedings of the selection of the 1987 examination as well as of 1989 to the post of Assistant Guard. That record was not being placed before the Tribunal in spite of several adjournments. So by the order dated 21.4.1994, the Divisional Regional Manager was summoned or the record of the said selection of 1987 and 1989 be placed before the Bench. On 11.5.1994, the counsel for the respondents moved M.A. No. 1 402/94 where a request was made that the personal appearance of DRM, Northern Railway, Allahabad be dispensed with. In view of the fact that the record of the said selection was placed before the Bench. That M.A. was allowed.

4. We have heard the counsel for the parties at length and are constrained to decide the case on the basis of available material on record including the chart filed by the respondents of the selection/suitability test for the post of Assistant Guard of the year 1987. This goes to show that the applicant has cleared the 1987 selection/suitability test for the post of Assistant Guard. In the affidavit filed by Shri Manoj Kumar Srivastava, Divisional Operating Superintendent, Northern Railway, Allahabad he deposed "the above test was for non selection post (seniority-cum-suitability) and written test/viva voce was conducted to adjudge the suitable persons for the post. Subsequently, D.O.S. was nominated to take suitability test to find the persons suitable and after the viva voce he ticked as (✓) against the suitable person. Thereafter amongst the suitable persons, persons were placed on the panel as per

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their seniority basis". In the chart referred to above of the selection/suitability test the name of the applicant bears tick mark and as such he was adjudged as a suitable person but because of his depressed seniority, he could not come within the range of the vacancies notified for framing of the panel. The panel was prepared of 12 such adjudged suitable persons and since the applicant was junior to all of them, he was not empanelled. The applicant, therefore, cannot claim regularization on the post of Assistant Guard nor can be granted appointment on regular basis in spite of the fact that he has been adjudged as suitable person. During the pendency of the O.A. another suitability test was conducted in the year 1989 and in that year also because of the depressed seniority the applicant could not be empanelled as he couldn't qualify for empanellement within the notified vacancies for that selection. The applicant has not sought any relief in the present application on the basis of 1989 selection/suitability test and he did not get the application amended and only preferred M.A. to bring fresh facts on record. The respondents were also asked to furnish the suitability test result ^{of 1989 selection} including that of viva voce but only the result of written was furnished where the applicant has passed and the result of the viva voce was not furnished. The respondents have also furnished the panel prepared as a result of 1989 suitability test and the applicant could not be empanelled, this time also because of depressed seniority. However, we are not considering that aspect because the applicant has not sought any relief on the basis of 1989 selection.

5. The contention of the learned counsel of the applicant having passed the suitability test should not be

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asked to take subsequent selection to be notified by the respondents for the post of Assistant Guard and in this connection he has placed reliance on the decision of a review petition filed in the case of Jethanand Vs. Union of India reported in Full Bench decision Pt. II Behri Brothers 1991 Ed. P 263 . In fact that judgement while reviewing the case of the Full Bench of Jethanand vs. Union of India reported in Full Bench Decision Vol. I Behri Brothers P 353, the Full Bench held that when for promotion from Class IV to Class III, the applicant has cleared the test, it is not necessary that he should be empanelled and he can be considered for regular appointment in his turn. In that review judgement, whether the substantive vacancies were available to absorb the incumbent who has cleared the selection has not been discussed. A person cannot claim regularization on a substantive post unless there is a vacancy of substantive nature and he comes within the number of notified vacancies for that particular selection. The empanelment may not be necessary but at the same time only those who are empanelled on the basis of the notified vacancies can have a claim for regular appointment. Such an incumbent who has cleared the selection has to wait till by virtue of seniority he comes within the zone of consideration for appointment ~~not~~ in the notified vacancies of subsequent selection and his case can only be considered alongwith others who have been adjusted suitable in that subsequent selection and can get a regular appointment on a substantive post ^{vis-a-vis} others selected in subsequent* if he is senior enough. Thus the applicant cannot get any relief for regular appointment either on the basis of 1987 selection or 1989 selection. However, he cannot be

*selection
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compelled to take another selection and it is open to him at his option to participate in the subsequent selection in order to earn outstanding grading to overcome the hurdle of seniority.

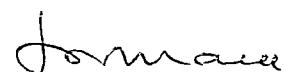
6. We have also considered this fact on the basis that a junior cannot have a march on a post as the suitability test was only a qualified test and not a selection where a junior can have a march over his senior.

7. The application, therefore, partly allowed and the prayer for regularization is disallowed but he shall not be reverted from ad hoc post of Assistant Guard so long as a vacancy of that nature is available. The respondents shall consider the applicant in the subsequent vacancies and ~~and are selected~~ alongwith others who participated in the subsequent selection and can be regularised only on the basis of seniority if he comes within the range of notified vacancies for which the subsequent selection is directed to be held. He will get seniority from the date of regularization only.

8. In the circumstances the parties to bear their own costs.



(B.K. Singh)
Member(A)



(J.P. Sharma)
Member(J)

Mittal