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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.717/87

Date of decision:25.11.92

Sh.K.C.Tewani

...

Applicant

versus

Union of India through
General Manager,
Northern Railway,
New Delhi & anr.

Respondents

CORAM: THE HON'BLE SH.P.C.JAIN, MEMBER(A)

THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant ...

None

For the Respondents ...

Sh.I.C.Sudhir, Counsel.

JUDGEMENT(ORAL)

(DELIVERED BY HON'BLE SH.P.C.JAIN, MEMBER(A))

The applicant while working as FO Electrical (Diesel) Tughlakabad was promoted on a purely temporary ad hoc ^{C. and} officiating basis from Class III to Class II and posted as Assistant Electrical Engineer(Diesel) Tughlakabad vide Notice No.252/79 dated 16.5.79. He was ordered to be reverted from the aforesaid post vide impugned order dated 20.4.87(Annexure A) to ^{C.} this post in Grade III. It is against the aforesaid order of reversion that the applicant has filed this OA under Section 19 of the Administrative Tribunals Act,1985 praying for issue of a direction to the respondents not to revert him and not to give effect to the impugned order of reversion and to allow him to work in Class II service.

(3)

As an interim measure, he prayed for ^{as} an ex-parte ad interim injunction to the respondents to allow him to work in Class II service. By an order passed on 14.7.87 by a Bench of this Tribunal, status quo as of that date was directed to be maintained. By another order dated 21.7.87, the reversion of the applicant till disposal of the OA was stayed and it was further directed that if the applicant resumes duty, the respondents would allow him to join in his old scale of Class II grade subject to the outcome of this OA.

2. The respondents have contested the OA by filing their return to which no rejoinder has been filed by the applicant. We have perused the material on record and also heard the learned counsel for the respondents. None appears for the applicant at the time of the oral hearing of the case. The case is listed at Sl.No.2 of the list of cases for final hearing in today's cause list. As the case is fairly old and the applicant has since retired from service, we consider it appropriate to dispose of this OA on merits.

3. It is not in dispute that the promotion from Class III to Class II post is by way of U.P.

a process of selection which comprises of a written test, viva voce and assessment of the records by the selection committee as laid down in para 20.41, Chapter II of the Indian Railway Establishment Manual Vol.I, Revised Edition, 1989. The applicant has also stated that the post to which he was promoted in 1979 was a selection post. There is nothing on record to show that the applicant participated in the selection as aforesaid and that he was empanelled for appointment to a Group 'B' post in pursuance of such a selection. In fact, on page 37 of the paperbook, the result of the selection has been placed in respect of promotion to Class II service in Mechanical Department against 75% posts and the name of the applicant does not appear in that selection. For this selection, a written test was held on 28.2.87, supplementary test on 20.3.87 and viva-voce on 6.4.87. Obviously, the impugned order of reversion had been issued as a result of the selection as aforesaid. The applicant has first contended that in every recruitment rules there is a power with recruiting authority to relax the rules and the case of the applicant is a case of deemed relaxation. The applicant

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has not placed on record, a copy of the rules to show that there is any provision for relaxation of the rules and what are the circumstances in which the competent authority can relax the rules. He has also not cited any authority in support of his contention that his case should be treated as a case of deemed relaxation. We,are, therefore, unable to uphold this contention. The second contention of the applicant that his long officiation against a selection post without any interruption has created a vested right and such right cannot be snatched without following due process of law. We are also unable to uphold this contention for the simple reason that if a process of selection is prescribed in which the applicant has either not participated or having participated was not selected, he does not acquire any vested right for being treated as selected only on the ground of officiating against the selection post. In this connection the judgement of the Full Bench of this Tribunal in the case of **Sh.Jetha Nand and ors. Vs.Union of India & ors.(1989(2) SLJ 657(CAT))** is referred.

4. The third contention of the applicant is that the list prepared by the respondents

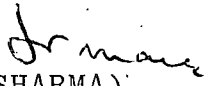
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
for the purpose of selection for the post of AME/AE(Loco) was against the rules as it ignored the staff which was within the zone of consideration and that the list of candidates prepared for the post against 75% quota ignored the applicant illegally inasmuch as he was given Rs.700-900 grade in October, 1972, but persons who were given that grade subsequent to 1972 were considered and included in the selection list. In this regard, we may refer to the instructions issued by the Railway Board in letter No.E(GP)81/2/87 dated 5.3.83 (Annexure R-3) which clearly provides^{ed} that it is the service rendered on non-fortuitious basis to be taken into account for preparing the integrated seniority list for consideration for promotion to a post in Group 'B' service. The service rendered by the applicant on a purely ad hoc/officiating basis in a Group II post is not at all relevant because service and /for eligibility is which is counted in the feeder category of Class III post for which he has not been able to show by placing any material on record that he was eligible in terms of the instructions referred to above for being included in the zone of consideration and subsequent consideration for selection. Therefore, this contention is without any basis. The respondents have stated

in their reply that the applicant was appointed to officiate in Group 'B' service pending selection to be replaced by empanelled candidate. As we have already stated above, the impugned order of reversion dated 20.4.87 has prima facie been issued after 13 people/ ^{were} empanelled for appointment to the selection post in pursuance of the selection already referred to.

5. Before parting with this case, we may also refer to ground (E) of the applicant in the OA which states " The limited interest of the applicant is that he should not be reverted till retirement. He has no other interest". It may be on this account that no one has appeared before us for the applicant at the time of the final hearing of the case.

6. In the light of the foregoing discussion, we are of the considered view that the OA is devoid of merit and the same is accordingly dismissed leaving the parties to bear their own costs.


(J.P.SHARMA)
MEMBER(J)


(P.C.JAIN)
MEMBER(A)