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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.939 of 1990 Date of Decision: 18.8.93

Abdul Gafoor Applicant.

Versus

Union of India & others Respondents.

CORAM:

Hon'ble Mr. Justice V.S.Malimath, Chairman.

Hon'ble Mr.S.R.Adige, Member(A)

For the applicant: Shri B.B.Raval, counsel.

For the respondents: Shri O.N.Moolri, counsel.

JUDGMENT

(By Hon'ble Mr.S.R.Adige, Member(A).)

The applicant Shri Abdul Gafoor has prayed that the respondents may be directed to empanel him for the post of Ticket Collector in accordance with paragraph 2.2 of the records note of the meeting dated 27.11.75 held between Railway Board and the Deputy Railway Minister, and the order dated 22.2.90(Annexure-A1) by which a selection panel had been prepared for employees found suitable for promotion to the post of Ticket Collectors be modified to that effect. It has also been prayed that the respondents be directed to regularise the applicant's services as Ticket Collector with effect from the date of his continuous officiation, together with all consequential benefits.

2. Shortly stated, the applicant, who was initially appointed to the post of Bhisti at Kota Junction in 1978, was regularised w.e.f. 17.5.86. He was put to officiate in the higher post of Ticket Collector w.e.f. 17.6.86 to 30.4.88 and was ordered to be paid all necessary officiating allowances vide Annexure-A2. This arrangement continued for a further period of nine months

w.e.f. 1.5.88 to 28.2.89 vide Divisional Office (western Railway) Kota's order dated 19.5.89 (Annexure-A15). During hearing, Shri Moolri, learned counsel for the respondents conceded that the applicant continued to officiate as Ticket Collector till 4.3.90.

3. Meanwhile, it appears that a selection to the post of Ticket Collector was held. The applicant appears to have passed the written examination, and secured 103th position vide list dated 8.1.90 (Annexure-A5), but his name did not find mention in the panel dated 22.2.90 prepared on the basis of that list (Annexure-A1) and ultimately by the D.R.M. (western Railway) Kota, Office order dated 3.3.90 (Annexure-A10), all those 30 persons, who were named in the panel prepared on 22.2.90, were promoted/ posted as Ticket Collectors on adhoc basis at the stations shown against their names. In that letter, it was stated that adhoc arrangement, made against the vacancies of Ticket Collectors in the scale of Rs.950-1500/-, stood discontinued. It was further stated that these promotions were purely on adhoc basis and the promotees ~~would~~ be regularised as Ticket Collectors after passing the prescribed promotion course.

4. It appears that hardly was this promotion order issued, the applicant proceeded on leave from 5.3.90 to 10.3.90, ^{and} thereafter again went on leave w.e.f. 13.3.90. On 17.5.90, he appears to have filed this O.A. along with M.P. No. 1162/90, in which it was stated that this matter fell within the jurisdiction of ^{this} Jodhpur Bench of the Tribunal, but as the Advocates at Jodhpur went on strike, a prayer was made to allow this O.A. to be retained before the Principal Bench. That prayer was allowed on 17.5.90.

and the case was listed for admission on 18.5.90. On that date, the application was admitted and an interim order was issued directing the respondents not to revert the applicant from the post of Ticket Collector in case he had not already been reverted. The case was ordered to be listed before the D.R.(J) on 3.8.90, but it appears that on 1.6.90 the case came up before the bench again and the applicant as well as the respondents were heard through their counsel. The interim orders passed on 18.5.90 were modified to the effect that the respondents were directed not to revert the applicant from the post of Ticket Collector unless such reversion became necessary to accommodate the regularly selected candidates. Meanwhile the applicant filed M.P.No.1853 of 1990 but because certain infirmities were found in the same, he was given the liberty to file a fresh M.P. Thereafter, he filed another M.P. bearing No.1915 of 1990. In that M.P., which was filed on 8.8.90, the applicant contended that although more than two months had elapsed since, the Tribunal had passed the order on 1.6.90, the respondents till then were not allowing him to work as Ticket Collector. After hearing the counsel for both the parties on 17.9.90, the Tribunal maintained the orders passed earlier i.e. 1.6.90 that the applicant should not be reverted from the post of Ticket Collector unless such reversion became necessary to accommodate the regularly selected candidates. The respondents were directed to comply with these directions, and the M.P. was, therefore, disposed of accordingly.

5. Meanwhile, it appears that the orders were issued directing the applicant to work as Bhisti

w.e.f. 22.5.90 in place of Shri Chhotey Mal
vide Annexure-11.

6. On 9.10.90, the applicant moved another M.P. bearing No.2571 of 1990 praying that contempt proceedings be initiated against the respondents for not taking the applicant on duty as Ticket Collector. That M.P. was disposed of on 23.10.90 with the observations that the applicant, if he so wished, may move C.C.P if he was aggrieved by non-implementation of the Tribunal's orders. Thereafter, the applicant filed C.C.P No.224 of 1990 on 14.12.90 praying that the contempt proceedings be initiated against the respondents for not implementing the Tribunal's orders dated 1.6.90 and 17.9.90. On 25.4.91 orders were passed on that CCP in which it was held that as disputed questions of fact had been raised, the same could be gone into only when the main application itself was finally heard. Accordingly, the C.C.P. was directed to be taken up with the main application at the time of final hearing. Thereafter, on 26.9.91, the applicant filed another M.P. No.3189 of 1991 again praying for a direction to be issued to the respondents to allow him to resume his duties as Ticket Collector pending disposal of the O.A. This M.P. was disposed of by order dated 22.1.92 with the direction to the respondents that pending final disposal of the present application, the petitioner should be allowed to join as Ticket Collector wherever it was possible to accommodate him against such a vacancy, and these directions were ordered to be complied within three months. It appears that this order dated 22.1.92 was issued ex parte, because none appeared for the respondents on 22.11.91 when this matter had been

heard and orders were reserved. Consequently, on 26.3.92, the respondents filed M.P.No.1170 of 1992 praying for recall of the orders dated 22.1.92. In that petition, it was stated that since the applicant was never promoted regularly or on adhoc basis to the post of Ticket Collector, there was no question of reversion and no order for reversion at any time had been passed against the applicant. In the M.P., it was stated that after the promotion/posting orders of Ticket Collectors were made on 22.1.92, nobody had been allowed to work as Ticket Collector except one Gopal Kumar, and even he had been allowed to officiate only for a very short duration/^{on account} of a fair and he too had been put back to his original post soonafter the fair had concluded. It was also also stated that there was no vacancy of the post of Ticket Collector against which the applicant could be allowed to work/officiate. Counsel for the both the parties were heard on/M.P. and orders were finally passed on 22.1.93 holding that it would not be appropriate to vacate the interim order dated 22.1.92 and directing ~~xxxx~~ that the O.A. be listed for final hearing in its turn.

7. Meanwhile, the applicant had also filed CCP No.177 of 1992 again praying for contempt proceedings to be initiated against the respondents for failing to implement the direction of the Tribunal dated 22.1.92 in M.P.No.3189 of 1991. That CCP appears to be filed on/about 11.5.92 and was finally rejected on 29.5.92. In the order disposing of CCP No.177 of 1992, it was noted that the direction had been given to the respondents that the petitioner should be allowed to join duties as Ticket Collector wherever it was possible to accommodate him against a vacancy. The petitioner

had been unable to identify any vacancy and under the circumstances, it could not be held that the respondents had contumaciously violated the interim order of the Tribunal. As the petitioner had failed to make out a prima facie case about the occurrence of the vacancy after the Tribunal's orders dated 22.1.93 against which it was possible to accommodate him, no action under the Contempt of Courts Act was warranted.

8. A recital of the above facts makes it abundantly clear that this relatively simple matter has been allowed to drag on unnecessarily, largely on account of the numerous M.Ps and C.C.Ps that have been filed.

It cannot be denied that the applicant, who is confirmed against the post of Bhisti, was put to officiate as a Ticket Collector from 17.6.86 onward, and this arrangement continued right upto 4.3.90 during the course of which he also appears to have earned increments in the post of Ticket Collector. However, the applicant has failed to furnish any formal order promoting him to the post of Ticket Collector. Moreover, it is clear that the post of Ticket Collector is a selection post, ~~and~~ was to be filled by means of a written examination as well as interview, ~~and~~ Although the applicant cleared the written examination, he was not successful in the interview. Accordingly, his name did not figure in the panel of successful candidates who were promoted/posted as Ticket Collectors and that order subsequently stated that all adhoc arrangements made against the vacancies of Ticket Collectors stood dis-continued as a consequence thereof. As the applicant had been given an opportunity along with all the other interested candidates to compete for the post of Ticket Collector, and had

ultimately been declared unsuccessful, he had to give way to the successful candidates, notwithstanding the fact that he had officiated against the post of Ticket Collector for a considerable length of time, and he cannot legitimately make a grievance of the respondents action. The applicant has sought to derive support from Para 2.2 of the record note dated 27.11.75 of a discussion said to have been held between the Railway Board and Deputy Railway Minister which, according to the applicant, reads as under:-

"2.2 panel should be formed for selection post in time to avoid adhoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

9. A certified copy of the record note has not been filed by the applicant, and hence we are not in a position to verify its authenticity. The applicant has no doubt referred to two letters ^{authorizing the} issued by the N.E. Frontier Railways, ostensibly in the light of the paragraph stated above, but copies of the same have not been furnished ~~with~~ ^{either}. Even if, the record note, is authentic, it can at best be considered a general guideline, and can under no circumstance override the departmental rules and regulations governing selection to posts, ~~unless~~ ⁱⁿ the same are modified accordingly. The applicant has nowhere challenged the validity of the rules and regulations by which the written examination and viva-voce test were held for filling up the posts of Ticket Collectors and under the circumstance these extracts of the record note, even if

authentic do not help him.

10. Coming to the M.Ps and CCPs, which still remain to be disposed of in this case, we note that in M.P. No.3189/91, the applicant prayed for a direction to be issued to the respondents for allowing him to resume his duties as Ticket Collector pending disposal of O.A., and in that M.P., direction was issued on 22.1.92 to the respondents that pending final disposal of the present O.A., the applicant should be allowed to join as Ticket Collector wherever it was possible to accommodate him against such a vacancy and these directions were ordered to be complied with within three months. However, ^{as} we are now disposing of the O.A. itself, no further action is required on this M.P.

11. Similarly in CCP No.224 of 1990, the applicant had prayed that contempt proceedings be initiated against the respondents for not implementing the Tribunal's order dated 1.6.90 and 17.9.90, and on 25.4.91 orders were passed on that CCP in which it was held that as disputed questions of fact had been raised, the same could be gone into only when the main application itself was finally heard. As it is abundantly clear, that the arrangement by which the applicant was put to officiate as Ticket Collector, was brought to a close only when regularly selected candidates were promoted/ posted as Ticket Collectors, it cannot be said that there was any contumacious violation of court orders dated 1.6.90 and 17.9.90, and hence this CCP bearing No.224/90 has no merit and is dismissed.

12. Similarly in CCP No.244 of 1992 filed on 9.7.92 a prayer was made to initiate contempt proceedings against the respondents for failing to implement the Tribunal's interim order dated 22.1.92 passed in M.P.No. 3189 of 1991. It has been stated that in that order, the respondents have been directed to allow the petitioner to join as Ticket Collector wherever it was possible to accommodate him against such a vacancy, and any such arrangement would be subject to the outcome of the O.A. As, inspite of various representations, ^{the m/s} ~~which took no action at all~~ the applicant filed CCP No.177 of 1992 which, however, was dismissed as the petitioner had failed to make out a prima facie case about the occurrence of vacancy against which he could be accommodated. However, the Tribunal had concluded by saying that if such a situation arose later, i.e. if vacancies were identified, it would not come in the way of petitioner taking action at an appropriate stage. Meanwhile, the petitioner had been able to identify certain vacancies, one of which arose as a result of demise of one Shri Pitamber and 26 other vacancies had arisen consequent to certain promotions made, but the applicant had deliberately ^{been M/s} denied adjustment against any of these vacancies which amounted to contumacious violation of the Tribunal's order.

13. On the other hand, in ^{their m/s} reply the respondents have stated that the situation remained unchanged inasmuch as no vacancy had arisen since the Tribunal's order dated 29.5.92 dismissing CCP No.177 of 1992. In view of the fact that in the O.A. itself, we have come to the conclusion that the applicant had to make way for regularly selected candidates and the Tribunal's interim order in M.P.No.3189/91 was itself subject to the ^{The m/s} outcome of main application, we do not think that there has been any contumacious violation of the Tribunal's order dated 22.1.92 in M.P.No.3189 of 1991

and thus CCP No.244 of 1992 has no merit and is dismissed.

14. Lastly, we would advert to M.P. No.201 of 1993 in which it has been alleged that the S.D.C. Superintendent Kota Division, Western Railway misbehaved with the applicant, threatened him and also spoke in derogatory terms about the petitioner's counsel as well as this Tribunal. These allegations have been denied by the respondents. As we are disposing of this application, it is not necessary for us to pass any order on the M.P. at this stage. The applicant has liberty to work out his rights in accordance with law.

15. In the result, the applicant's prayer for inclusion in the selection panel of those found suitable for promotion to the post of Ticket Collectors and the regularisation of his services as Ticket Collector with effect from the date of his continuous officiation is rejected and this application is disposed of with the following directions:-

- i) The respondents are directed to take the petitioner back on his substantive post of Bhisti.
- ii) The intervening period, from the date he proceeded on leave, until the date he rejoins, shall be regulated by grant of such leave as may be admissible to him. For the period no leave of any description is admissible to him, extraordinary leave without pay may be granted. The intervening period will not constitute a break in service.
- iii) The respondents will pass necessary orders in this regard within a period of three months from the date the applicant reports for duty.

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iv) Parties shall bear their costs.

Arif Ali
(S.P. ADIGE)

MEMBER (A)

Malimath
(V.S. MALIMATH)
CHAIRMAN

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