

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1373/91

DATE OF DECISION:9.9.1991.

SHRI S.K. SRIVASTAVA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

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

FOR THE APPLICANT

SHRI S.K. SAWHNEY, COUNSEL

FOR THE RESPONDENTS

SHRI RAMESH GAUTAM, COUNSEL

JUDGEMENT (ORAL)

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

Heard the learned counsel for both the parties.

The case of the applicant as put-forth by the learned counsel is that the applicant was selected for the post of W.L.I. and placed on the panel vide merit No.3 of letter No.756-E/37-XXIII(EVI) dated 31.5.1989 (Annexure A-2). This selection was held in response to the respondents' circular letter dated 31.5.1989 (Annexure A-2). The said circular vide paragraph-2 provided that:-

"All staff in Class III Service, Group 'C' working on the Northern Railway under Headquarters Division who fulfil any of the under noted conditions of eligibility on 31.5.89 and are desirous of being considered for the selection of Welfare Inspector Grade Rs.1400-2300 can apply...."

Further paragraph-4 of the same circular provides that applications so received will be submitted by the candidates to their respective Subordinate Incharge

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"who will personally check and verify all the particulars, borne on each application, as per their office record and put their date/signatures thereon in token of their having done so."

At the time when the applicant applied for the post of W.L.I. in response to circular dated 31.5.89 he was working in the office of Deputy C.C.S., Varanasi which is controlled administratively by the C.C.S. Claims, Baroda House, i.e., Headquarters Division. The applicant was thus working in the Headquarters Division when he applied for the post of W.L.I. His application was accepted after due verification and he was selected and appointed as W.L.I. vide order dated 10.7.90 (Annexure A-3). Later on, the issue of the non-eligibility of the applicant for the post of W.L.I. in the Headquarters Division was raised by one of the Unions in the P.N.M. Meeting held on 21/22.3.91, pointing out that the applicant holds lien in Lucknow Division and since the selection for the post of W.L.I. is decentralised the applicant was not eligible for appearing in the selection. After discussion it was decided in the meeting vide Minutes of P.N.M. (srl. No.94, item No.16) to transfer the applicant as W.L.I. to Lucknow Division with the approval of the competent authority. Accordingly, order dated 13.3.91 were issued, transferring him to Lucknow Division (Annexure A-5) with the direction to the applicant to report to D.R.M., Northern Railway, Lucknow. About the same time on 3.4.91 the General Manager (P) asked the applicant to explain his conduct by 5.4.91 as to why he should not be taken up for having applied for the post of W.L.I when the selection "was conducted only for Headquarters Division" and when "it was specifically mentioned in paragraph-2 of the above letter that Group 'C' staff working in the Headquarters Division and having lien in Headquarters

office were only eligible for selection." The applicant submitted his explanation vide his letter dated 5.4.91, stating that he had applied for the post of W.L.I. in accordance with the circular dated 31.5.89 like other staff in the Deputy C.C.S. Claims' office. Further, no objection was raised by the Subordinate Incharge of the establishment of the Deputy C.C.S. Claims Office, Varanasi about his candidature. He also submitted that he was ready to accept the bottom seniority in Lucknow Division if he was transferred as W.L.I to that Division. Notwithstanding, the applicant was reverted to his substantive post of Senior Clerk vide letter dated 30.4.91 on the ground that his selection was ab-initio wrong, which order has been challenged in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985. The learned counsel for the applicant submitted that there was no condition in the circular dated 31.5.89 that the candidate must hold lien in the Headquarters office. To further focus our attention on this aspect the learned counsel drew our attention to the circular letter dated 9.1.91 (Annexure A-7), issued by the respondents for a subsequent selection which specifically stipulates that only Group 'C' staff working in the Headquarters Division and having their lien in any branch of the Headquarters office alone shall be eligible for the post of W.L.I. He, therefore, averred that if there was any lapse it was on the part of the respondents and that the applicant cannot be said to have misled the respondents to his selection as W.L.I. The learned counsel further submitted that reversion, without following the Railway Servants (Discipline and Appeal) Rules, 1968 is legally unsustainable

and relied on the decisions reported in ATR 1987 (2) 67
K.B. Jagannathan & Ors. v. UOI & Ors. and 1991 (1)
SLJ 284 K.V. Madhavan v. Garrison Engineer, GE's office,
M.E.S., Cochin & Ors.

The defence of the respondents as projected by the learned counsel, Shri Ramesh Gautam is that only those candidates who were working in the Headquarters Division and who had their lien in the various branches of the Headquarters Division were eligible for the selection. In this connection he referred us to Annexure A-9, circular letter dated 9.1.91 which relates to a subsequent selection and not to the selection held in response to circular dated 31.5.89. The learned counsel fairly, however, conceded that circular dated 31.5.89 did not clearly stipulate that the applicant should be holding lien in the Headquarters Division. He, however, pleaded that this contention was implied in the language of the said circular. He further submitted that assuming that the respondents had made a mistake in selecting the applicant, they had the right to rectify the same as soon as it was brought to their notice.

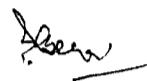
We have considered the record and the submissions made by the learned counsel for both the parties. As indicated above, we do not find any lapse on the part of the applicant in applying for the post; neither the circular of 31.5.89 stipulated the condition that the applicant should hold lien in the Headquarters Division, nor was this pointed out by the Subordinate Incharge who was responsible for checking the candidature of the applicant. The selection of the applicant cannot be annulled on the basis of the circular letter dated 9.1.91 which relates to a subsequent selection. The applicant was selected and appointed in accordance with the provisions made in the circular of 31.5.89

which did not stipulate the condition relating to
lien. He was not guilty of any mis-representation.

In the circumstances, we have no alternative but
to set aside and quash the order of reversion dated
30.4.1991 (Annexure A-1). We further order and direct
that the applicant shall be entitled to all the
consequential benefits.

There will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)
9.9.91.


(T.S. OBEROI)
MEMBER(J)
9.9.91.

/SYK/