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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 729/90

New Delhi, 2-9-1994

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Chaturbhuja Sinduriya
S/O Budhha Jamadar,
R/O Near Gopal Mill,
Kota Junction, Kota.

... Applicant

By Advocate Shri B. B. Raval

Versus

1. Union of India through its
General Manager, Western
Railways, Churchgate,
Bombay.
2. Divisional Railway Manager,
Western Railway, Kota.
3. Senior Divisional Commercial
Superintendent, Western Railway,
D.R.M.'s Office, Kota.
4. Station Superintendent,
Western Railway,
Kota Junction, Kota.

... Respondents

By Advocate Shri O. N. Moolri

O R D E R

Shri S. R. Adige, Member (A) -

In this application, Shri Chaturbhuja Sinduriya, has prayed for a direction to the respondents not to revert him from the post of Booking Clerk to the post of Khalasi; for pay and allowances of Booking Clerk w.e.f. 24.9.1984 together with arrears, annual increments and interest at the rate of 18% p.a.; and regularisation as a Class 'D' employee w.e.f. 1.6.1981.

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2. From the materials on record, it appears that the applicant who belongs to the SC community was engaged as a casual labour (Khalasi) on 1.6.1978. According to the respondents, he was granted temporary status on 4.6.1980 and was regularised as a Box Boy on 16.1.1985. The applicant claims that he should have been regularised immediately after completion of three years' service, but this claim has no force, because regularisation depends upon the availability of a regular vacancy, and the applicant has not produced any material to show that a regular vacancy was available just after completion of three years' service, or that any person who was junior to him was regularised, and thus he was subjected to hostile discrimination. He states that he submitted a representation to the authorities for regularisation in the cadre of Class 'D' employees w.e.f. 1.6.1981, but no such representation is on record either.

3. The applicant claims that departmental promotion examination for the post of Booking Clerk was held in December, 1989, for which he applied, but he was not permitted to appeal on the ground that he had not completed five years as a confirmed Class 'D' employee. The applicant claims that meanwhile he has been officiating as a Booking Clerk w.e.f. 24.9.1984, but he has been denied the pay of Booking Clerk, and was now being threatened with reversion to his substantive Class 'D' category.

4. The respondents deny that the applicant has been working as a Booking Clerk since 24.9.1984 and state that he is only a regularised Box Boy w.e.f. 16.1.1985

vide orders dated 28.8.1985 (Ann. R-1). They state that the applicant has not produced any appointment letter, promotion order or authentic document to support his contention that he was appointed in any manner as a Booking Clerk, and that the certificate at Annexure A-1 said to have been issued by the Station Superintendent, Kota Junction, Kota that the applicant was working as a Booking Clerk w.e.f. 24.9.1984 without any break till today, that is, 15.3.1990, might possibly be a fake certificate, and in any case, the Station Suptd. is not authorised to issue such a certificate. Furthermore, they state that it was only in 1987 that the applicant applied for selection to the post of AC, but he was not found eligible, as he had not completed three years' continuous service in Group 'D' as on 30.11.1987 which was required in terms of Railway Board's circular dated 9.11.1987 (Ann. R-3).

5. On 26.4.1990, when this case was heard, the status quo was ordered to be maintained which was extended from time to time.

6. In so far as the applicant's prayer for regularisation as a Group 'D' employee w.e.f. 1.6.1981 is concerned, the same is rejected as the applicant has failed to produce any material to satisfy us that a regular vacancy arose on that date or that anyone junior to him was regularised on that date, and thereby he was subjected to hostile discrimination.

7. In so far as the apprehension of reversion from the post of Booking Clerk raised by the applicant is

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concerned, the applicant has failed to show us any material appointing him or promoting him to the post of Booking Clerk, and only relies upon the certificate said to have been issued by the Station Superintendent, Kota, which is denied by the respondents. On the slender strength of this material, we are unable to arrive at any firm conclusion whether the applicant was in fact promoted as Booking Clerk w.e.f. 24.9.1984 and has been continuing as such since that date continuously, as claimed by him, or not. Furthermore, the applicant has not furnished any order of reversion either against which any cause of action would lie.

8. In this connection, we note that the applicant had filed a C.C.P. alleging that the respondents had not complied with the orders directing maintenance of status quo. It was alleged that when the applicant wanted to resume duty as Booking Clerk from which post he had not been reverted, the Station Superintendent, Kota did not allow the applicant to join on the specious plea that the order did not specifically state that the applicant be allowed to join as Booking Clerk. This C.C.P. bearing No. 263/93 was dropped on 27.7.1993 by the Tribunal, after noting the submissions made by Shri Raval, learned counsel for the petitioner, that the CCP did not survive. During hearing, Shri Raval stated before us that he had not made any such averment before the Tribunal, and alleged that there was something suspicious in the order as his name had not been listed as the counsel appearing in this case in the order dated 27.7.1993. This order dated 27.7.1993 dropping the

C.C.P. was passed by a Division Bench consisting of the then Hon'ble Chairman Mr. Justice V. S. Malimath and one of us (Shri S. R. Adige, Member-A), after hearing Shri Raval. Merely because his name has not been shown in the order dated 27.7.1993 as the applicant's counsel is not sufficient to initiate a roving inquiry, because the text of the order is itself clear that the applicants' counsel was Shri Raval.

9. In the result, we dispose of this application by making the interim orders dated 26.4.1990 for maintenance of status quo absolute. The respondents are further directed to pay the applicant the emoluments of the post which he is holding. As regards payment of arrears, if any, upon an application for the same being made by the applicant quantifying the amount of arrears claimed, the respondents should dispose it of by means of a speaking, reasoned order within two months of it being filed. Furthermore, the applicant may be permitted to appear in the next selection to be held for the post of Booking Clerk, subject to his fulfilling the necessary qualifications and in accordance with the extant rules, and in the event that he is working as a Booking Clerk on ad hoc basis, may not be displaced from that post except by a regular incumbent.

10. This application is disposed of accordingly.
No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Member (A)