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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2638/90

New Delhi this the 8th day of February 1996.

Hon'ble Sh. N.V. Krishnan, Acting Chairman
Hon'ble Dr. A. Vedavalli, Member (J)

Prem Narain,
S/o Sh. Mata Din,
G.A. Commercial Control,
D.R.M. Office,
Northern Railway,
New Delhi.Applicant

(By Advocate Sh. G.D. Bhandari)

..... Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.Respondents

(By Advocate Sh. Shyam Moorjani)

O R D E R

(Hon'ble Mr. N.V. Krishnan, Acting Chairman)

This application was filed against the threatened reversion of the applicant. It is stated that by the order dated 30.12.85 (Annexure A-1) of the Divisional Commercial Superintendent, Northern Railway, New Delhi, a direction was issued that the applicant, then working as leave reserve Waterman, should be posted as General Assistant (GA) to the Commercial Controller, New Delhi in the grade of Rs.260-430 from 1.1.86. This was addressed to the Station Superintendent SZM. It is stated that on being relieved from the post of Waterman, he joined as G.A. from 1.1.86 and has been working continuously without break. He has been granted yearly increments in the grade of Rs.975-1560 and he was drawing Rs.1075/- when the O.A. was filed, with the next increment on 1.1.1991. He has not yet been

regularised. It is contended that the post of General Assistant is a substantive and regular permanent post and hence he should be regularised.

2. The applicant also refers to the Annexure A-6 order of the Railway Board dated 22.5.66, which requires that persons officiating on a higher post should be adjusted within a period of 12 months. If their performance is found to be unsatisfactory a vacancy to improve in the next six months should be given and the final decision should be taken within 18 months.

3. Though the applicant has submitted a number of representations for regularisation, it has not yet been heeded to. The applicant, however, has been given the benefit of medical facility and an identity card, showing him as General Assistant to Commercial Controller (Annexures A-3 and A-4).

4. As the respondents were threatening his reversion, this O.A. has been filed for a direction to the respondents to regularise the ad hoc promotion from the date of his initial promotion on 1.1.186 and grant him all consequential benefits.

5. The respondents have filed a reply in which they have denied these allegations. They only admit that the applicant was screened for the post of Waterman on 30.4.82. It is denied that the applicant was promoted as General Assistant. It is contended that there is no post of General Assistant in the Railways on the Division. Further, Waterman is not eligible for

promotion to the post of Goods Clerk. Goods Clerks are put to work in control by a selection against the promotion quota limited to 33 1/3%. It is also stated that the applicant's pay has been fixed only in the grade of Waterman, i.e., Rs.750-940 and not in the higher grade.

6. The respondents, however, state that the applicant was purely utilised on local arrangements made by the Senior Divisional Commercial Superintendent for one month's sanction and that the sanction was extended from time to time because regular employees were not available. They also deny that the Railway Board's circular applies to a selection post. It is further contended that the orders putting back the applicant to his substantive post have already been passed as the local arrangement could not continue any more. They further contend in reply to para 4 (xvii) of the OA that "as a result of the posting of Shri Pravesh Kumar and Shri Nasir Khan as GA/Commercial Control, Shri Prem Narain, the applicant became surplus and was, therefore, spared and was placed back into his substantive post." (emphasis added).

7. The case was listed for final hearing on a number of occasions. On 24.2.95, the matter was part-heard and the learned counsel for the respondents was directed to furnish further information and if necessary, produce the record. In respect of many hearings thereafter there was a default on the part of the respondents and on 30.5.95 the case was closed for orders in the absence of the respondents' counsel. However, on the mention of the respondents' counsel the

case was reopened. Even so, there was no appearance by the respondents' counsel on 24.8.94, when we closed the case for orders.

8. We have carefully considered the pleadings. The respondents have nowhere denied the authenticity of the Annexure A-1 order, which directs the relief of the applicant as Waterman for posting as General Assistant to Commercial Controller in the grade of Rs.260-430 from 1.11.86. The contention of the respondents that there is no such post is belied by the various documents produced by the applicant, viz. the Annexure A-4, which is an identity card describing his as General Assistant Commerical Controller and the particulars of the pay produced by him, which shows that he is being paid pay on the higher pay scale of Rs.915-1540 and his designation in the computerised list is shown as CNL. Though the respondents deny that the post of G.A. exists, in their reply, which has been extracted above in para-6, it is stated that Pravesh Kumar and Nasir Khan have been appointed as 'GA/Commercial' Controller.

9. We are unable to understand how an ad hoc appointment of this nature has continued for nearly five years as on the date the OA was filed. In view of the averments an interim direction had been issued not to revert the applicant from the post of G.A. until further orders.

10. The respondents could have very well produced the record to establish their case that it was never intended to promote the applicant on an ad hoc

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basis. However, they have not availed themselves of the various opportunities given for this purpose. We are unable to accept the contentions made in the reply in the absence of any other supporting records. As the applicant has continued on an ad hoc basis for such a long time, he should now be considered for regularisation as a Goods Clerk, by direct recruitment, ~~as it is stated~~ that the post of Goods Clerks is a feeder post for G.A., against the next vacancy of Goods Clerk that arises, provided he satisfies the necessary eligibility conditions. In regard to age, he shall be given the benefit of the service rendered, to determine whether he is overaged. It would be open to the respondents to put the applicant through the prescribed direct recruitment process for such appointment. We make it clear that in such recruitment the claim of the applicant shall be considered along with all others who may also apply for that post, in accordance with law. Until the applicant's case for appointment as a Goods Clerk is considered, he shall continue on an ad hoc basis as a General Assistant.

11. The O.A. is disposed of with the above directions. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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N.V. Krishnan
(N.V. Krishnan)
Acting Chairman