

Central Administrative Tribunal
Principal Bench, New Delhi.

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OA.1120/88

Date of Decision: 30-9-93

Abdul Razak and others Applicants

Versus

Union of India and others Respondents

Shri V.P. Sharma Counsel for the applicant

Shri D.P. Kshatriya Counsel for the respondents

CORAM:

The Hon. Member(J) Shri C.J. ROY.

The Hon. Member(A) Shri B.K. SINGH.

J U D G E M E N T

(delivered by Hon. Member(J) Shri C.J.ROY)

This application is filed by Abdul Razak and others under Section 19 of the Administrative Tribunal's Act, 1985 against the order of the respondents dated 27.5.88 (Annexure-A1) reverting the applicants from the post of Driver 'C' to the post of Shunter.

2. The facts of the case are that the applicant No.1/joined the Railway Board as Cleaner on 22.7.58 and applicant No.2 Shri Ram Chander on 16.6.56 and the applicant Shri Ram Kishan joined on 23.4.76, and subsequently they were promoted as Shunters on different dates. The Railway department sent them training for the P17A Course /to the Railway Training School Chandusi eligible for becoming/to the higher post of Driver 'C' grade and after successful completion they were appointed vide order dated 16.12.1986 and were posted at Rewari. In the meantime, IV Pay Commission came into effect and the department was asked

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to give an option as to whether they would like their employees to be treated on selection category or non selection category for being eligible to the revised pay scale. The department opted for the selection category, as a result of which, the applicants were subjected to the eligibility test to the post of Grade 'C' Driver post. The applicants did not raise any objection to this and appeared in the said eligibility test for becoming eligible to the revised pay scale but failed to qualify except for Shri Ram Kishan. It was submitted that Shri Ram Kishan filed this OA prior to his getting the result of being qualified. Subsequently, applicant No.1 and 2 were reverted to the post of Shunter.

3. The respondents have filed the counter affidavit admitting the fact that the applicants were promoted to the post of Driver Grade 'C' from the post of Shunter consequent upon qualifying in the P-17A training course. As a result of recommendations of IV Pay Commission, revised pay scales were enforced with effect from 1.1.1986. The classification that the post of Goods Driver Grade 'C' comes under Selection Post was received vide Railway Board's letter only on 12.3.1987 and was circulated vide letter dated 10.4.87. Prior to receipt of this order, the applicants along with others were promoted on adhoc basis as Goods Driver grade 'C' in the pay scale of Rs.1350-2200 vide order dated 5/16.12.1986 and were posted as Rewari with the

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following terms and conditions:-

"As per instructions received from Railway Board in PS 9056, where 2 grades have been merged into single grade, promotions to the revised scales are to be made purely on ad-hoc basis and not on regular basis till a final decision is taken as to the classification of the "single revised scale" as a selection or "Non Selection" (copy attached as Annexure R-2)

4. Therefore, the above promotions made with specific instructions will not confer upon them any prescriptive right for such promotion in future. Their pay on promotion in revised scale will be fixed separately. No junior persons who had not qualified in the selection test were given promotion.

5. We have heard the learned counsel for both parties and perused the documents on record.

6. It is a matter of fact that prior to the receipt of orders/ of the Railway Board, circulars/ the applicants herein, along with others were promoted on adhoc basis as Goods Driver Grade 'C' with specific instructions that due to the merging of the two grades into a single grade, that promotions to the revised scales were made on adhoc basis instead of regular basis till a final decision is taken as to the classification of the "Single revised scale" as a SELECTION or NON SELECTION. It is pertinent to note that the applicants have never raised any objection when the circular dated 31.8.1987 purporting to conduct selection for the post of Goods Driver (Driver 'C') was issued, even after specific mention in it to submit their refusals if they do not want to appear in the above test. They appeared in the test in order

to become eligible for the new pay scale of IV Pay Commission but could not succeed. Subsequently, Shri Ram Kishan, who is also a party in this case, was later declared successful. The allegation of the applicants that their juniors were considered for the next higher post of Driver 'C' does not prove worth. The documents filed goes to show that the alleged persons were promoted as Driver 'C' before 1983, whereas the applicants before us were given adhoc promotion only in 1986. The past procedure of promoting the Shunters on seniority cum suitability cannot be correlated with the present system of 1986, while the applicants themselves 'without objecting' have appeared and failed in the test.

The details of persons alleged to have been promoted are given below:-

<u>S.No.</u>	<u>Name</u>	<u>Date of promotion as Driver 'C'</u>
1.	Shri Sardara	Driver 'C' 30.8.79
2.	" Mata Deen	" 26.6.77
3.	" Kishan Lal	" 8.5.81
4.	" Mohan Lal	" June-84
5.	" Madhan Lal 'G'	" 8.2.83
6.	" Madhan Lal 'K'	" May-79
7.	" Nand Ram	" 21.9.78

7. The Railway instructions dated 5/16.12.1986 clearly states that consequent upon merging of two grades into a single grade, the revised scales are to be made purely on adhoc basis and not on regular basis till a final decision is taken as to the classification of the "single revised scale" as a Selection or Non-Selection. Since a decision has been taken and the process of appointment on Selection basis has also been carried out in pursuance of IV Pay Commission, we do not feel that the applicants

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herein have a case for our interference. The law is very clear on this position. In the case of Jetha Nani and Others versus Union of India and others (Full Bench Judgement CAT 353), this Tribunal has observed that:

".....if he has failed in the test he is not entitled to be selected and consequently not entitled to hold a promotional post. If a class IV employee who has sat in a selection test for promotion to Class III post fails, obviously he cannot be appointed to be post which is a selection post....."

In conclusion, the Full Bench held:

"(i) The right to hold the selection/promotional post accrues only to those employee who have undergone a Selection Test and empanelled for the promotion/selection post and continue as such for 18 months or more. An adhoc employee will also get the right if he has passed the Selection Test."


".....The cardinal principle is that he must have qualified in the selection test to become suitable for the post.....".

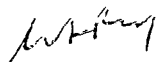
8. The applicants having subjected ~~themselves~~ to the test and after failing to qualify, ~~they~~ cannot question that ~~they~~ should be put to trade test and at the same time claim IV Pay Commission benefit without passing the test as this has become a selection post.

The contention that prior to this notification, it was only a non-selection post cannot cut much ice in view of the fact that ~~they are~~ claiming IV Pay commission benefit. The allegation in respect of Annexure A-1 (page-2) list, showing the names of successful candidates were juniors to the applicants and were considered in spite of their not qualifying in the test is not acceptable. All the candidates and juniors cited therein, by the applicants are qualified for the next higher post of Driver 'C' as per the document enclosed.

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9. In the facts and circumstances of the case we are not
satisfied with the argument of the learned counsel for the applicant
nor there is any merit in the case for our interference. We,
therefore, dismiss this application as devoid of merit with
no order as to costs.


(B.K. SINGH)
MEMBER (A)


(C.J. ROY)
MEMBER (J) 30/9/93