

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 1706/90

New Delhi this the 22nd day of August, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

Ms Renu Sethi,
D/o Shri B.R. Sethi,
Unit Catering Manager,
Parliament House Annexe,
New Delhi. ...Petitioner.

By Advocate Shri B.S. Mainee.

Versus

1. The Secretary,
Ministry of Railways,
Railway Board,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi. ...Respondents.

By Advocate Shri Romesh Gautam.

ORDER (ORAL)

Shri N.V. Krishnan.

This application was admitted on 6.9.1990 and in the normal course it would have ^{u been} finally heard according to its turn. However, the applicant filed M.A. 488/94 for certain directions of an interim nature ^{viz.,} restraining the respondents from filling up at least one post in the grade Rs.1600-2660 till the final disposal of this O.A. When this M.A. was being heard for directions, we felt, on the basis of the submissions made by the parties, that the O.A. itself should be disposed of. Hence this O.A. was heard and is being disposed of by this order.

2. The Northern Railway was managing the canteens in the Parliament House. The applicant was engaged as

ll

Assistant Manager (Catering) on daily wages in May, 1980. Subsequently, the canteens of the Members of Parliament, which were being run in North Avenue and South Avenue, were also taken over for management. In this connection, certain preliminary steps were directed to be taken in the meeting held on 3.11.1980, Annexure A-2A. It was decided that all arrangements should be completed before 11.11.1980, the canteen itself being taken over w.e.f. 12.11.1980 by the Annexure A-3 letter of the Railway Board of the same day. Para 3 of the minutes of the Meeting on 3.11.1980 are reproduced below:

"(3) Whatever staff is required for the purpose of running the two canteens should be in position well in advance of 11.11.1980. Class III staff required may be inducted either from the present PH Catering Units and wherever this is not possible, direct recruitment may be resorted to. To begin with, as many staff (both Class III and Class IV, as is possible) should be employed on daily rate basis. Class IV staff be appointed on daily rates of pay from the open market".

Subsequently, the Railway Board issued the orders dated (Annexure A-3) 12.11.1980/ containing the following provisions regarding recruitment of staff:

"(4) Arrange direct recruitment of staff from the open market in Class III or Class IV categories to the extent necessary. Panels of selected persons if available with the Railway Service Commission may be considered for appointment in recruitment grades. Intermediate posts may be filled out of the existing staff by promotion. In case it is inescapable, direct recruitment also may be made in the intermediate grades".

The applicant was offered an appointment as Unit Catering Manager (UCM for short) by the letter dated 22nd January,

6

1981, Annexure A-2. It was stated that this would be an ad hoc appointment which is terminable without notice on either side and that it would be terminated due to the expiry of the sanction or surrender of the post which she held.

3. The applicant started working and according to her, she had rendered good service, having earned a Commendation Certificate, Annexure A-7A dated September, 1981. While so, steps were taken to screen such ad hoc employees. The General Manager issued a notice dated 28.3.1990 (Annexure-I to the Additional Documents,) which directs holding of Screening Test for regularisation of the 15 employees, including the applicant. The other persons in that list are shown as Store-cum-A/Cs Clerk and Assistant Catering Manager. Results of the screening are contained in the impugned Annexure A-1 letter of Northern Railway to the Senior Commercial Officer (Catering). It indicates that as a result of the selection/screening held for the post of Store-cum-Accounts Clerk, 11 persons have been placed in the panel, including the applicant. As a result of approval of the applicant by the Screening Committee for appointment to the post of Store-cum-Accounts Clerk only, the applicant apprehended reversion from the post of UCM and, therefore, this O.A. was filed for a direction to the respondents to regularise the services of the applicant as UCM, on which she had been working for about 10 years when the O.A. was filed. When the application was admitted, the respondents were restrained from reverting the applicant from the post of UCM to Store-cum-Accounts Clerk till 26.9.1990, which has been extended till date.

6

4. It is stated in the O.A. that the applicant had the necessary experience for the post which she was holding and due to her experience, she was considered suitable and appointed in the Railways as Assistant Manager (Catering) in May, 1980. It is further stated that at the time of her appointment, no specific qualifications of any diploma, etc. were insisted upon. The applicant was considered suitable after due test and interview by the Chief Commercial Superintendent as well as the Senior Commercial Officer (Catering). It is further stated that the respondents cannot take this action after a long time, particularly when the working of the applicant has been satisfactorily throughout, no adverse report has been ever communicated to the applicant and there is nothing else against the applicant and she has become over-aged.

5. The respondents have filed a reply in which it is stated that, on 22.6.1980 (Annexure R-1), the Railway Board have prescribed the qualification for this post, i.e. Craftsmanship course in cookery and Elementary Management certificate short course and one year's experience in standard establishment like Hotel, Restaurant or Guest House. It is further stated that the Recruitment Rules have been framed on 16.8.1984 and according to them, the candidate should have qualified Higher Secondary (10+2) or equivalent with diploma in catering from recognised institution. Two years experience in an established Hotel is desirable. A copy of the recruitment rules has been filed as Annexure R-2. In so far as the applicant is concerned, it is stated that the applicant did not fulfil the required qualification for the post held by her, i.e. UCM and, therefore, she was

le

(12)

found fit only for the post of Store-cum-Accounts Clerk and the Screening Committee recommended her regularisation on that post.

6. We have heard the learned counsel for the parties. They have reiterated their respective positions in the pleadings.

7. Admittedly, the Annexure R-1 letter dated 26.2.1980 was in existence when the applicant was first appointed. That letter states that the Ministry had earlier decided that 25% of the vacancies of Managers in the grade Rs.330-480 (RS) in the catering department may, at the discretion of the General Managers, be filled by direct recruitment, through the Railway Service Commission. It is also stated that the qualifications for the posts should be (i) Craftsmanship course in Cookery and Elementary Management Certificate short course and preferably (ii) one years experience in a standard establishment like Hotel, Restaurant or some Guest House. Admittedly, the applicant does not have the qualifications of Craftsmanship course in Cookery and Elementary Management Certificate.

8. The learned counsel for the applicant contended that the applicant was already working as Assistant Manager (Catering) in Northern Railways and it is because of the experience that she had, as well as the service rendered therein, that a decision was taken to take her on direct recruitment as UCM when the MP's canteens were taken over in May, 1980. He contended that the management was fully aware of her qualifications - or lack of it - and experience and yet, they chose to appoint her. He contends that the respondents are prevented from raising the issues of qualifications at this stage in the light

of the decision of the Supreme Court in Bhagwati Prasad Vs. Delhi State Mineral Development Corpn. AIR 1990 SC 371. Their Lordships had the following observations to make in that case:

"Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period periods created by the respondent in the circumstances would be sufficient for confirmation".

It was held that three years experience is sufficient for confirmation of the daily rate workers who were engaged by the respondents in that case. The applicant herein was continued in service for nearly 10 years when the Annexure-I was issued.

9. We are satisfied that the ratio of the decision in Bhagwati Prasad would apply to the present case also. The respondents have no case that the applicant knows nothing about the Catering Management. On the contrary, the Annexure A-7A letter dated September, 1981 (i.e. soon after the applicant was taken as a UCM) speaks of high standard of service rendered to the Railway Convention Committee in July, 1981 and she was given a cash award of Rs.150/-. In the

(19)

circumstance, we are of the view that the respondents cannot stop the applicant's regularisation on the contention that she does not have the necessary qualifications. We are also of the view that in case the respondents wanted to take action in this regard, they should have made some specification in this regard in the appointment order Annexure A-2 which is silent about the qualifications. It is also clear that the respondents did not take early steps to recruit any person directly against this post through the Railway Service Commission as has been authorised in the Annexure R-1 order. If that step had been taken, respondents could have taken the plea that the applicant was being replaced by a qualified person duly selected for regular appointment.

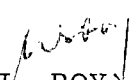
10. On an earlier occasion, we had directed, on 10.6.1994, the respondents to produce certain records, namely, (i) records leading to the offer of appointment issued to the applicant on 22.1.1981 (Annexure A-2) in order to find out how the appointment was actually made (ii) the proceedings of the DPC leading to the issue of Annexure A-1 panel, and (iii) the character roll of the applicant. We wanted to know whether at the time of appointment there was some kind of selection and consideration of the educational qualifications. We also wanted to know from the DPC proceedings whether that committee misdirected itself by screening the applicant for the post of Store-cum-Accounts clerk while the General Manager had directed that the screening should be for the post of UCM. In particular, we also wanted to know whether the DPC found the applicant disqualified for the post of UCM on the ground that she does not have the necessary qualification and whether the

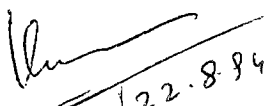
k

(20)

DPC called for the original appointment file to find out whether any qualification was insisted upon at that time. We also wanted to see the character roll because of the averment made by the applicant that she had an unblemished record, which has not been admitted by the respondents. However, the respondents did not say in positive terms that any adverse remarks were communicated to the applicant. Sufficient time was given to the learned counsel for the respondents to produce these records. They have still not produced before us. In the circumstances, we are constrained to draw an adverse inference in this regard against the respondents.

11. In this view of the matter, we are satisfied that the respondents had found the applicant suitable to hold that post despite the lack of the specified educational qualification. Hence, we find that the applicant is entitled to be considered for regularisation. In the circumstance, we allow this O.A. with the direction that the respondents shall now screen the applicant to the post of UCM, treating the applicant as having the necessary educational qualifications specified in Annexure R-1 for this purpose and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. The interim order issued earlier is made absolute.


(C.J. ROY)
MEMBER(J)


122.884
(N.V. KRISHNAN)
VICE CHAIRMAN(A)

'SRD'