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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. NO.1718 OF 1990

DATE OF DECISION 26-12-90

J. P. Nath ... APPLICANT

Shri G. D. Bhandari ... Counsel for the
Applicant

Vs.

Union of India & Others ... RESPONDENTS

Shri N. K. Aggarwal ... Counsel for the
Respondents

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

HON'BLE MR. J. P. SHARMA, MEMBER (J)

1. Whether reporters of local papers may be allowed to see the Judgment ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgment ? N
4. To be circulated to all Benches of the Tribunal ? N

J. P. Sharma
(J. P. SHARMA)

P. C. Jain
(P. C. JAIN)

MEMBER (J)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. No. 1713 of 1990

Date of decision 26.7.90

J. P. Nath

... APPLICANT

Shri G. D. Bhandari

... Counsel for the Applicant

Vs.

Union of India & Others

... RESPONDENTS

Shri N. K. Aggarwal

... Counsel for the Respondents

COURT : HON'BLE MR. P. C. JAIN, MEMBER (A)

HON'BLE MR. J. P. SHARMA, MEMBER (J)

JUDGMENT

(Hon'ble Mr. P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was appointed to officiate on the post of Inspector of Works (I.O.W.) Gr.-III against promotion quota, has assailed order dated 16.8.1990 (Annexure A-1) by which he has been deputed for four months' training and order dated 16.8.1990 (Annexure A-3) by which his promotion orders have been cancelled. He has prayed for quashing of the aforesaid both the impugned orders. As an interim measure, the applicant has prayed for a direction to the respondents for not implementing and operating both the aforesaid orders. The Tribunal vide its order dated 24.8.1990 directed the respondents, as an ad interim measure, not to depute the applicant for the training in pursuance of order dated 16.8.1990 and to maintain status quo in regard to the post on which the applicant was working on that date. The interim order has continued since then. As the ground which has to be traversed for taking a final decision on the question of interim relief was virtually the same as for the final disposal of the C.A., both the parties agreed that the case may be heard for final disposal.

2. We have perused the material on record and heard the learned counsel for the parties.

3. Briefly stated, the relevant facts are that the applicant was appointed to a Class-IV post on 2.4.1957 in the Civil Engineering Department of the Northern Railway. He was promoted as Sub-Overseer Mistri (S.O.M.) in February, 1965 in the grade of Rs.380-560/- which has since been revised to Rs.1400-2300/-. He claims to be the seniormost S.O.M. in the Bikaner Division as his name appears at serial No.1 in the seniority list issued on 20.5.1989 (Annexure A-5). The post of S.O.M. in the grade of Rs.1400-2300/- is the feeder post for promotion to the next higher post, i.e., I.C.W. ^{Gr.-III} though the scale of the promotion post is also the same. He was appointed on an ad hoc basis in a work charge post of I.C.W. Gr.-III for a period of about eight months (Annexure A-6). 25 per cent of the posts of I.C.W. Gr.-III are filled up from the ranker quota (promotees) on the basis of a selection comprising of written and viva voce tests. The applicant qualified in the selection test and was placed on the panel declared on 23.3.1990 (Annexure A-2). He was the only selected candidate on the basis of the above empanelment. He was posted as I.C.W. Gr.-III under the Chief I.C.W., Delhi Sarai Rohilla vide office order dated 18.7.1990/7.8.1990. Respondent No.2 vide his letter dated 10.8.1990 directed the Chief I.C.W., Delhi Queens Road (LG) to relieve the applicant at once to carry out the promotion orders (Annexure A-8). He was accordingly relieved on 10.3.1990 (AN) and he joined at Delhi Sarai Rohilla (Loco MS) on 11.3.1990 (AN) (Annexure A-9). On 16.8.1990 an order was passed (Annexure A-1) deputing the applicant as a Trainee I.C.W. for four months before he is given a working post of I.C.W. Gr.-III, and by another order of the same date his promotion order was cancelled on the ground that there is no post of I.C.W. Gr.-III in the pay scale of

Rs.1400-2300/- at D.E.E. (Annexure A-3).

4. The applicant's case is that after his empanelment for promotion to the post of I.C.W. Gr.-III he should not be deputed for any training as the training course (P-10) has already been disbanded and further in accordance with the Railway Board's orders dated 8.11.1979 passing the P-10 course was not necessary for empanelment for promotion to the post. It is also contended that after he had been promoted and assumed charge of the promotion post his promotion could not be cancelled without following the prescribed procedure or at least without giving him an opportunity to show cause. He has also taken the plea that cancellation of his promotion orders amounts to cancellation of the panel which the D.R.M. was not competent to do. He also contends that a post of I.C.W. Gr.-III exists at Delhi Sarai Rohilla against which he was promoted and on which he had joined duty.

5. The case of the respondents is that there is no post of I.C.W. Gr.-III in the scale of Rs.1400-2300/- at Delhi Sarai Rohilla and as such his promotion was cancelled and the mistake which had been committed was corrected. It is also stated that though qualifying in the training course was no more necessary for empanelment for the post of I.C.W. Gr.-III, the Railway Administration has the powers, in accordance with the Railway Board's letter dated 8.11.1979 (Annexure A-10) to give some training to the empaneled candidates if it is considered necessary before posting him regularly against the working post.

6. From the material on record it is seen that in accordance with the instructions issued on 21.9.1959, candidates placed on the provisional panel of I.C.W. were required to qualify P-10 course and in the event of their

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failure to qualify, their names were required to be deleted from the provisional panel and they had to appear afresh in the selection. However, this was modified vide orders issued by the Railway Board on 8.11.1979 when it was decided that "once a S.O.M. is selected/promoted as I.C.W. Gr.-III after his selection consisting of written and viva voce tests, there is no need to subject him to further course of training before empanelment. The panel should be published immediately after selection is approved by competent authority. However, there is no objection to the empanelled candidates being given some training, if Railway considers it necessary before posting him regularly against a working post." In pursuance of these orders of the Railway Board the Northern Railway also issued orders on 13.12.1979 (A-11) which according to which those who had already undergone P-10 course were not to be subjected to any written examination and should be empanelled forthwith. Similarly, those who had already passed the selection for the post of I.C.W. Gr.-III should be empanelled irrespective of the fact whether they had or not undergone any training (P-10 course). It was also indicated therein that in future seniormost S.O.M.s in the grade of Rs.380-560/- in the Division should be sent in advance of the selection for the post of I.C.W. Gr.-III for training at Chandausi where special training courses will be conducted to equip the candidates with the practical knowledge for their efficient working as I.C.W.s so that no further training may be necessary. Vide orders issued on 19.1.1980 (A-12) this advance training was stated to be optional but not compulsory and those who were not interested in going through the same were still considered eligible to appear in the selections. P-10 course has since been disbanded as is clear from the Northern Railway Headquarters Office letter dated 20.4.1990 (Annexure A-4). It may be mentioned here that the training for which the applicant has been deputed vide impugned order dated 16.8.1990 is not

the P-10 course at the Training Institution at Chandausi, but has been prescribed as below :

- "(1) Two months' training in stores and office work in C.I.O.W./D.E.
- (2) Two months' training in field with P.Q.R.s and C.T.R. works levelling etc. under direct supervision of A.E.M./D.E."

This training, therefore, cannot be said to be the training referred to as P-10 course which has since been disbanded.

Further, the Railway Board's orders dated 8.11.1979, relevant portion of which has been extracted above, provides that though for empanelment training is not necessary, yet there is no objection to the empanelled candidates being given some training, if Railway considers it necessary before posting him regularly against a working post. Apart from this, there can hardly be any valid objection to a Government servant being put through training/training course to refresh/update his knowledge relevant for the job; in fact such updatement is vital if the public services have to perform efficiently. The grievance of the applicant, however, is that this is being done to deprive him of his promotion and with a view to harassing him. He has stated in para 5(g) of his application that "the impugned orders are full of hostile discrimination as such a training has not been ordered to be given to anybody else so far. The applicant has been picked up in order to harass him as he belongs to a backward class community." In their counter affidavit on this point the respondents have stated "That the contents of ground (g) of the application are wrong and denied and as such not admitted." The reply of the respondents on the point of discrimination is not specific inasmuch as no instance has been quoted where an empanelled candidate for promotion to the post of I.O.W. Gr.-III may have actually been deputed for similar training. This becomes significant particularly in view of the fact that two orders have been

passed on the same date — (1) cancelling the promotion on the ground of non-availability of post, and (2) for deputing the applicant for four months training. If the intention of the respondents was in fact to depute the applicant for some training to prepare him for the job of I.O.W. Gr.-III in terms of the Railway Board's permission in their letter dated 8.11.1979, then the applicant would have been deputed for the aforesaid training before he was actually ordered to be promoted and in fact allowed to join on the promotion post.

7. As regards the availability of post of I.O.W. Gr.-III at D.E.E. the respondents produced at the time of making oral submissions a copy of order dated 8.8.1986 issued from the Office of the Divisional Personnel Officer, Northern Railway, Bikaner giving the sanction of Engineering Department at various locations within the Division. From this sanction it is clear that there is no post of I.O.W. Gr.-III at D.E.E.; the post of I.O.W. Gr.-II is the sanctioned post at this location. The applicant is admittedly not entitled to hold the post in Gr.-II. The respondents have, therefore, contended that the applicant's orders of promotion were issued by mistake and by impugned order (A-3) the mistake has been corrected. In the absence of any other authentic information in support of the contention of the applicant that a post of I.O.W. Gr.-III exists at D.E.E., they have contended that the applicant is not entitled to be appointed to the post of I.O.W. Gr.-II at D.E.E. and that no sanctioned post of I.O.W. Gr.-III exists at the above location. However, the respondents admitted in their counter affidavit that the selection of I.O.W. Gr.-III in the scale of Rs.1400-2300/- against 25 per cent quota was held for two posts, but the result of only one candidate has been declared and the result of the other candidate is still under consideration (para 4.7 of the counter affidavit). Thus even if the post

(b) (i)

of I.O.W. Gr.-III does not exist at D.E.E., two such posts would be available and the applicant can be posted and is entitled to posting against either of the two posts as he was the seniormost S.O.M. and he is admittedly the only candidate who had so far been empanelled for promotion to the post of I.O.W. Gr.-III. If it means a transfer to another location, it cannot be helped if the applicant wants to avail of the promotion. It is seen from the reply filed by the respondents that the applicant was previously ordered to be transferred to Sadulpur on ad hoc promotion as I.O.W. Gr.-III vide letter 5.5.1988 (A-6) but he did not avail of the promotion and submitted refusal for ad hoc promotion. Now the difference is that the promotion will not be ad hoc but it will be a regular promotion.

8. The contentions of the applicant in regard to the alleged cancellation of the panel is not sustainable as neither the panel has been cancelled or modified nor the empanelment of the applicant has been done away with.

9. In view of the foregoing discussion, we hold that the applicant should be posted to a post of I.O.W. Gr.-III in the scale of Rs.1400-2300/-, preferably within Delhi area, against one of the two posts for which the selection was held and he was empanelled. The respondents shall be free to depute him for minimum necessary training after his appointment to the promotion post and during the period of training he will be allowed pay etc. in the pay scale of the promotion post. The application is disposed of as above leaving the parties to bear their own costs.

J. P. Sharma
(J. P. SHARMA)
MEMBER (J)

P. C. Jain
(P. C. JAIN)
MEMBER (A)