

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2034/1988

Date of decision 18-10-94

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri S.C. Upadhyay,
16/2, Railway Colony,
Sarojni Nagar, New Delhi

Applicant

(By Advocate Shri G.D. Bhandari)

Versus

1. Union of India, through its Genl.
Manager, Northern Railway,
Baroda House, New Delhi
2. Shri Vijay Kumar Khanna, Signal Inspector,
Under Chief Signal Inspector (PS)
Power Cabin, Northern Railway,
Railway Station, Delhi.
3. Shri Kirpal Singh, Signal Inspector,
Under Chief Signal Inspector,
Northern Railway, Power Cabin,
Tughalakabad, New Delhi
4. Shri Arun Kumar Gupta, Signal Inspector,
Under Chief Signal Inspector,
Northern Railway, Railway Station,
Kurukshetra.
5. Shri B.K. Dubey, Signal Inspector,
Northern Railway, Railway Station,
Shakur Basti, Delhi
6. Sh. Surender Dutt, Signal Inspector/Const.),
Under Chief Signal Inspector (Const.)
Northern Railway, Tilak Bridge, New Delhi
7. Shri Satpal Gandhi,
Signal Inspector,
Under Chief Signal Inspector (PS), Power
Cabin, Northern Railway, Railway Stn.,
Delhi
8. Shri S.K. Sharma, Signal Inspector,
Under Chief Signal Inspector, Power Cabin,
Northern Railway, Ghaziabad (U.P.)

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9. Shri S.C. Mehta, Signal Inspector,
Test Room, Under Chief Signal
Inspector (East) Northern Railway,
Motia Bagh, Delhi
10. Shri Y.P. Bharadwaj, Signal Inspector
(Works)
Under Chief Signal Inspector (Works/Spl.)
Northern Railway, Darbar Cabin,
Near G.R.P. Line, Pul Mithai,
Sadar Bazar, Delhi.

.. Respondents

(By Advocate Shri Romesh Gautam)

ORDER

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant has filed this application seeking a direction from this Tribunal that the order dated 20.2.1987 issued by the Divisional Personnel Officer, New Delhi (Annexure 'A'), promoting nine persons to the post of Signal Inspectors, including the interpolation of respondents 5 and 9, namely, Sarvashri B.K. Dubey and S.C. Mehta in the list at S.Nos. 4-A and 1-A, is void, ab initio and illegal. He has also sought ^a declaration that he should be promoted prior to his juniors, respondents Nos. 2-8, and 9 and 10, who have not qualified for the said posts.

2. The brief facts of the case are that the applicant was working as Electrical Signal Maintainer Grade I (ESM) from the date of his appointment.

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on 14.1.1965. The next promotion post from ESM Grade I is Signal Inspector Grade III. The applicant was deputed to work with the Metropolitan Transport Project (MTP) from 26.5.1981 to 29.7.1982. He was reverted to his substantive post as ESM Grade I in his previous Division i.e. Divisional Railway Manager with effect from 30.7.1982. He had requested for his posting at Delhi. According to the respondents, he remained out of duty on his own accord till he joined duty as ESM Grade I at Delhi on 21.5.1986.

3. The applicant has challenged the selections for the post of Signal Inspector held in pursuance of the communications issued by the respondents dated 16.9.1982 (Annexure R-2) and 12.11.1982 (Annexure R-3). Annexure R-2 is a letter intimating the decision to hold a written test for the recruitment of persons to the post of Signal Inspector against the 20% quota reserved for departmental staff. In the attached list of eligible candidates the applicant's name is given at S.No. 51 and shown as working under SSTE (MTP). The applicant's contention is that he did not receive this intimation of the test which was to be held on

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9.10.1982 as he was not working under SSTE(MTP) on the relevant date. Similarly, by respondent's letter dated 12.11.1982, the list of candidates, including the applicant at S.No. 6, were required to be intimated that since they had failed to appear in the written test held on 16.10.1982, they should appear in a supplementary test to be held on 21.11.1982 for recruitment to the post of Signal Inspector(Annexure R-3). In this letter, the designation and station where the applicant was working is shown as ESM Grade I/ S.I. (D-1 UMB) Cantonement, i.e. at Ambala. The applicant contends that he did not also receive this intimation of the test to be held on 21.11.1982 as he had never taken over the post of ESM Gr. I at Ambala. Subsequently, by letter dated 15.1.1986, the respondents intimated since him that he had failed to appear in the test held on 9.10.1982 and the supplementary written test held on 21.11.1982 (which has been wrongly mentioned in Annexure R-5 as 12.11.1982), his claim for promotion had been rejected.

4. The applicant's claim is that he was not

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informed about the aforesaid tests. He drew our attention to the judgment of this Tribunal in O.A. No. 12/90 dated 29.1.1992 (Annexure A-1 to the rejoinder). In this judgment, the Tribunal has noted that he was reverted to his parent department i.e. the Divisional Railway Manager from the Metropolitan Transport Project on 29.7.1982 and he reported there on 30.7.1982, when he had requested for his posting at Delhi. The letter dated 16.9.1982 (Annexure R-2) had been addressed to his office at SSTE (MTP) when he was no longer there and he had not received the intimation for the written test to be held on 9.10.1982. Similarly, in the judgment of the Tribunal dated 21.9.1992 reference had been made to the suit filed by the applicant in the court of Sub-Judge, Delhi on 29.9.1982 (No. 682/82) moving the court for interim injunction against his posting outside Delhi. The Court had passed an ex-parte order restraining the respondents from transferring the petitioner from Delhi on 29.10.1982, which was made final by order dated 7.7.1983. This would mean,

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according to the learned counsel for the applicant, that when the second order dated 12.11.1982 was issued by the respondents for holding the supplementary test on 21.11.1982 to his place of posting at SI(8-I), Ambala Cantt., by virtue of the interim order passed by the Sub-Judge, Delhi on 29.10.1982 he had not assumed his posting at Ambala and he continued in the post of ESM Grade I in the Delhi Division.

5. From the above facts, it is apparent that the letters issued by the respondents dated 16.9.1982 and 12.11.1982 (Annexures R-2 and R-3) intimating the holding of the written test and the supplementary for selection to the post of Signal Inspector, test on 9.10.1982 and 21.11.1982, in which the applicant's name had been included, were not addressed correctly to the place of his posting at the relevant dates. In the facts and circumstances, it cannot be held that he had been properly intimated about these tests and hence the applicant cannot be faulted for not appearing in the tests. The respondents have, in fact, shown ^{utter} carelessness in the discharge of their duties in this matter.

6. Normally, in these circumstances, we would have directed the respondents to hold a fresh written

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test for the applicant and in case he qualifies in the same to give him proforma promotion to the post of Signal Inspector from the date his junior was promoted. However, we find that the applicant had given a notice of voluntary retirement vide his notice dated 15.6.1988 and it was only later, that he filed this O.A. in the Tribunal on 17.10.1988. We have been informed that his request for voluntary retirement has since been accepted. In these circumstances, therefore, the question of directing the respondents to hold a fresh written test for selecting him to the promotion post does not arise, as the applicant is no longer in the service of the respondents. It cannot also be presumed that he would have passed if he had appeared in the written test. At this stage, since the applicant has retired from service, the relief sought that he may be declared promoted prior to his junior, has become infructuous.

7. The learned counsel for the respondents drew Paras 6(d) & (e) of our attention to the reply filed by the respondents in which they have explained how Sarvashri S.C. Mehta and B.K. Dubey, who had appeared later in the written test and passed had been placed in the select panel

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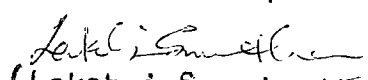
dated 20.2.1987 (Annexure 'A'). We are satisfied with the explanation given as to the manner the names of these two persons had been interpolated in the select panel for the post of Signal Inspector at S.No. 1A and 4A and the applicant's allegation that the action is arbitrary is rejected.


8. In view of the above discussions in paragraph 6 above we had asked the applicant's counsel as to what relief can be given to the applicant at this stage. The learned counsel for the applicant then submitted that relying on the judgment of this Tribunal in Hotu Ram Arora v. UOI [O.A. No. 2420/89 decided on 24.10.91] the applicant should also be given the promotion as Signal Inspector as given to his juniors. We have considered this case and we find that the case dealt with promotions to Group 'B' posts on ad hoc basis which presumably depended only on seniority. The Tribunal held that because of the illness of the applicant he could not appear in the selection held in 1988 but this cannot be taken as voluntary refusal by the applicant. In the circumstances, the Tribunal came to the conclusion that he had been denied promotion to Group 'B' post on ad hoc

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basis while juniors to him had been so promoted and allowed the application with a direction to give him notional ad hoc promotion to Group 'B' post. The facts in this case are distinguishable as the selection involved in this case is regular promotion based on passing the written test, which, as mentioned above, cannot be presumed.

9. In the facts and circumstances of the case, since the applicant has voluntarily retired from service even before filing this O.A., the relief sought cannot lie now. However, since the respondents have themselves been negligent in performing their duties, thereby causing the applicant to file this O.A., which he would have otherwise succeeded but for the fact of his retirement from service, we feel that the applicant should be awarded costs which is quantified at Rs. 1,000/-. The respondents are directed to pay the costs within one month from the date of receipt of a copy of this order. Subject to this, the O.A. is dismissed.


(Lakshmi Swaminathan)
Member (J)


18/1/84
(N.V. Krishnan)
Vice-Chairman (A)