

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.267/90

DATE OF DECISION:28.9.1990.

SHRI JAI SINGH

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

ADVOCATES:

SHRI B.S. MAINEE

FOR THE APPLICANT

SHRI P.S. MAHENDRU

FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

The issue raised in this application is that the applicant had worked uninterruptedly in the post of Ticket Collector from 9.10.1977 and has not yet been confirmed in the said post and that instead the respondents have issued orders dated 30.10.1987, reverting him to his substantive post.

The applicant promoted as Ticket Collector from the post of Gatekeeper with effect from 9.10.1977 and has held that post since then uninterruptedly. He was asked to appear in the selection test comprising written and viva voce tests in 1979. He appeared in the selection and passed in the written test but after the viva voce he failed to find a place in the select list. In the second attempt in 1983 he again did not make the grade. The respondents, therefore, sought to revert him vide orders dated 30.10.1987 at Annexure-A-6 to

contd....

his substantive post. Aggrieved by this action of the respondents he filed OA-1678/87 in the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 when his reversion was stayed as per ad-interim orders. In the counter-affidavit filed in the said OA the respondents submitted that no order reverting the applicant from the post of Ticket Collector had been issued by them. Consequently, the OA-1678/87 was dismissed as withdrawn. The Tribunal in its order dated 4.1.1988, however, made it clear that this would not preclude the applicant from moving the Tribunal by way of a fresh application if he was not regularised or if he was reverted. Thereafter, the applicant worked for about six months as Ticket Collector, when the respondents issued an order posting another person as Ticket Collector at Karnal. The applicant was directed by the Station Superintendent, Karnal to approach the Divisional Railway Manager's (DRM) office to seek further instructions regarding his posting. He also filed a representation on 5.2.1989, requesting the respondents to regularise his services based on the written examination in which he had passed in 1979. The applicant has pleaded that the reversion of the applicant to the post of Gatekeeper, Group 'D' is illegal, arbitrary and discriminatory. He has sought to fortify his case by referring to the Full Bench judgement in Jetha Nand case. The applicant has also contended that there are vacancies of Ticket Collector available and despite his representations, he has not been given any posting so far. By way of relief he has prayed that the order No.220-E/143-XXI/P-2 dated 28.7.1988, posting another person as Ticket Collector at Karnal resulting in his reversion may be set aside allowing consequential benefits to him and that the respondents may be directed to regularise him as Ticket Collector.

contd....

2. The respondents in their written reply have submitted that the post of Ticket Collector (Rs.950-1500) is a selection post. The post of Ticket Collector is filled up in the proportion of 33 $\frac{1}{3}$ % against promotee quota and rest by way of direct recruitment through Railway Board Recruitment. The applicant being eligible for promotion against the promotee quota was called upon to appear in the selection examination in 1979 for the post of Ticket Collector but he failed to qualify, hence his name was not in the panel. The respondents have not disputed the contention of the applicant that he was posted as Ticket Collector under the orders of Traffic Inspector, Panipat dated 31.8.1977 after he had been given local training in the duties of Commercial Clerk for 35 days, in which he was declared successful vide Traffic Inspector's letter dated 4.10.1977. They have however, clarified that the Traffic Inspector, Panipat was not the competent authority either to issue appointment orders on completion of such training. The Traffic Inspector seems to have acted under some mistaken belief in this regard. It has also been confirmed by the respondents that not only the applicant failed in the selection held in 1979 but he failed again when second opportunity was given to him in the selection held in December, 1986. It has been, therefore, averred that he has no legal right to claim promotion to the post of Ticket Collector. The applicant continued to work as Ticket Collector, as sufficient number of selected candidates were not available to man the posts of Ticket Collector. His continuation as Ticket Collector, however, was a local arrangement against available vacancies on account of non-availability of selected hands. It has been further averred that Shri Vedvir Singh, who has been posted as Ticket Collector at Karnal is a selected hand. On relief from Karnal, the applicant was directed to report to DRM office, but he chose to remain unauthorised.

L contd....

(16)

sedly absent without any information since August, 1988. The applicant also has not disclosed the name of the officials in the DRM ^{office} whom he reported to seek further posting orders. The representation of January 1, 1989 was admittedly received and the same was answered by the respondents on 21.6.1989 placed at Annexure-R-1. It has been further affirmed that none junior to the applicant is officiating as TCR, except those who may be covered under any stay order from the Court of Law and that no payment has been arranged to the applicant, as he was absconding from duty without any information which renders him liable to be taken up under Discipline & Appeal Rules.

3. We have heared the learned counsel of both the parties and gone through the record carefully. The applicant has been admittedly working as Ticket Collector on ad hoc basis since 9.10.1977. He appeard in the selection test in 1977 and again in 1986 but on both the occasions he failed to find a place in the select list. In the Full Bench judgement in the case of Jetha Nand & Others Vs. Union of India delivered on 5.5.1989 it has been held that:-

"if the employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post but he will be entitled to be given further opportunity to appear in the selection test."

Regarding the number of opportunities which should be given to an employee to enable him to qualify in the selection test the Full Bench of the Tribunal in its judgement (supra) observed that:-

"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

gj contd....

selection post in an ad hoc capacity, he should get at least three or more opportunities to sit in the test."

While maximum number of opportunities to qualify in the selection have been prescribed as three the determination of final number of opportunities which should be given in such cases was left to the discretion of the Railway Board. In the present case the applicant has already availed of two opportunities in a span covering the period 1979-1986 and yet he has not made the grade. It has also been confirmed that none junior to him is continuing to officiate on adhoc basis except cases falling under the orders of a Court of Law, if any. In that view of the matter, we do not see any merit in the application. However, if sufficient number of selected hands are still not available to man the proportion of posts in the promotion quota the respondents should continue the applicant as Ticket Collector on adhoc basis. For this purpose, he can be posted at any station in his zone of seniority. If that is not feasible, as none junior to him is working as Ticket Collector on ad hoc basis, there is no alternative but to revert him.

In summary the OA is disposed of with the following directions:

- a) the applicant shall be reverted only if none junior to him is working as Ticket Collector on ad hoc basis in his zone of seniority,
- b) the respondents shall investigate the circumstances in which the applicant had not been given a posting order after he was relieved from the post of Ticket Collector at Karnal

contd....

2

by duly selected hand on 29.7.1988 and denied his salary etc. either for the post of Ticket Collector or for the substantive post;

c) the respondents shall take action to regularise the period of absence based on the investigation so carried out and in accordance with the Rules, within a period of four weeks from the date of this order.

There will be no orders as to costs.

Dilbagh
(I.K. RASGOTRA)

MEMBER(A) 28/7/1990

Dees
(T.S. OBEROI)

MEMBER(J)