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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A. No. 697/88

Date of Decision: 10-9-1993.

Shri Prehlacl Singh

Petitioner

VS

Union of India

Respondents

General Manager

Northern Railways

Coram: The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner Shri G.D. Bhandari, Counsel

For the respondents Shri B.K. Aggarwal, Counsel

(Judgement (Oral) Hon'ble Mr. I.K. Rasgotra, Member (A))

We have heard Shri G.D. Bhandari and Shri B.K. Aggarwal, Learned counsel for the petitioner and respondents respectively. The petitioner while working as A.S.M in the grade Rs. 425-640 was promoted on Ad hoc basis as a Section Controller (SCNL) on 23.4.1985. The respondents held selection for filling up the vacancies on regular basis. The written test was held on 26.2.1984 and 4.3.1984. The result of the written test was declared on 11.5.1984. The petitioner was placed at Serial No. 3 for the Jodhpur Division and serial No. 11 in the Headquarters select list. The viva voce test was

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held on 18.5.1984, 21.5.1984 and 12.9.1984 and the final result was declared on 16.12.1985 and 22.5.1987. The petitioner did not make grade. There are 3 feeder categories for the post of Section Controller (SCNL); each one has a quota fixed as under:

Guard	30%
Asstt. Station Master	30%
Asstt. Yard Master	15%

The learned counsel for the petitioner, Shri G.Q. Bhandari submitted that although the petitioner was not found suitable in the selection yet he was allowed to continue uninterruptedly as SCNL from the date of his initial promotion on ad hoc basis till he was finally selected in the subsequent selection held sometime in 1989. The grievance of the petitioner is that while his junior was placed on the select list he was not selected even though he is assigned very high seniority and there was nothing adverse on his service record. He has never been communicated any adverse remarks nor has he been served any charge sheet or had come to any adverse notice. The learned counsel for the petitioner further referred to the letter of the Railway Board placed at Annexure A-2 according to which the Railway Administration was hauled up for exceeding the percentage prescribed for the various feeder categories in the selection of SCNL. The Railway Board had also called for the remarks of the respondents administration in the case of one Shri Dutta Ram. In this O.A. filed against above background the petitioner has prayed for the following reliefs:

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1. To direct the respondents to maintain the original seniority of the petitioner by interpolating his name in the panel taking into consideration his continued and uninterrupted ad hoc service.
2. It is further prayed that his pay should be fixed taking into consideration the seniority as per relief 1 above.

The stand of the respondents is that the post of SCNL is a selection post and is filled up in accordance with the merit. If some juniors to the petitioner was selected it was because they had higher merit and for no other reason. The petitioner cannot make a grievance of his failure to make the grade in the selection. With regard to the Railway Board's letter regarding the Railway exceeding the percentage fixed for the various feeder categories, the respondents contended that there was no averment to that effect in the O.A. they further submit that the remarks called by the railway board were furnished and therefore the railway Board did not raise the subject, as they were apparently satisfied with the explanation offered by the respondent administration. The said letter of the Railway Board which is internal correspondence cannot be used by the petitioner in support of his case. The facts of the case are clear and there is no dispute about them. The post of Section Controller (SCNL) is a selection post and admittedly the petitioner did not make the grade in the selection. He was appointed on ad hoc basis on 23.4.1985 after he had been declared successful in the written test. Thereafter he continued to work on ad hoc basis

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till regularised in the subsequent selection held in 1989. The argument putforward by the learned counsel of the petitioner that even after the petitioner was not selected and placed on the panel, he was not reverted by the respondents and consequently he was entitled to assigning of seniority from the date on which he was promoted on ad hoc basis is not acceptable. The seniority counts from the date an official is selected on regular basis. The ad hoc promotion cannot be counted for seniority unless and until the petitioner makes the grade in the select list. There is no dispute that he failed to do so. He was admittedly not reverted after he failed in the selection held in 1984. This cannot be a matter of grievance, as the petitioner benefitted from the inaction of the respondents. The learned counsel for the petitioner also drawn our attention to the letter of the Railway Board dated 19.3.1976 (Annexure A-10) (Page 24 of the paper book). This letter contains an extract from the record note of the meeting of the Deputy Minister for Railways and the Railway Board with the Heads of Personnel Department of the Railway Administrations held on 27.11.1975. The said minute provides that "panel should be formed for selection posts in time to avoid ad hoc promotion. Care should be taken to see while forming panel that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview". This is only a record note of the discussions. This record note has not been followed by issue of any Memorandum or any instructions by the Railway Board. The said record note therefore lack statutory force. The selection cannot obviously be regulated by the record note of discussion.

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In view of the facts and circumstances of the case, the O.A fails and the same is dismissed. No costs.

  
(B.S. Hegde)

Member (J)

  
(I.K. Rasgotra)

Member (A)

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