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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 2575/91

DECIDED ON : 26-8-1992

Ilam Singh

... Applicant

-Versus-

Union of India & Ors.

... Respondents

CORAM : THE HON'BLE MR. T. S. Oberoi, MEMBER (J)  
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

Shri Umesh Misra, Counsel for the Applicant

Shri B. K. Aggarwal, Counsel for the Respondents

JUDGMENT

Hon'ble Shri P. C. Jain, Member (A) :-

The applicant was working as a Shunter when he was promoted on ad-hoc basis to the post of Driver Grade-C on 27.4.1989. As the post of Driver Grade-C was a selection post, the applicant was asked and he appeared in a selection comprising of written test and viva voce. As he did not succeed, his name was not included in the panel of the names of the successful candidates and accordingly not regularised as Driver Grade-C. Apprehending his reversion from the post of Driver Grade-C to the post of Shunter vide some message dated 4.10.1991 from DME (OP) Ambala to Loco Foreman, Saharanpur, he filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents not to revert him from the post of Driver Grade-C and to give him one more opportunity to qualify the test for the purpose of regularisation. As an interim measure, he prayed for being allowed to remain in the post of Driver Grade-C as long as the vacancy is available and he is not given one more opportunity to qualify in the test. By order passed on 6.11.1991, an interim direction was issued by the Tribunal to the respondents not to revert the applicant if he was not already reverted. The interim order has

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continued since then. We were informed by the learned counsel for the parties during the course of oral hearing that the applicant has continued to work as Driver Grade-C on ad-hoc basis.

2. The respondents have contested the O.A. by filing a reply to which a rejoinder has also been filed by the applicant. As the pleadings were complete in this case, it was decided with the consent of both parties that the case may be finally disposed of at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

3. One area of dispute between the parties is about the status of the applicant on appointment as Driver Grade-C. The applicant in his O.A. has himself stated that he was promoted on ad-hoc basis though he has also stated that he was eligible for promotion, his work was satisfactory, and before his promotion he was tested and found fit. The case of the respondents is that the applicant was tested on local seniority basis and having been found fit therein, he was promoted on ad-hoc basis. The fact that the applicant participated in the selection held on Divisional seniority/eligibility basis and he did not succeed in the same, is not in dispute. Thus, it is clear that the appointment of the applicant on the post of Driver Grade-C was on ad-hoc basis as a stop-gap-arrangement on a local seniority basis and unless he qualified in the selection, which is a condition precedent for appointment to a selection post on a regular basis, he does not acquire any legal right to continue to work on the post of Driver Grade-C.

4. The contention of the learned counsel for the applicant is that unless he is given another opportunity to pass the test, he cannot be reverted. For this purpose he relied on the

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judgment of the Full Bench of the Tribunal in the case of Jetha Nand & Ors. vs. Union of India & Ors. : Full Bench Judgments (CAT) (1986-1989) 353. From a perusal of the above judgment read with another Full Bench judgment of the Tribunal in the case of Suresh Chand Gautam & Ors. vs. Union of India & Ors. : Full Bench Judgments (CAT) (1989-1991) 487, it is clear that the question of giving more than one opportunity arises only in cases where Class-IV Railway employees are holding posts in Class-III on ad-hoc basis. The case before us is of a Class-III employee who is holding a higher post in Class-III on ad-hoc basis and in such a case, the aforesaid two Full Bench judgments do not prescribe that more than one opportunity is required to be given before the employee can be reverted from his ad-hoc appointment on the higher post in Class-III to his substantive post in Class-III.

5. Another contention of the learned counsel for the applicant urged before us is that until the post of Driver Grade-C held by the applicant on ad-hoc basis is required to be filled in by regularly selected candidates, the applicant has a right to continue on the post of Driver Grade-C on ad-hoc basis. It is also stated by him that no regularly selected candidate is available to be appointed on the post held by the applicant. The respondents in their reply have stated that selected persons have been waiting for posting and they cannot be posted until and unless non-selected persons are reverted. It is categorically stated that the contention of the applicant that candidates are not waiting for posting, is wrong. In the absence of any specific material brought on record by either party, we are unable to say whether any selected candidate is available for posting as Driver Grade-C but he could not be posted because of the continuance of the applicant due to interim orders issued by the Tribunal. So far as the legal

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position is concerned, it is quite clear that a Railway servant who is allowed to officiate in a higher post on temporary basis/ad-hoc basis/as a stop-gap-arrangement, can be reverted if such a reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates, as was held by a Full Bench of the Tribunal in the case of Suresh Chand Gautam & Ors. (supra).

6. Learned counsel for the applicant also stated at the bar that the applicant has already been allowed to avail of another opportunity in the test/recently but its results have not yet been declared. He, therefore, prayed that the applicant may be allowed to continue on the post of Driver Grade-C on ad-hoc basis till the results of the aforesaid selection are announced and if the applicant succeeds therein, he can be allowed to continue on a regular basis thereafter. We have carefully considered this prayer. Neither party could give us any information as to when the second selection was held and when its results are expected to be announced. Further, as already stated above, we are not in a position to say whether any selected person is available for regular appointment to the post of Driver Grade-C in the Divisional seniority list. In these circumstances, the O.A. is disposed of as below :-

We hold that the applicant has no legal right to continue to work on the post of Driver Grade-C in view of the fact that he has failed in the mandatory selection for regular appointment to the post. However, if no selected candidate out of the Divisional seniority list is available for regular appointment to the post of Driver Grade-C and if any person junior to the applicant has been allowed to continue to work on the post of Driver Grade-C on ad-hoc basis, the applicant may also be

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allowed to continue to work on the post of Driver Grade-C on ad-hoc basis till a regularly selected candidate is available for appointment, or till no junior of the applicant is allowed to work on the post on ad-hoc basis, or till the results of the second selection in which the applicant is said to have appeared are announced and if the applicant succeeds therein, whichever is the earliest.

7. On the facts and in the circumstances of the case, we leave the parties to bear their own costs.

( P. C. Jain )  
Member (A)

( T. S. Oberoi )  
Member (J)

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