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V
CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
New Delhi.

O.A. No. 1524/91

New Delhi: August 25th, 1995.

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Gurcharan Singh,
S/o Shri (Late) Jai Singh,
Senior Signaller,
Railway Station, NR, Churu,
Rajasthan,

.....Applicant.

By Advocate Shri G.D. Bhandari.

Versus

Union of India through

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway,
Bikaner

.....Respondents.

By Advocate Shri O.P. Kshatriya.

JUDGMENT

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

In this application, Shri Gurcharan Singh, Senior Signaller (Since retired), Churu Railway Station (Rajasthan) has sought for a direction to absorb him as Guard (pay scale Rs. 1200-2040) retrospectively from the date of accrual of the vacancy, together with pay fixation in that scale and consequential benefits.

2. At the outset, applicant's counsel Shri G.D. Bhandari stated that although the applicant had retired, his absorption as a Guard, would entitle him to running allowances which is treated as part of pay, and the O.A. succeeds, the applicant would also earn pensionary benefits.

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3. The applicant's case is that in 1986 while he was working as Signaller, Northern Railway decided to abolish the post of Signaller and to absorb its surplus Signallers against alternative posts, such as Trains Clerk, Ticket Collector, Asstt. Station Masters, Guards etc. For this purpose, the respondents constituted a Screening Committee before whom the applicant had appeared and declared fit for the post of Guard and was subjected to requisite medical test. Thereafter he successfully underwent a departmental training course for the post of Guard and was posted as Guard at Sadulpur vide respondents' order dated 20.1.87 and later transferred to Churu as a Guard vide order dated 2.2.87 (Annexure-A4). Meanwhile, some guards of the Bikaner Division filed an O.A. before CAT Jodhpur Bench and obtained a stay order restraining the respondents from absorbing the surplus Signallers including the applicant as Guards on the plea that their seniority would be adversely effected. Later that case was dismissed, but meanwhile the respondents pended the applicant's posting order and he was not allowed to join duties as Guard vide respondents' orders dated 20.1.87 (Annexure-A6). The applicant states that despite several representations filed by him, to permit him to work as Guard, he received no response and under the pressure of the Guards of the Bikaner Division, the respondents issued orders dated 24.2.89 (Annexure-A13), by which out of 39 posts of Signallers rendered surplus, 15 senior persons were retained in their original category while 24 were subjected to suitability test for absorption at various posts other than Guard. The applicant's name

did not feature in this list, which was followed by order dated 7.3.89, whereby the 14 persons including the applicant were asked to present themselves before a Committee of Officers for judging their suitability for absorption against other posts. The applicant contends that subjecting him to fresh test a second time, was illegal and unjustified. It is also contended that during this transitional period, the applicant was shown as Senior Signaller but never functioned on the post because there was no such post nor such office existed. He received the pay of Signaller while he was ordered to work as Ticket Collector-cum-Announcer on Public Address System. Similarly situate person Shri Mehar Chand filed O.A. No. 788/87 in the CAT Principal Bench whereby, vide judgment dated 11.8.89, the respondents were directed to consider the suitability of the Signallers who were rendered surplus and who possess the requisite qualifications for appointment as Guards against the direct recruitment quota. It is further asserted that consequent to some posts of Guards falling ^{vacant} ~~being~~, the respondents vide order dated 14.2.91 called 27 persons junior to the applicant both in status and grade, to appear in the written test and viva voce test which was held in March, 1981 and consequent to its result, 21 persons were directed to appear in the viva-voce test held on 9.3.91 on the basis of which 21 persons were declared in the select list vide order dated 11.3.91 and were placed in the panel (Annexure-A19). The applicant contends that the Tribunal vide order dated 11.8.89 had ordered that the selected and qualified Signallers should be absorbed as Guards

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against 15% direct recruitment quota and that the filling up 21 posts (Annexure-A19) by the promotee quota is in violation of the statutory Railway Rules as well as in disregard of Tribunal's order dated 11.8.89 (Annexure-A16).

4. The respondents have challenged the contents of the O.A. in their reply and stated that CAT Jodhpur Bench had stayed the absorption of surplus Signallers in the category of Guards in pursuance of which an order dated 5.3.87 was issued whereby the posting orders of the Signallers including the applicant as Guards 'C' were pended. Keeping in view these stay orders, the respondents decided to retain 39 posts of Signallers vide respondents' letter dated 14.9.87 (Annexure-R2). Subsequently O.A. No. 89/87 was dismissed by the CAT Jodhpur Bench on 29.8.88 on the ground of its having become infructuous. The respondents point out that ^{In consequence to the CAT Jodhpur Bench's stay order,} ~~it was the least circumstance that no~~ Signaller including the applicant could be posted as Guard and the applicant was utilised in another capacity but drew his salary against the post of Senior Signaller in the grade of Rs.1200-2040 (Annexure-A15). The respondents further point out that in O.A. No. 788/87 Mehar Chand Vs. UOI, the CAT Principal Bench directed the respondents to consider the suitability of all the Signallers who had been rendered surplus and who possess^{the} the requisite qualifications for appointment of Guard against the direct recruitment quota, along with other candidates. Since the essential qualification for appointment as Guard against the direct recruitment quota was graduate and none of Signallers ^{was} graduate, they

could not be absorbed as Signallers against the direct recruitment quota. The respondents have, therefore, asserted that this O.A. is fit to be dismissed.

5. We have heard Shri G.D.Bhandari for the applicant and Shri O.P.Kshatriya for the respondents. We have also considered the matter carefully.

6. Admittedly, the applicant retired on 30.6.91. Merely because the respondents decided by an executive order to wind up the post of Senior Signaller and absorb surplus Signallers against the ^{1 quota for} direct recruitment post of Guard and the applicant also successfully completed the training course for the post of Guard, does not give him an enforceable right for absorption as Guard against the Direct Recruitment quota, unless the recruitment rules themselves permit so. Shri Kshatriya has drawn our attention to Rule 124 Indian Railway Establishment Manual, Volume I, according to which vacancies of Guards are to be filled by 15% direct recruitment quota from the open market and 85% by promotion from amongst Senior Trains Clerk, Train Clerk, Ticket Collectors, Commercial Clerks, Switchmen, Yard Staff and Brakemen, and the qualifications for direct recruitment are a University degree or equivalent, and the applicants' age should be between 18-25 years. It is clear that these recruitment rules which are statutory in nature would prevail ^{1 or} any executive instructions that the respondents might have issued and manifestly, the applicant does not fulfil the requirements either for direct recruitment, not being Graduate, and well

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above 25 years of age, nor ^{in India} for promotion. The Tribunal's direction in O.A. No. 788/87 dated 11.8.89 Mehar Chand Vs. UOI was ^{only} that the respondents were to consider the suitability of the Signallers who had been rendered Surplus and who possessed the requisite qualification (emphasis supplied), for appointment as Guards against the direct recruitment quota, along with other candidates. Manifestly, the applicant did not possess the requisite qualification referred to above, and ^{therefore} could not be appointed as Guard.

7. In the light of the above, this O.A. fails and is dismissed. No costs.

A Vedavalli

(DR.A. VEDA VALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
MEMBER (A)

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