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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH, DELHI

O.A.NO. 289 OF 1988

DATE OF DECISION 12-9-1991.

Ashesh Chandra.

.. Applicant.

v.

Union of India, through Northern Railway. Respondent.

Shri G.S. Maine, counsel for the applicant.

Shri S.N. Sikka, Counsel for the respondent.

CORAM:

Hon'ble Mr. G. Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr. S. Gurusankaran, .. Member (A)

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JUDGMENT

Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman:

The respondent, Northern Railway issued an advertisement in January, 1987 inviting applications for recruitment to certain posts in the catering services for the Rail Yatri Niwas. The applicant submitted his application for the post of Demi Chef d'Range. The qualification and experience prescribed for the post are "Matric with 3 years relevant experience or NCVT/Craft Course, Restaurant/Counter Service with 2 years experience in a Hotel Establishment". The applicant has alleged that by the letter of the respondent dated 15-5-1987 he was advised about his selection for the post and was asked to undergo the necessary medical test, to resign the post that he was holding at Taj Palace and accordingly he resigned that post from 28-1-1988, whereupon the respondent issued the appointment order on 4-2-1988, pursuant to which he joined duty on 6-2-1988. His grievance is that his services were terminated by the order dated 12-2-1988. He has prayed for quashing the said order and to treat him as in service. It is urged that the reason stated

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in the order that the applicant did not fulfil the minimum requisite technical qualifications prescribed is baseless and that the principle of promissory estoppel operates against the respondent. It is further alleged that as the agreement relating to the appointment provides for one month's notice for termination, the impugned order is bad in law. There is also the plea of violation of the principles of natural justice.

2. In the reply filed on behalf of the respondents, it is contended that the selection of the applicant was wrong as he did not fulfil the minimum qualification/experience prescribed for the post. It is stated that subsequent to the appointment it was detected that he did not possess the required qualification and as such the administration had no option/<sup>but</sup> to terminate his service. It is pointed out that at the time of submission of the application, the applicant did not have three years relevant experience and his eligibility was wrongly determined on the basis of the alternative qualification. It is stated that in view of the provision in paragraph 301 of the Railway Establishment Manual, 14 days notice is sufficient for termination of service under such circumstances.

3. The question that arises for determination is whether the discharge of the applicant from the service pursuant to the order dated 12-2-1988 is sustainable in law.

4. This is a case where the order of termination mentions the reasons. It is stated that the applicant "does not fulfil the minimum requisite technical qualification prescribed for the post on which he has been appointed and as such he is not eligible for retention in service". The qualification prescribed for the post is Metric, and an experience of three years is also prescribed. Alternatively

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NCVT/Craft Course in Restaurant/Counter Service with two years experience in a Hotel Establishment was prescribed. The copy of the application submitted by the applicant is at Annexure-X wherein he has mentioned that he has passed the B.A.(Final) examination/ <sup>and</sup> has also done one year course in Diploma Cookery. As regards experience, he has stated that he has been working as Assistant Steward for the past two years at Hotel Taj Palace, New Delhi. It is to be noted that the experience prescribed is of three years. The applicant has alleged that despite his having specifically stated that he had acquired only two years experience, his application was considered, he was selected and was advised regarding the selection by the letter dated 15-5-1987. He has also stated that he was asked to take the medical test which was conducted on 25-5-1987. There is a specific plea that he was not offered the job immediately because he had not yet completed three years experience in the Taj Palace where he was working as Assistant Steward, but was advised that he will be offered the appointment in the month of February, 1988 by which time he would be completing the period of three years. This plea of the applicant has not been specifically answered in the reply filed by the respondents. There is only an omnibus denial of paragraph 6.12 of the application wherein this plea has been raised. From the circumstances of the case, we are of the view that there is no reason to doubt the veracity of this averment. The applicant had specifically pointed out in his application that he had acquired only 2 years experience. Despite the fact that the advertisement prescribed an experience of 3 years, the applicant was considered for appointment to the post and was selected and advised accordingly in the month of May, 1987. The contention put forward in paragraph 2 of the reply that there is a *prima facie* case against the applicant for concealment of his qualification

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has to be rejected as opposed to the facts on record. From 15-1-1985 onwards, the applicant had been working as Assistant Steward at Taj Palace Hotel, which post he resigned on 28-1-1988. The offer of appointment to the applicant was immediately after his resignation from the Taj Palace Hotel by which time he had acquired the prescribed experience. Pursuant to the offer that was made on 5-2-1988, the applicant joined the service of the respondent on 6-2-1988.

5. It appears that it was based on a clarification that was obtained by the respondent from the Institute of Hotel Management Catering and Nutrition, Pusa, New Delhi, that the syllabus and the area covered under craft/diploma course in restaurant and catering service is different than that covered by the Cookery course, that the conclusion was arrived at that the applicant does not fulfil the minimum requisite technical qualification prescribed for the post, on which basis the proposal for termination of his service was made. However, the respondent has failed to take into account the fact that the applicant had the alternative educational qualification and had acquired relevant three years experience at the time of his appointment. No doubt, when a period of experience is prescribed in an advertisement, a candidate should have that experience on the date of submission of the application. But, in the peculiar circumstances of this case and having regard to the specific averment of the applicant, that the actual appointment was deferred so as to enable him to acquire the prescribed experience, the failure to take this aspect into consideration before terminating the service of the applicant, has to be taken serious note of. There is also the circumstance that on the event of the offer of appointment, the applicant had

resigned the job that he was holding in the Taj Palace Hotel. In addition to the foregoing circumstances, the failure on the part of the respondent to afford the applicant an opportunity of being heard before the termination of his service is a clear violation of natural justice.

6. The decision of a Division Bench of this Tribunal in SANJEEV KUMAR AGARWAL v. UNION OF INDIA (II 1987 ATLT 311) relied upon by counsel of respondent is not applicable to the facts of the case as the appointment was not secured by the applicant by fraud.

7. In the result, the order dated 12-2-1988 under which the services of the applicant have been terminated is hereby quashed. The respondent is directed to reinstate the applicant in service forthwith against the post to which he was appointed. The applicant shall be treated as having been in continuous service and shall be entitled to consequential benefits except arrears of pay during the period he was out of service.

*Prabhakar*  
12/9/1991  
MEMBER (A)

*Sh. S. J.*  
9-9-91  
VICE-CHAIRMAN