

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA-154/87

DATE OF DECISION: 27.5.1991.

SHRI ONKAR SINGH YADAV

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

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THE HON'BLE, MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS

SHRI O.N. MOOLRI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Onkar Singh Yadav, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order of the Divisional Personnel Officer (DPO), Northern Railway, Bikaner (Annexure A-1), rejecting his petition for regularising him as Section Controller. While Annexure A-1 deals with several other grievances, the grievance agitated in this OA relates to his not being considered for the post of Section Controller (SCNL) grade Rs.470-750, as he was over age.

2. The facts of the case in brief are that the applicant was appointed as Gateman in Bikaner Division of the Northern Railway on 30.8.1958. He was promoted to the post of Section Controller on ad hoc basis in Rewari w.e.f. 1.12.1984, when he was working as Assistant Station Master (ASM) grade Rs.330-560 vide order issued on 4.5.1987 by the Senior Divisional Operating Superintendent, Bikaner on the same pay and grade against the existing vacancy (Annexure A-2). The respondents invited applications from the ASMs etc. grade Rs.425-640 for holding a selection

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for the post of Section Controller (Rs.470-750 pre-revised) vide circular No.PIT/852-Selection/SCNL/85 dated 13/24.6.1985 (Annexure A-5) but no selection was held. Fresh applications were invited for holding the selection vide circular dated 9.7.1985 but again no selection was held. The applicant had submitted his applications for appearing in both the selection in response to the respective circulars. The applicant submits that circular dated 9th July, 1985 was in continuation of the circular issued on 13/24.6.1985. Yet, in the latter circular the respondents prescribed the age limit for the candidates to be 47 years as on 1.7.1986. Thus, only those who were 47 years of age on that date could apply for the post of SCNL since the original order dated 13/24.6.1985 did not prescribe any age limit and since the second circular was in continuation of the former, no age limit should be thrust into make him ineligible for the post. Finally, another circular letter was issued on 14/24.2.1986 inviting applications from eligible candidates for the post of Section Controller. The applicant submitted his application on 3.7.1986 but he was not called for the selection, as he was over-age. He submitted numerous representations to the respondents for not considering him for no fault of his, but they did not bring any positive response. It was with reference to his personal interview with the Divisional Railway Manager on 30.7.1986 that he was advised on 23.9.1986 (Annexure A-1) that he has not been called for selection, as he was over-age. The applicant contends that his juniors have been selected while he has been ignored. Out of the five selected candidates who are undergoing training in the Zonal Training School, Chandausi, only two are senior to him. In the meantime, the applicant had been continued as SCNL without any break. Having worked for over seven years as Section

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Controller, the applicant submits that he has acquired prescriptive right to be regularised against the post of SCNL. In support of his contention he has cited the case of Rattan Lal & Ors. v. State of Haryana 1985 (4) SCC 43. He maintains that the benefit of regularisation against the post of SCNL has been denied to him unreasonably.

The applicant further submits that there is no element of direct recruitment in the grade of Section Controller as per the Recruitment Rules. The vacancies in the grade of SCNL are however filled in accordance with the pre-determined ratio between the various categories such as Guards, Station Masters, Yard Formen, Traffic Apprentices etc. In the channel of promotion which constitutes part of the Recruitment Rules no age limit is prescribed for promotion to the post of SCNL. He further submits that even if there is any age bar, it can be relaxed in terms of Rule 114 of Indian Railway Establishment Manual by obtaining competent sanction.

By way of relief the applicant prays that the Tribunal may set aside and quash the impugned order dated 23rd September, 1986 (Annexure A-1), rejecting the applicant's candidature for the post of SCNL with a further direction to regularise him as SCNL in the grade of Rs.470-750.

3. The respondents have broadly admitted the facts of the case. They, however, submit that the selection was held during 1986 as per the applications received in response to circular dated 14.2.1986. The applicant was not called upon to appear, as he was over-age and was therefore not within the field of eligibility. At the same time, the respondents admit that the applicant

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is continuously working as Section Controller but on purely ad hoc basis **due to acute shortage in the category of Controllers** and on the basis of his confidential reports (emphasis supplied). In paragraph (Xvii) of the counter-affidavit, the respondents further reiterate that the applicant was promoted as Section Controller on purely ad hoc basis **due to acute shortage of Controllers** (emphasis supplied).

4. The applicant has filed a rejoinder wherein he contends that at the time the applicant was promoted "no final revised channel of promotion had been received" from the headquarters' office and, therefore, no age bar was applicable to the applicant. Otherwise also, it is not understandable as to how he was promoted even on ad hoc basis when he was over-age.

5. Shri G.D. Bhandari, the learned counsel argued the case of the applicant while Shri O.N. Moolri, the learned counsel appeared for the respondents.

6. We have heard the learned counsel of both the parties. The learned counsel for the respondents referred us to the Recruitment Rules which make the staff over 48 years of age ineligible for selection to the post of Section Controller grade Rs.470-750 (Annexure R-2 annexed to the counter). This is also substantiated by Note-1 of the Recruitment Rules at Annexure A-3, filed by the applicant. Since the age limit was always part of the Rules, we fail to appreciate as to why the applicant was promoted on ad hoc basis in the first instance. While on the one hand, the respondents contend that the applicant could not be called for selection, being over-age, on the other hand, they submit that **due to acute shortage in the category of Section Controllers** (emphasis supplied) there was no way out but to continue the applicant as SCNL for over 7 years on ad hoc basis. The applicant, apparently, is still working as SCNL and there appears


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to be no possibility of reverting him from the post in the situation delineated by the respondents. It is nobody's case that the post of SCNL is a short term vacancy requiring only stop gap ad hoc promotion. It is obvious that the applicant is working against a regular vacancy. In that view of the matter, he cannot be denied the benefits attached to the post of SCNL, as any other course would be infraction of provisions made in Articles 14, 16 and 39 of the Constitution of India.

In the circumstances of the case, we consider that this is a fit case for judicial interference. In the interest of justice and fair play, we order and direct that the applicant should be considered for selection in accordance with the rules in relaxation of the condition of age limit as required in the case of the applicant and in case he is found suitable and qualifies in the relevant training in the Zonal Training School, he shall be regularised as Section Controller from the date he was appointed on ad hoc basis viz. 1.12.1984, in accordance with the decision of the Full Bench of the Tribunal in the case of **Jetha Nand & Ors. v. UOI** (T-844/86) decided on 5.5.1989. He shall also be entitled to all consequential benefits. We further direct that this order shall be implemented within six weeks from the date of communication.

Having regard to the nature of the case, there will be no order as to costs.


(I.K. RASGOTRA) 27/5/91
MEMBER (A)


(AMITAV BANERJI)
CHAIRMAN