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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1959/1990. DATE OF DECISION:

Sunder Lal

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Applicant.

V/s.

Union of India & Ors. .

Respondents.

CORAM:

Hon'ble Mr. B.S. Sekhon, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri V.P. Sharma, counsel for the applicant.
Shri B.K. Aggarwal, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs: -

- " i) That the application of the applicant be allowed with costs.
- ii) That the Hon'ble Tribunal may be pleased to pass an order, declaring the action of the respondents of not considering the applicant for regularisation his services as Shunting Jamadar as illegal, unjust, against the mandatory provision and hence null and void. The applicant further prays for issuance of the direction to the respondents to consider the applicant for regularisation of his services as Shunting Jamadar. Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant. "

2. The facts as given by the applicant in his O.A. are at variance with those given by the respondents in their counter reply. Whereas in his O.A., the applicant has stated that he joined the Railway Department on 26.4.64, in the counter reply, the respondents have stated that he was appointed as Skid Porter on 26.2.1964 at Tughlakabad Railway Station. According to the applicant, he passed the

suitability test for the post of Shuntman on 9.9.70 (Annexure A-5), and was promoted as Shuntman, but according to the respondents, he was promoted as Shuntman on 6.10.1978. The applicant further states in his O.A. that he passed the suitability test for Shunting Jamadar on 1.1.1975 and was put on duty as Shunting Jamadar sometime in the year 1976 and has been working as such since then and getting the pay and allowances of Shunting Jamadar. His only grievance is that he has not been regularised in the post of Shunting Jamadar in spite of several representations. He claims to be the seniormost person qualified for the post of Shunting Jamadar. On the other hand, the respondents have denied that he was put on duty as Shunting Jamadar in the year 1976 and has been working as Shunting Jamadar since then. According to them, he was promoted as Shuntman only on 6.10.1978 and the question of his promotion as Shunting Jamadar, which is the next higher post, in the year 1976 does not arise. The applicant was utilized as Shunting Jamadar whenever there was short term vacancy. "Since there is no vacancy of a Shunting Jamadar, he cannot be given a chance. When there will be regular vacancy, selection on the basis of seniority will be held and if the applicant comes within the eligibility zone, he will be given a chance to appear in the Selection and if selected, he shall be promoted to officiate in that post".

3. We have gone through the record of the case and have heard the learned counsel for the parties.

4. After hearing part arguments on 11.1.1991, we directed the respondents to produce the service record of the applicant, seniority list of Shuntmen on Divisional basis and the records pertaining to selection(s), if any, held for the post of Shunting Jamadar during the period 1980 to 1990. The respondents have accordingly produced the following files for our perusal: -

- (1) Service Book of the applicant.
- (2) File No.729-E/61/366 in respect of the applicant.
- (3) Seniority List of Pilot Jamadars and Shuntmen on Delhi Division.

5. The Service Book of the applicant shows that the applicant was appointed as Skid Porter on 26-2-64 at TKD. The first page of the Service Book containing the particulars of service is duly signed by the applicant. He was regularised as P/Man (scale Rs.200-250), TKD, vide No. 220E/257 Pt XIII-P-3, dated 21.4.77 and was promoted as Shuntman (scale Rs.210-270) w.e.f. 6.10.78, when his pay was fixed at Rs.230/-. Prior to that also, he officiated as Shuntman from 1.1.78 to 30.9.78. He was sanctioned officiating allowance as Shunting Jamadar in the grade of Rs.330-480 (Revised Scale Rs.1200-1800) for the following periods:

1.3.85 to 28.12.85	Rs.330 (In grade Rs.330-480)
1.1.86 to 28.2.86	Rs.1200 (In grade Rs.1200-1800)
1.3.86 to 21.5.86	Rs.1230 (In grade Rs.1200-1800)

These entries have been attested by the DPO, Delhi. There is no formal letter or any other communication relating thereto available on the said Service Book of the applicant. File No.729-E/61/366 produced by the respondents has also been gone through. This file also does not contain any letter of formal appointment of the applicant to the post of Shunting Jamadar. The 'Seniority List of Pilot Jamadars and Shuntmen on Delhi Division' produced by the respondents shows that it was issued as provisional subject to revision, addition, deletion and interpolation on receipt and consideration of representations/appeals, under the signature of Assistant Personnel Officer-I/New Delhi in April, 1986. The name of the applicant appears at Sl. No.575. This list also indicates the date of ^{initial} appointment of the applicant as 26.2.1964 and the date of promotion as Shuntman as 6.10.78.

6. The applicant has not produced the letter of his appointment as Shunting Jamadar or any other document to show that any of his juniors has already been regularised in the post of Shunting Jamadar. He has also not produced any document to show that his officiation as Shunting Jamadar has been continuous from the year 1976, as claimed

by him or that he has been officiating in the pay scale of Shunting Jamadar from that year without any intervening breaks. He has also failed to produce any representation / appeal against his provisional seniority indicated in the list circulated in April, 1986. In the circumstances, we can only rely on the record produced by the respondents which goes to show that the applicant was given local chances to perform the duties of Shunting Jamadar, although he was never selected for appointment against a regular post of Shunting Jamadar. The facts in the case of Babu Lal Vs. Union of India (T.A. 25/1989 - Suit No.66/80) relied upon by the applicant are different and do not apply to the instant O.A.

7. In view of the foregoing discussion, we hold that there is no merit in the O.A., which is hereby dismissed. We leave the parties to bear their own costs.


(P.C. JAIN)
Member(A)


(B.S. SEKHON)
Vice Chairman(J)

17-9-91