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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPLA BENCH: NEW DELHI

OA NO.1563/90

DATE OF DECISION: 23.10.1990.

SHRI KULDIP KUMAR BAMANIA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

SHRI B.S. MAINEE

COUNSEL FOR THE APPLICANT

SHRI P.S. MAHENDRU

COUNSEL FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER(A))

Shri Kuldip Kumar Bamania has filed this application under Section 19 of the Administrative Tribunals Act, 1985 apprehending that his services are likely to be terminated by respondent No.2 in accordance with the direction of respondent No.1.

2. The facts of the case, in brief, are that the applicant was selected for appointment by the Railway Recruitment Board as Apprentice Signal Inspector (Rs.425-700) vide panel No.49 dated 25.4.1986. He is placed at srl. No.5 in the panel which is inclusive of SC candidates. The applicant belongs to SC category. On reporting to the respondents, in pursuance of the said panel, the applicant was imparted training from 6.10.1986 to 2.11.1988 at the various Signal and Telecom Institutes of the Railways and was appointed to a regular working post w.e.f. 7.11.1988 vide notice No.940E/51/87/P1b dated 7.11.1988 (Annexure-1) which reads as under:-

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"Shri Kuldip Kumar Bamania App. Signal Inspector Grade III Rs.1400-2300 (RPS) after successful completing of training who is reported on 3-11-1988 is Ty. appointed as Signal Inspector grade III Rs.1400-2300 (RPS) and posted as SI-III/LR/F&R under SI(D)/FZR. He will draw Rs.1400/- PM in grade Rs.1400-2300.

Dates of resumption may be advised to this office."

The applicant has submitted that the proposed action of the respondents to terminate his service on the ground of some error in his appointment is violative of Article 311 of the Constitution. He has, therefore, prayed that the respondents may be directed to produce the impugned order in the Court and that the same may be quashed being illegal and unconstitutional. He has further submitted that he resigned his job with the Union Bank of India before joining the railway. He also did not accept various other offers during the intervening period which he received from Doordarshan for the post of Engineering Assistant and from other institutions. He is completing 28 years of age in October, 1990 and he would now become ineligible for any Government job..

3. The respondents in their counter are broadly in agreement with the facts of the case as brought out by the applicant. They have however submitted that the services of the applicant were terminated vide order No.940-E/51/90/P1b dated 7-8-1990, as the applicant "had got appointment due to mistake committed by the Railway Recruitment Board, Jammu" and that this is permissible in terms of service conditions applicable to temporary Railway servants under para 301 of Indian Railway

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Establishment Colde Vol.I, (1985 Edition). He has also been sent a cheque in lieu of notice period of 14 days amounting to Rs.897/- (p.30 of the paper book). The applicant, however, has not received the order, as he has been absconding and avoiding service. It has further been brought out that the reason for the termination of the service of the applicant is that a senior candidate had been by mistake superseded in the panel. This mistake is sought to be remedied by terminating the services of the applicant, who is on probation for a period of two years and that his service can be terminated and the same has rightly and validly been terminated in accordance with the rules.

4. In the rejoinder, filed by the applicant, it has been denied that the applicant is on probation for a period of two years. In fact, in accordance with the Railway Board's letter No.E(GR63)RCR-2 dated 16.9.1963 the probation period of Class-III Railway employees is one year after the completion of training/apprenticeship. The applicant has denied that he has been absconding. In fact he had sent an application under registered AD post on 3.8.1990 for extension of his leave upto 25.8.1990. The applicant has further denied that his services can be terminated under the Rules contained in Indian Railway Establishment Code Vol.1, as temporary Railway servants have also been held to be eligible for protection of the provisions of Article 311 of the Constitution by the Supreme Court. The action of the respondents is, therefore, arbitrary and illegal. It has also been brought out that a large number of Apprentice Signal Inspectors (Grade Rs.1400-2300) are being recruited by the

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respondents as will be apparent from Railway Recruitment Board, Chandigarh letter dated 26th December, 1988, sending a provisional panel of 40 candidates for this category. Another advertisement has also been issued by Railway Recruitment Board, Allahabad and Railway Recruitment Board, Jammu Tawi for additional recruitment to this very category.

The learned counsel for the applicant has also cited a number of judicial pronouncements in support of his case.* Shri B.S. Mainee, learned counsel for the applicant, however, laid great stress on the fact that applicant joined the Railway service after resigning from the Union Bank of India and invoked the doctrine of promissory estoppel, to stop the respondents from terminating the services of the applicant. The learned counsel placed reliance in this regard on the Hon'ble Supreme Court verdict in the case of M.P. Sugar Mills Co. Ltd. V. State of UP-AIR-1979-SC-620. He submitted that the respondents would not be entitled to go back on the promise, as such an Act would adversely affect the applicant and would be, therefore, inequitable. He, further contended that the applicant by resigning his job from the Bank had altered his position placing reliance on the promise made by the respondents by offering him appointment. It was urged that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel.

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*AIR-1958-SC-36-Parshotam Lal Dhingra V. UOI .

*SLR 1971 (2)-71-SC-Appar Apar Singh V. State of Punjab.

*SLJ-1988 (1)-CAT-523-G.P. Mathur & Ors. V. State of Rajasthan & Ors.

*SLJ-1988-(1)-SC-75-M.K. Aggarwal V. Guargaon Gramin Bank & Ors.

*ATR-1988 (2)-CAT-510-C.S. Bedi Vs. UOI.

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5. The main issues which arise for resolution are:-

- a) Status of the applicant.
- b) Whether the panel of selected candidates prepared on the basis of open selection examination brought into operation after the approval of the competent authority can be made inoperative after over four years after its implementation, in respect of one individual.

The applicant was selected as an Apprentice signal Inspector Grade III in the pay scale of Rs.425-700 and given training in the various Signaling Institutes of the Railways for two years. He was appointed against a regular working post w.e.f 7.11.1988 on probation for a period of oneyear. The paragraph 104 in Section B of Chapter-I of Indian Railway Establishment Manual, regulating recruitment to Group 'C' specifies that:

"all appointments will be made on probation for one year for trainees or apprentices appointed to working post after the conclusion of their training. The probationary period commences on the date of such appointment."

There is no provision for extending the probation beyond the prescribed period of one year. Appointment to a permanent post on probation means that the person so appointed is taken on trial for a period during which period the employee must satisfy the employer about his ability, efficiency and competency. It is now well settled that a probationer does not acquire permanent status until he is confirmed by an express order of the employer. At the same time, it has been held that where the relevant rule prescribes a maximum period of probation without

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any provision for extension of the period, the employer is at liberty to terminate the service of the probationer, if he is not satisfied as to the fitness of the employee. If, however, he is allowed to continue after expiry of that period the probationer would be deemed to have been confirmed w.e.f. the date the probation was completed. The act of confirmation in such a case is the inherent implication of the act of the employer in having allowed the employee to continue after expiry of the probation period. Thereafter the services of deemed permanent employee cannot be terminated without following the provisions of Article 311 (2).*

In the case of the applicant the Rule prescribes specific period of probation of one year and therefore on completion of one year's service as a probationer from 7.11.1988 to 6.11.1989 he would be deemed to have been confirmed w.e.f. 6.11.1989 and, therefore, entitled to the protection of Article-311 (2) of the Constitution.

Regarding (b) above, the panel of the apprentices was recommended by the Railway Recruitment Board as early as on 25.4.1986, and has been in operation with the approval of the competent authority since then. To make it inoperative, to ^{the} prejudice of one individual in the panel at this point of time, does not appear to be reasonable or justified. More so, as the reason for such an action is not in any way related to the applicant.

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The reason articulated by the learned counsel for the respondents is that the applicant "had got appointment due to mistake committed by Railway Recruitment Board, Jammu." Apparently the mistake committed is that some other candidate belonging to SC who had higher merit has by mistake not been included in the panel recommended by the Railway Recruitment Board, Jammu in panel No.49 dated 25-4.1986. The question of a senior SC candidate being superseded by the applicant does, not arise as the said senior person is in the approved panel. If, however, a person with higher merit has not been included in the panel, the respondents should provide for him by making suitable adjustment in the existing vacancies. He cannot be found a berth by dispensing with a service of a selected person who has been in regular service for over two years after having been trained for two years as an apprentice. The person who may be inducted in service in any case would count his service from the date of appointment. He cannot have the benefit of the seniority of the applicant, as he cannot replace him. The course adopted by the respondents is patently unjust and inequitable. It is not the contention of the respondents that the panel recommended by the Railway Recruitment Board was ab initio bad in law. We, therefore, do not see any merit in making the panel inoperative in respect of the applicant.



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In the facts and circumstances of the case, we quash the order No.940-E/51/90 Plb dated 7-8-1990, terminating the services of the applicant. The applicant shall, therefore, be deemed to have been in service continuously without any break. However, the period of leave applied by him may be regularised against the leave due.

The application is disposed of with the above directions with no orders as to costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A) 23/10/90

T.S. Oberoi
(T.S. OBEROI)
MEMBER (J)