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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.646 of 1990

This 25th day of July, 1994

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

Hon'ble Shri B.K. Singh, Member (A)

Harinder Pal Singh Bhatia,
Lab Assistant,
Diesel Shed,
Northern Railway,
Ludhiana

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Applicant

By Advocate: Shri G.D. Bhandari

VERSUS

1. Union of India, through:
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chemist & Metallurgist (CMT)
Northern Railway,
Mechanical Workshop,
Amritsar.

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Respondents

By Advocate: Shri P.S. Mahendru

O R D E R (Oral)

Hon'ble Mr. J.P. Sharma, M(J)

The applicant joined as Lab. Khalasi in the scale of Rs.196-232 in the cadre of Chemist and Metallurgist on 19.9.1979. He was promoted to the post of Lab. Assistant on 14.9.1987 in the grade of Rs.260-430. The applicant gave his option for transfer from Tughlaqabad Shed to Ludhiana Shed and it is said by the learned counsel for the applicant that before the decentralisation of the cadre of Lab. Assistants (Rs.950-1500) by the order dated 3.4.89, the applicant had joined at Ludhiana Shed but was given a bottom seniority. The applicant apprehended reversion on the substantive post of Lab. Khalasi and filed the present application in April 1990. On 16.4.90 an interim direction was issued by this Tribunal that the respondents should maintain status quo as on 'today'

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(16.4.1990). The interim order continued to be operative and the applicant is still working on the post of Lab Assistant to which he was promoted by the order dated 14.9.87.

2. The applicant prays for grant of reliefs that the respondents be directed to regularise him on the post of Lab Assistant (Rs.975-1500) which he has been holding since 14.9.1987 and which is a non-selection post to be filled up on the basis of seniority-cum-suitability.

3. The respondents contested this application and in the reply stated that the post of Lab Assistant in the grade of Rs.260-430/Rs.975-1560 is a selection post and is to be filled up by holding a proper selection after viva-voce test of the employees from amongst Helper Khalasis as per instructions contained in the letter dated 6.8.1987 (annexure R-1). Promotion to the post of Lab Assistant can be only on the basis of seniority-suitability from among the cadre of Khalasis and not on the basis of any alleged cadre of Lab Khalasis. Instructions in this respect are contained in the circular of Northern Railway (annexure R-2). The applicant was, according to the respondents, appointed to the post of Lab Khalasi in the Diesel Shed, Tughlaqabad, Delhi and was transferred at his own request to Diesel Shed, Ludhiana. The applicant was put to officiate as Lab Assistant on adhoc basis and that arrangement was pending selection. The concerned authority invited applications from Khalasi/Khalasi Helper/Lab Assistnts/Khalasis officiating as Lab Assistants for the proposed selection ~~selection~~ for filling up three posts of Lab Assistants in the grade of Rs.975-1540 (RPS) against promotion quota vide letter dated 18th July 1990. It is

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stated that the applicant also applied for appearing in the said selection. The applicant is liable to qualify the proposed selection as and when held and in the event of failing in the said selection he is liable to be reverted to his substantive post. It is also stated that earlier instructions have been superseded by the instructions contained in the letter dated 6.8.1987 (annexure R-1).

4. The respondents have also stated that the applicant has given his option to appear in the selection for the post of Lab Assistant along with others and that he will be given due consideration as and when other optionists are called for the selection by the Amritsar Workshop where the cadre of Lab Assistant has been decentralised.

5. The applicant has not filed any rejoinder.

6. We heard the learned counsel for the applicant at great length. The contention of the learned counsel is that the applicant is officiating on the promotion post of Lab Assistant from 14.9.87 without break and he has been continuing on the said post after the interim direction issued by this Tribunal on 16.4.1990. In view of this he has referred to the circulars of the Railway Board issued between 1966 and 1983 (annexure A-9 and A-10) which lay down that an employee who has officiated for more than 18 months cannot be reverted without holding DAR proceedings. The contention of the learned counsel is that the work of the applicant during all this period has been found to be satisfactory by the Assistant Chemist and Metallurgist, Northern Rly, Diesel Shed, Ludhiana vide experience certificate dated

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7.10.1989 (annexure A-4). The applicant has also pointed out that earlier seniority of Lab Khalasis was centralised i.e. in all the 9 Divisions under the Railways there was a common seniority list and it was only in April 1989 that the seniority of Lab Khalasis was decentralised. His contention is that though the applicant was transferred on his own request but he could not be given bottom seniority as the instructions in vogue at that time before April 1989 were regarding centralised seniority. Even if the applicant had gone on transfer on his own choice, he could not be given bottom seniority. The learned counsel has also referred to the contradicted ^{-dry} reference made in the reply where at one place the post of Lab Assistant has been mentioned to be non-selection post, i.e. to be filled up on the basis of seniority-cum-suitability, while at another place it is stated to be selection post.

7. We have given a careful consideration to the various contentions raised by the learned counsel for the parties. We have to confine ourselves to the relief prayed for in the application and the relief is that since the applicant has officiated continuously without break from September 1987 by virtue of the golden rule of 18 months, he should have been deemed to have ^{been} regularised and cannot be reverted without following DAR proceedings. However, the matter in this regard has been set ^{at rest} ~~forth~~ by the case Jetha Nand vs. Union of India, full bench decision, CAT (PB) volume 1 457. The full bench of CAT (Principal Bench) held that unless and until for selection post the person qualifies, passes and is empanelled, he can claim only continuance on that post and can be reverted if he does not qualify the test. Those incumbents who fail can be provided another chance irrespective of having availed of earlier chance.

The case of the applicant is not covered by the various circulars cited by the learned counsel for the applicant.

The case of the applicant falls within the ambit of Jetha Nand (supra) case and since it is a selection post, merely because the applicant continued for years together by officiating on ad hoc basis, he cannot get any lien to the post warranting his regularisation on the same.

8. It appears that the applicant has also appeared in the selection advertised by the respondents for 50% promotion quota sometime in 1990. There is also an averment to this effect in the reply by the respondents that the applicant applied for the said selection. Neither the applicant has filed any rejoinder giving the upto date position regarding his selection nor the respondents' counsel has apprised of the latest position regarding that selection and whether the applicant has made a grade for appointment to the post of Lab. Assistant. Everything being in dark cannot be probed further.

9. The learned counsel for the applicant ultimately pressed for the seniority that the applicant was originally having as Lab. Khalasi. We are afraid, no such relief has been sought in the OA and the Tribunal cannot bestow such a relief with mandatory direction to the respondents nor the respondents have categorically taken this as an issue for decision in this case.

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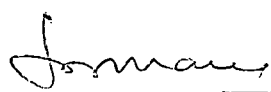
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10. In view of the facts and circumstances, the present Original Application is dismissed as devoid of merit. The interim order issued on 16.4.1990 is vacated. It is made clear that the applicant will not be entitled to any benefit of officiating service which he put in by virtue of the interim order passed by this Tribunal on 16.4.1990.

Cost on parties.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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