

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.236/91

New Delhi, this the 21st March, 1995

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

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

1. Shri Triloki Nath,
S/o Shri Madan Gopal
2. Shri Prem Kumar,
S/o Shri Chotta Lal
3. Shri Sher Singh,
s/o Shri Mansa Singh,
4. Shri Amar Singh,
s/o Shri Raghbir Singh
5. Shri Janak Singh,
s/o Shri Balwant Singh

(All Drivers, Grade 'C' under Locoforeman,
Northern Railway, Bhatinda).

... Applicants

By Advocate: Shri B.S. Mainee

Vs.

Union of India
through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Ambala.
3. The Locoforeman,
Northern Railway,
Bhatinda.

... Respondents

By Advocate: Shri B.K. Aggarwal

ORDER (ORAL)

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

All the applicants have jointly filed this application when they were officiating on adhoc basis Guard Grade 'C' in the grade of Rs.1200-2040 and working at Railway Station, Bhatinda. The Hon'ble Chairman has retained this application in the Principal Bench though the judicial lies in the CAT, Chandigarh Bench. The grievance of the applicant is against an order dated

14.1.91 Passed by Divisional Personnel Officer, Northern Railway, Ambala regarding the promotion of Shunters who were working as Driver, Grade 'C' on adhoc basis and after passing the selection were regularised as Driver Grade 'C'. In the said order at the bottom it is also stated that the Shunters who are working as Driver Grade 'C' on adhoc basis and not qualified the selection for the post of Driver Goods are reverted to their substantive post of Shunter and the name of the applicants is mentioned at S.No.1,13,9,5,15.

2. The applicants filed the present application on 24.1.91 without exhausting departmental remedies against the impugned order dated 14.1.91. By the order dated 25.1.91 an interim direction was issued to the respondents that the applicants shall not be reverted from the post of Driver for a period of 14 days and that order was continued from time to time. However, in the reply filed by the respondents it is stated that the applicants had already been reverted.

3. The respondents contested this application and in their reply stated that though the applicants while working as Shunters were sent for training in the Zonal Training School, Chandosi at different point of time but the training by itself does not entitle those who have qualified in the training for regularisation on the post of Driver Grade 'C'. Driver Grade 'C' is a selection post and only those who could pass the selection can be regularised to that post. It is because of this fact that the applicants could not make a grade in that selection and failed. The applicants could not be regularised and had to be reverted to make way for the selected candidates. The respondents have also placed a reliance in the case of Jethanand Vs. Union of India (1988 (ii) Suj 657, Full Bench judgement wherein it is held that suitability test is mandatory for regularisation

in Class III post and an official does not acquire any right to continue in the selection post when he failed in the selection test.

4. We heard the learned counsel of the parties on 10th March, 1995 and again heard the learned counsel today. The learned counsel for the applicant has highlighted the record note issued as a circular of the Railway Board in the year 1975 with the letter of 1976. The relevant portion of this circular is quoted below:-

"Panels should be formed for selection posts 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 file of consideration should be saved from harassment. The Board desires that the above instructions should be strictly complied with, particularly in regard to SC/ST employees."

In order to further reinforce the said circular, the learned counsel has referred to a decision of the Calcutta Bench, CAT in Mohini Dutta case reported in ATR 1987(2) 517. The contention of the learned counsel is that a perusal of the authority as well as of the circular considers the effect of not being declared successful in the interview without considering three grounds firstly that the employee has been working on the post on adhoc basis; quite satisfactorily should not be declared unsuitable in the interview and particularly in the present case when the applicants as shunters have already undergone training in Zonal Training School, Chandosi of P-12 course and have also passed the same course as per rules. We have referred to the decision of the case of Jethanand of the Full Bench which was also reviewed by the Full Bench decided on 21.5.90 and the earlier decision was of 5.5.89.

5. Firstly we observed that the judgement in Mohini Dutta case appears to be per incuriam as the record note of the meeting of the JCM was taken for granted as a circular of the Railway Board. To our mind the circular of the Railway Board can only be issued under the provisions of section ¹⁵⁷ ~~129~~ of the Indian Railway Establishment Code. Secondly, the Full Bench has considered regarding the serving on promotional post on adhoc basis even beyond 18 months and that can be said to be a sufficient longer period for a promotee. If in the Full Bench after considering the rival contention in that case and also hearing the review petition filed by the original applicants decided the matter in the manner ^{that} if an employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post and an employee holding a promotional post in adhoc capacity can be reverted to its original post even after 18 months of serving on adhoc basis. The ratio of the Full Bench therefore has prevailed over any observation made in the case of Mohini Dutta which was a decision arrived at earlier.

6. Even taking into account the said circular that has only laid down certain guidelines for the selection body that they should take care while taking interview of such adhoc employees who have been functioning on the promotional post for abnormal longer period. We have to understand that language seeing to the words at the commencement of the said alleged circular which says that adhoc promotion should not be resorted to. It also says that care should be more effectively taken while interviewing the SC/ST candidates. The learned counsel has emphatically stressed the fact the General Manager has issued instructions for strict

compliance for the aforesaid circular. The strict compliance will not change the language and meaning used by the author of the said circular. The circular remains as a guideline for the selection body.

7. There are catena of decisions of Hon'ble Supreme Court which lays down that the Tribunal in judicial review cannot sit as an Appellate authority. If the selection body has considered the applicants not having made a grade for being empanelled on the basis of written and viva-voce, the Tribunal cannot declare them qualified to be empanelled. In such a situation as none of the applicants of SC/ST category we do not find fault with the order passed by the respondents in not empanelling the applicants and affecting their reversion to their substantive post of Shunter.

8. The application is therefore totally devoid of merit. The applicants shall stand reverted to the post of Shunter by the impugned order from the date the order was passed. Any benefit given to them as an interim order shall stands vacated. Cost on parties.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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