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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3080/91

New Delhi, this 28th day of May, 1998

HON'BLE SHRI T.N. BHAT, MEMBER(J)  
HON'BLE SHRI S.P.BISWAS, MEMBER(A)

Shri Netra Pal Yadav  
s/o Shri Ram Saroop Singh Yadav  
T-6-B, South Railway Colony  
Bareilly Jn, U.P.

.. Applicant

(By Shri G.D. Bhandari, Advocate)

versus

Union of India, through

1. General Manager  
Northern Railway  
Baroda House, New Delhi
2. Divisional Railway Manager  
Northern Railway, Moradabad ..

Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Heard the rival contentions of the learned counsel  
for both parties.

2. The reliefs sought for in this OA, filed under  
Section 19 of Administrative Tribunals Act, 1985 include  
(i) issuance of a direction to the respondents to give  
proper seniority to the applicant in the capacity of  
Assistant Guard; (ii) direct the respondents to  
consider the applicant's promotion to the post of Guard  
(Goods); and (iii) treat the period from 18.7.86 to  
31.10.87 as leave due.

3. Vide A-4 orders dated 12.8.85 issued by the  
respondents, applicant's name was placed in the panel of

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Assistant Guard in the scale of Rs.225-308 (pre-revised). Following the aforesaid empanelment, applicant was appointed as Assistant Guard vide order dated 16.9.85(Annexure R-3) purely on temporary and ad-hoc basis. The said order stipulated inescapable need for passing P-24 training course that was scheduled to start from 14.11.85. Applicant attended the said course and the results, as mentioned at R-4 dated 24.2.86, show that he has neither passed nor failed. The remarks against applicant's indicate "Failed (Supp-TR)". This was followed by communication dated 30.5.86, in which respondents directed the applicant to report for subsequent training that was scheduled to start with effect from 10.3.86. Applicant could not avail the facility of appearing in the supplementary examination though he was in receipt of the opportunity formally. This was followed by A-6 order of reversion dated 18.7.86 placing the applicant to his substantive post alongwith yet another similarly placed candidate.

4. Applicant has challenged the above order of reversion on the strength of Railway Board's instructions dated 5.12.73 which stipulate that if an employee has availed 3 chances he may be allowed to avail one more chance at his own cost. the question that arises is whether the reversion order is valid in the face of the Railway Board's order aforementioned.

5. We find that there are clear stipulations in the letter of appointment to the effect that the candidates so utilised on ad hoc basis will be required to pass the prescribed training course before they could be used as

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Assistant Guard on regular basis. It was also clarified that any one failing to qualify the training course they will be reverted to the substantive post. That apart, Railway Board's circular under 1924 stipulates that if any candidate who had not qualified even by availing a second chance, his name would be deleted from the panel.

6. As per the Northern Railway's instructions vide notification dated 25.8.75 promotion from Class IV to Class III category are allowed subject to two chances to qualify promotional course at the cost of the administration. Since the order of promotion was purely temporary and on ad hoc basis subject to passing of the P-24 course, the reversion order cannot be faulted.

7. Applicant takes the plea that he was reverted on account of major penalty charge sheet (Annexure A-10) served on him. We do not find any ground to accept such a contention because the charges were closed subsequently. We find the order of reversion had nothing to do with the complaint made by the passengers as a result of which the applicant was apparently subjected to major penalty charges. Even if we accept applicant's submission that reversion could not be resorted to in view of protection available in A-5, the action of respondents in reverting the applicant cannot be faulted when the said action is based on unsatisfactory working on the part of a purely ad-hoc employee.

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8. The applicant would further claim that the seniority as in Annexure A-4 could not be invalidated by A-15 depleting his seniority position subsequently. Applicant also submits that seniority of selected employee is to be reckoned from the date of empanelment. He challenges the order at A-15 by which he has been placed at Sl.No.35 making his erstwhile juniors like Ram Pal and Shiv Kumar etc. senior to him. As per the applicant, ever since 12.8.85, when he was placed on the panel, applicant has been continuously holding the post as Assistant Guard and there has been no break in service and as such his seniority was to be counted from the date of promotion i.e. 12.8.85. Respondents have resisted this claim of the applicant. It has been submitted that those who passed the promotional course for the post of Assistant Guard in subsequent chance would rank junior to those who qualified in the first chance. In the additional affidavit filed in December, 1993, respondents have submitted that the instructions dated 25.8.75 were in operation at the relevant time when the case of the applicant was examined and those instructions have not been superseded. In other words, instructions on the issue of seniority, as of 25.8.75, would hold good. Accordingly, employees shown at Sl.No.6 to 13 in the select list as in Annexure R-2, who passed promotional course and got promotion as Assistant Guard prior to the applicant had to be regularised in terms of date of qualifying the prescribed test. We do not find any infirmity in the action of the respondents assigning the applicant seniority with effect from 28.10.87 when he had qualified the course. Applicant's own admission dated 18.12.97, as at A-8, is relevant in this

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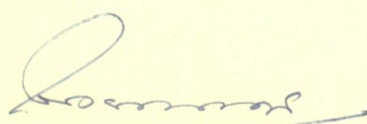


connection. While examining the issue of seniority in an identical case in Ashok Gulati Vs. B.S. Jain (AIR 1987 SC 424), the Supreme Court held that where the appointment was not made in accordance with the rules and that the order of appointment conveyed was temporary and ad hoc basis and the rules further required certain procedures to be followed for appointment on a regular basis, then the period of ad hoc service would not be reckoned for determination of seniority. In fact, this decision was one of the items discussed by the apex court in Direct Recruit Class II Engineer Officers Association & Ors. Vs. State of Maharashtra & Ors. JT 1990(2) SC 264. We are of the view that the corollary to conclusion (A) applies to the case of the applicant herein because between 12.8.85 and 20.10.87 applicant's appointment was purely ad hoc and not on regular basis in accordance with the rules. The fact that qualifying P-24 course is a pre-requisite for regular appointment as Assistant Guard is not disputed. What is also not disputed is that applicant passed the said course only after June-July, 1986. Under these circumstances, his claim of regularisation and counting of seniority from the date of his initial ad hoc appointment, i.e. 12.8.85, cannot be accepted in terms of Direct Recruit case (supra).

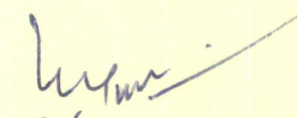
10. The applicant has also claimed consideration for promotion to the post of Guard (Goods) in the grade of Rs.1200-2040 (pre-revised). This claim is on the basis of the fact that applicant had continued to work from 12.8.85 as Assistant Guard and fulfilled all the requirements prescribed in IREM for such promotion. We

find that the notification for holding selection to the post of Guard (goods) was issued by the respondents on 23.8.91 and the crucial date i.e. 30.4.91 was fixed by which date candidates should have completed five years service in their substantive post for consideration of promotion to the grade of Guard(C). Respondents have worked out revised channel of promotion for Guards following restructuring of the grades recommended by 4th Central Pay Commission. As per the channel of promotion, those eligible for consideration of promotion by means of an option of selection have to have 5 years of service after having qualified in P-3 induction course before being considered for the post of Guard. It is seen that applicant did not have 5 years of service in the substantive capacity as Assistant Guard on 20.10.92. Since he was promoted as Assistant Guard with effect from 20.10.87, he could have been considered for promotion only after a passage of five years, i.e. by end of October, 1992. The Applicant did not complete the requisite period of five years as Assistant Guard by 20.10.91 and thus he could not be called for the selection.

10. In the light of the discussions aforesaid, the application fails on merits and is accordingly dismissed. There shall be no order as to costs.

  
(S.P. Biswas)  
Member (A)

/gtv/

  
(T.N. Bhat)  
Member (J)