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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No. 1717/90

New Delhi, this the 1st day of December, 1995.

Hon'ble Shri K.Muthukumar, Member (A)

Hon'ble Shri D.C.Verma, Member (J)

Shri Hari Ram
S/o Shri Parbhati
Booking Clerk
Northern Railway
Patel Nagar
New Delhi

.....Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India : Through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Bikaner (Rajasthan)

....Respondents

(By Advocate: Shri R.L.Dhawan)

ORDER

Hon'ble Shri D.C.Verma, Member (J)

Shri Hari Ram was initially appointed as a Gangman on 6.5.1970 and later changed the cadre as A.S.M. Khallasi and subsequently promoted as Booking Clerk on 1-1-73 has filed this OA with the following main reliefs:-

- i) to quash the impugned orders directing the respondents to hold the fresh selection after having correctly assigning the seniority to the candidates.
- ii) to direct the respondents to regularise the applicant because he has already put in more than 5 years service in a satisfactory manner.

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iii) to restrain the respondents from reverting the applicant from class III post to class IV post.

2. The fact of the applicant having been appointed as Gangman and after change of cadre has been promoted as Booking Clerk on adhoc basis is not challenged.

3. The applicant's case is that he continued as Booking Clerk on adhoc basis till 1-3-1985 and thereafter he was reverted to Class-IV post on 1-3-1985 but was again promoted on adhoc basis on 14-7-85. The applicant was not regularised though he cleared the examination of 1987 and continued on the said post as per Railway Board's circular No. E(NG) I-72/PMI/227 dated 31-10-72 mentioned in para 4.24 of the OA. It has been alleged that normally the empanelled employees should be appointed against the selection posts but in case there is no empanelled employees available and it becomes inevitable to make local arrangements, it should be made as short as possible but not for more than 3 months. For the period exceeding 3 months, it should be with the CPO/Additional CPO's specific sanction.

4. According to the extant instructions, it is stated, all cases of adhoc arrangements which are likely to continue beyond 3 months must be reviewed by the D.R.M. and if any adhoc officiating arrangements in higher grades should continue for more than 6 months, matter must be referred to the General Manager. It is submitted that in view of the Railway Board's Circular letter No. E-(NG)I-69/PMI/200 of 4.11.1970 ~~that~~ even if the selection cannot be finalised for any reasons, the adhoc promotees must be put through a selection and if they pass the written test and are considered suitable for the selection post, ^{there} will be no occasion for replacing them by any junior man selected later. Adhoc promotees should not be retained in higher

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posts beyond 6 months unless they have in the meantime qualified in the post. The further contention of the Ld Counsel for the applicant is that as the applicant has not been reverted back after completion of 18 months he should be deemed to have been regularised on the post of Booking Clerk.

5. The Ld Counsel for the respondent has submitted that the applicant failed to clear the 1987 test and the 1987 test was actually cancelled subsequently. So the test held in 1987 cannot be made a basis for selection of the applicant to hold a selection post of Booking Clerk.

6. It is seen that the cancellation of the 1987 selection was not challenged at any time. It is also seen that though the reference to the Railway Board's Circular of 1972 and 1970 (referred to above) has been made in the OA, copy of the said Circulars has not been filed by the applicant, so benefit of any such circular cannot be given to the applicant.

7. Unless the required examination for selection to Class III post is cleared no one can be made regular on such a selection post. Continuance to occupy such a post for a period beyond 18 months would not give a right. We are therefore also of the view that the contention that because the department allowed the applicant to continue on a selection post on adhoc basis beyond a period of 18 months, the applicant should be deemed to have acquired the post on regular basis, has no basis. In our view, therefore, the contention of the Ld Counsel on the point has no force.

8. It is seen that in the year 1990 another selection was held the result of the written examination of which was declared on 4-4-1990 (Annexure A-I to the OA). The name of the applicant is not in this list. The employees named therein were called for viva voce. It has been contended that 15% marks proportionate to the seniority of an employee is to be added with the marks obtained in the written

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examination and if thereafter one gets 60% and above the employee becomes eligible to be called for viva voce. The grievance is that in the case of the applicant no marks was given on the basis of seniority. The respondent's case is that no marks for seniority was given to any of the employees called for interview. In support of this he has relied on Railway Board's letter No. E(NG) I-83-PMI-65/(PNM/NFIR) dated 28.1.1988 which is on the subject of 'Selection Posts Written Examination as past selection process determination of eligibility of interview'. The same is reproduced below:-

"Attention is invited to this Ministry's letter No. E(NG)I-83-PMI/65(PNM/NFIR) dated 5-12-84 on the above subject advising inter alia that 60% of the total of the marks prescribed for written examination and seniority both should be the basis for calling candidates for viva-voce test (interview) instead of 60% of the marks for the written examination only.

Some of the Railways have expressed difficulties in observing these instructions in selection to general and ex-cadre posts.

The matter has been carefully considered by the Board and it has been decided that the notional marks for seniority should not be added for purpose of deciding eligibility for being called for viva-voce test in respect of the following categories of posts:-

- i) Ex-cadre posts where the employees retains his lien on the parent cadre and seeks advancement therein.
- ii) General posts like Welfare Inspector and Law Assistant etc. where employees of different departments and categories are considered but after induction they can seek advancement only in the new cadre.

(This also dispose off Northern Railway's letter No. 831E/63-2 XIII(E-IV) dated 1-9-87)".

9. The submission of the Ld Counsel for the respondent is that the Booking Clerks come within the general post which is covered by para-3(ii) of the above circular letter and therefore notional marks for seniority deciding eligibility for being called for viva voce test was not added in the result declared vide Annexure A-I. Ld Counsel has further demonstrated ^{by} ~~not~~ showing to the list (Annexure A-I) and designation given against the names of the employees called for interview, that Group- D employees of various departments

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were called for viva voce. Ld Counsel for the applicant has pointed out that names of ~~any~~ employees of Loco department is not in the list. Even if it be so the list Annexure A-I cannot be held as in-valid. Railway Board's Circular (Supra) para-3 (ii) only mentioned "where employees of 'different departments' and categories are considered". It doesn't say 'all departments'. The names of various departments of the Railways are mentioned in the Indian Railway Establishment Manual Vol-I. The Ld Counsel for the respondent also produced the list of marks obtained by various employees and the sheet of the applicant to show that the applicant failed to secure the required marks. After considering the various aspects as discussed above we are of the view that in the present case it was not necessary for the respondents to add the marks on the basis of seniority for eligibility for viva voce. Contention of the Ld Counsel for the applicant, therefore, is not tenable.

10) One of the reliefs claimed in the case is to correctly assign the seniority to the candidates. No seniority list have been produced either by the applicant or by the respondent. In absence of any such seniority list it cannot be ascertained what is the actual position of seniority and what position the applicant is entitled to get. In absence of details on the point this relief cannot be given.

11) Ld Counsel for the applicant has placed reliance on para-55 on the Full Bench Judgement given in Jetha Nand and others Versus Union of India and others 1989 (2) (CAT page-657). Para-55 of the Judgement is quoted below:-

"The simple answer to this is that if he has failed in the test, he is not entitled to be selected

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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 the post which is a selection post. If he is appointed to the selection post in an adhoc capacity, he should get at least three or more opportunities to sit in the test. If he passes the test and qualifies in the selection for promotion, his services should be regularised. How many opportunities in all should be given is left to the discretion of the Railway Board. We are aware that departmental examinations are being conducted in the various Departments for appointments to the higher posts and a number of opportunities are given to the candidates to pass the examination. It is only on their passing the examination that they become entitled for higher posts. Similarly, for promotion to a post in Class III, the employee should be given a number of opportunities to appear and pass the examination."

12) The Ld Counsel for the respondents has also relied on the decision given in Jetha Nand's case.

13) A reading of para-55 referred above shows that if an employee fails to clear the test^{he} is not entitled to be selected and consequently to hold a promotional post. However if a Class-IV employee who has appeared and failed in a selection test for promotion to the Class-III post, which he is already holding ^{on} adhoc capacity, such an employee should get atleast three opportunities to sit in the test. If such employees passes the test and qualified the selection he can be regularised but that if he fails he is liable to be reverted back. The Ld Counsel for the applicant

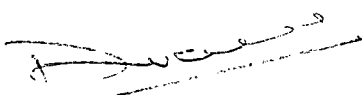
submits that as the applicant has been holding a Class-III post on adhoc basis and has not been given three opportunities to clear the selection test^{he}/is entitled for the same before being reverted back to a Class-IV post. From the records it appears that two test one in the year 1987 and the other in the year 1990 has been held and in both the test the applicant failed to qualify. In case 3rd test has not been held, the applicant, in view of the above Full Bench decision, is entitled to get an opportunity before being reverted. In the circumstances it is for the respondents to examine the position and in case the applicant has not been given three opportunities to clear the test he will be allowed in the 3rd test before being reverted back to Class-IV post.


14) The OA was filed in August 1990 and by an interim order dated 31-8-90, the respondents were directed to call the applicant for viva voce test provisionally but not to declare the result. The note sheet dated 22-10-90 further shows that the Ld Counsel for the respondents sought further clarification and had stated that the respondent would not revert the applicant and wanted the result of other candidates to be declared. By another order dated 4-1-91 the respondents^{were}/directed to keep one post of Booking Clerk in the promotee quota. For Class-IV vacant till the disposal of the OA and the respondents were further directed not to revert the applicant from Class-III post on which he was working on adhoc basis. It is thus clear that the applicant is still working in the adhoc basis on Class-III post. He will continue to work thereon on adhoc basis only till he is given third

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opportunity for selection to the Class-III post. In case the applicant has already been given three opportunities and has failed to clear the same the respondents would be free to revert the applicant to Class-IV post. In case the applicant is selected he will get the benefit flowing from it.

15) In view of all discussions made above the OA is decided accordingly and the respondents are directed to comply ^{with} the orders as above. No costs.


(D.C. VERMA)
Member (J)


(K. MUTHUKUMAR)
Member (A)

cc.