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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.2727/90

NEW DELHI THIS THE 22nd DAY OF DECEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)  
HON'BLE SHRI B.K.SINGH, MEMBER (A)

Shri Chunni Lal Malhotra,  
Senior Clerk,  
Under Locoforman  
Northern Railway,  
JIND. ....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,  
State Entry Road,  
NEW DELHI.
3. The Locoforeman,  
Northern Railway,  
JIND ..Respondents

(By Advocate : Shri O.P. Kshatriya)

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member (J)

The applicant filed this Original Application on 26.12.90, praying for the grant of the relief that the impugned order dated 22.11.90 passed by the Divisional Personal Officer, Northern Railway, New Delhi be quashed and the respondents be directed to consider the regularisation of the applicant

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for the post of Senior Clerk after giving him an opportunity to appear in the Suitability Test, till then the applicant be allowed to be continued on the same post senior clerk.

2. The respondents contested this application and stated that the application is not maintainable particularly in view of the fact that the applicant had earlier filed O.A.1058/87 almost for the grant of the same reliefs. It is further contended that the applicant did not appear for the Selection Test though he was called and spared.

3. The applicant therefore was rightly ordered to be reverted by the impugned order dated 22.11.1990.

4. The applicant has also filed rejoinder reiterating the same facts. We have heard the learned counsel for both the parties at length. Before commencing the arguments we got details about the O.A.No.1058/87 which was filed in the Principal Bench and since disposed of by the Order dated 27.2.92, dismissing the application and the relief prayed for by the applicant that he should

paid the officiating allowance for the post of Senior Clerk since 1983, and the regularisation to that post was not allowed.

5. The learned counsel for the applicant also did not dispute this fact <sup>and</sup> ~~to~~ argued that in the present application only challenge is to the Order of reversion dated 22.11.90. A perusal of the order dated 22.11.90 shows that the applicant was paid certain officiating allowance of the post of Senior Clerk w.e.f. 26.5.1989 to 02.03.1990. In the mean time, on 7.7.1990 Suitability Test was held, and since the applicant was not appearing in the Selection Test, though stated to be on the sick list, he could not <sup>be</sup> ~~be~~ empanelled and his appointment could not be continued and he was reverted to his substantive post of Fuel Issuer.

6. Two issues are involved in the present case, whether the applicant can be allowed to continue in the post of Senior Clerk even though selected candidates are available, and secondly whether the applicant who was on the sick-list, should have been given an opportunity in supplementary Selection Test in order to judge his suitability for

the post of Senior Clerk. As regards the first point, the applicant has no right whatsoever, in the exigency of the service and in the interest of administration, the respondents can make a feeder grade employee to serve on the officiating post but when duly selected candidates turn up, he is to be sent back to his substantive post. The applicant cannot, therefore, claim to be retained on the post of Senior Clerk. It is also because of the fact that the applicant by whatsoever reason did not take the Selection Test of the post of Senior Clerk. He may be ill or he may have ~~feigned~~ <sup>to</sup> ~~felt~~ illness but that will not give him right to continue on adhoc basis in the face of selected employees coming forth. In the case of Jethanand Vs Union of India, It has been decided by the Full Bench of the Tribunal that for selection post, a person has to pass pre-selection prscribed tests and after he gets successful, he can only calim promotion to the post. It is not the case of the applicant that person similarly situated who did not pass selection or who did not appear in the Selection of Suitability Test for the post of Senior Clerk was allowed

to continue and discriminating the applicant, he has been reverted. Thus the applicant has no right to continue on the post but by virtue of an interim direction issued in this case, the applicant has continued. The stay granted earlier in this case has been vacated by the Order dt. 2nd November, 91. The learned counsel also argues that the applicant had already been reverted before issue of the interim order on 26.12.1990. We are not going into ~~that~~ issue in the present case.

7. Regarding the second point raised by the learned counsel for the applicant that the applicant should have been given an another opportunity of appearing in the supplementary examination, we find that the applicant at that time in December, 1990 did not claim any such interim relief that the respondents should be directed to convene supplementary examination or suitability test for the post of Senior Clerk. He only prayed as an interim direction that the reversion of the applicant be stayed till the final disposal of the application. We are hearing this case in 1994. We cannot now balance <sup>the equities</sup> ~~an inquiry~~ by directing the

respondents to hold a selection or suitability test at this point of time. So prayer of the applicant that the respondents be directed to hold a Suitability Test cannot be allowed at this point of time.

8. The learned counsel for the applicant though did not pray as specific relief that a junior has been promoted so directed be also given for promotion to the post of Senior Clerk, the learned counsel has pointed out in Para 4.19 of the application that certain persons who were junior to the applicant have been promoted as Senior Clerk vide notice dated 8.11.1990. This naturally is after the suitability test. The applicant cannot, therefore, equate himself with those juniors. The learned counsel for the applicant has not referred to any such case where person without qualifying Selection or Suitability Test has been given promotion to the post of Senior Clerk.

9. We are constrained to observe that the applicant filed this application in December, 1990 but in this application, ~~in~~

in the relevant Column 7 he has not stated that he has already file O.A.1058/87.

Therefore, he has suppressed this fact. The learned ~~counsel~~ counsel for the respondents pointed out that by virtue of an order issued as an interim direction to the respondents in O.A.1058/87, the applicant continued on the post of Senior Clerk. We only observe this fact.

10. In view of the above facts and circumstances of the case, we find no merit in the application and the same is dismissed as such, leaving the parties to bear their own costs.

  
(B.K. SINGH)  
MEMBER (A)

  
(J.P. SHARMA)  
MEMBER (J)

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