

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1077/91
T.A. No.

198

DATE OF DECISION 17.1.92.

Shri Gopal Singh Meena

Applicant (s)

Shri B.S. Mainoo

Advocate for the Applicant (s)

Versus

Union of India

Respondent (s)

Shri P.S. Mahandru

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *OR*
4. To be circulated to all Benches of the Tribunal ? *OR*

J.P. Sharma
(J.P. Sharma)
Member (J)

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

17.1.92.

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PRINCIPAL BENCH: NEW DELHI

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SHRI GOPAL SINGH MEENA

...APPLICANT

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:

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

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS SHRI P.S. MAHENDRU, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri Gopal Singh Meena, the applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the failure of the respondents to send him for the supplementary test in "coaching theory" at Zonal Training School (ZTS), Chandausi and to put him back to duty as Booking Clerk. He is further aggrieved by non-payment of the salary from July, 1989 onwards.

2. The facts of the case in brief are that the applicant was employed as a Khallasi on the Northern Railway. He appeared in the selection test for the post in the category of Commercial Clerk and was placed at serial number 50 of the provisional panel, issued by the respondents vide their order dated 18.4.1986. The said order further stipulated that

"the staff may be informed that retention of their names on the panel is subject to their work being satisfactory during the currency of panel. The mere fact that they are placed on the panel will not confer upon them any right for promotion as

Coaching Clerk (BC/PC) grade Rs.260-430(RS). It will also be obligatory for them to pass the requisite promotion course (P7) from the Zonal Training School, N. Rly, Chandausi before their promotion as such."(emphasis supplied)

The applicant was deputed twice to the ZTS, Chandausi frist from 13.2.1989 to 3.4.1989 and again from 1.2.1990 to 21.3.1990. He, however, failed to qualify in the P-7 course on both the occasions. He was again deputed for the third time to ZTS, Chandausi from 16.7.1990 to 4.9.1990 for the last chance available to him for qualifying in the P-7 course. The result of the qualifying examination was declared vide Notice dated 7.11.1990. He passed in all the papers except in Coaching Theory in which he failed. There is no dispute about the above facts.

To qualify in the coaching theory paper, a supplementary test was to be held on 15.12.1990 vide Notice dated 25.9.1990. The applicant contends that although he was available in the Divisional Railway Manager (DRM) office, New Delhi, the letter advising him to appear in the supplementary test to be held at Chandausi on 15.12.1990 was sent to the Station Superintendent, New Delhi on 13.12.1990. Since, however, he was not working under Station Superintendent, the letter was returned to the Divisional Personnel Officer (DPO) by that authority with the endorsement that "He is not New Delhi staff why ST staff is being harassed by DPO." Consequently, he alleges that he was deprived of the opportunity to appear in the supplementary test for coaching theory. He made representation on 17.12.1990, protesting against the failure of the respondents to advise him about the supplementary test and to book him for the same. He

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further represented against non-payment of his salary from 1.8.1989 onwards. Inspite of his pursuing the matter at personal level he was neither booked for the Supplementary Test nor allowed to perform duties nor paid the salary.

By way of relief he has prayed that the respondents be directed:

- i) to book the applicant for supplementary test in coaching theory at ZTS, Chandausi;
- ii) to allow him to resume his duties pending passing the supplementary test and to pay the salary of the applicant from 1.8.1989 till date.

3. The respondents have taken the preliminary objections that the application is time barred and that it is pre-mature. They further contend that the applicant was absconding as he has not reported for duty to his incharge, i.e. Station Superintendent, New Delhi after attending the P-7 course at ZTC, Chandausi which ended on 3.9.1990. He could not, therefore, be directed to attend the ZTS, Chandausi by the Station Superintendent, New Delhi on 15.12.1990. The applicant remained absent from 31 July, 1989 to 19 April, 1990 and 28 April, 1990 to 13 May 1990 and again from 4 September, 1990 onwards. In these circumstances he could not report back to duty as Booking Clerk. The respondents further affirm that the applicant till date has not reported for duty to the Station Superintendent, New Delhi. He was paid wages till the date he worked in the post of Booking Clerk at New Delhi. He was admittedly directed by the Chief Booking Superintendent, New Delhi to report to P-1 Section in the office of DRM, New Delhi on 31.7.1979 in compliance with the letter dated 26.7.1989 under which the applicant was reverted to his substantive post of Khallasi. He however, never reported to P-1 Section in the office of DRM, New Delhi for obtaining orders of

posting to his substantive post of Khallasi. They further submit that after attending the course at ZTS, Chandausi from 1.2.1990 to 21.3.1990 the applicant did not report back for duty to his incharge and remained absent unauthorisedly when he approached DCS, New Delhi for duty on 18.4.1990 he was directed to report to Station Superintendent, New Delhi for duty where he worked from 20.4.1990 to 27.4.1990 and again absented himself unauthorisedly from duty from 28.4.1990 to 13.5.1990. Thereafter he remained absent from 14.5.90. The respondents aver that he intentionally did not report for duty at P-1 in the office of DRM to avoid his posting to the substantive post of Khallasi. They further submit that no representation dated 10.7.1990 has been received in the office of the respondents nor did he present himself in the office of DRM after attending the ZTS, Chandausi upto 3.9.1990. The respondents have also filed a copy of the letter sent by DPO, New Delhi to Station Superintendent, New Delhi dated 13.12.1990 according to which the applicant was to attend the supplementary test for 'coaching theory' to be held on 15.12.1990. There is no endorsement on the official record alleged to have been made by the Station Superintendent that the applicant was not staff of the New Delhi Station.

4. The applicant has filed a rejoinder, reiterating his stand taken by him in the O.A.

5. We have heard the learned counsel for both the parties and perused the record carefully. We are inclined to accept the view that the applicant kept away from the office of the Station Superintendent from where he was deputed to ZTS, Chandausi for qualifying in the P-7 course on account of his failure to pass the said examination. He apparently apprehended that failure in the said examination would entail reversion to his

substantive post of Khallasi and, therefore, he avoided attending the office. In the Full Bench judgement in **Suresh Chander Gautam & Ors. v. UOI & Ors. Full Bench Judgements CAT (1988-91) Vol.II 487** it has been held:-

"Therefore, we are in complete agreement with the decision of the Full Bench in Jetha Nand's case that a pass in the selection test is mandatory before a Class IV employee can be promoted to a Class III posts. We fully endorse the view that if a Class IV employee officiating in Class II post for more than 18 months failed to qualify in the selection test, he is liable to be reverted even after 18 months without following the procedure laid down in the Railway Servants (Discipline & Appeal) Rules. 3 or more opportunities or several opportunities may be given to the Class IV Railway Employees officiating in Class III post to qualify in the selection test. But when fully qualified candidates or persons regularly selected by the Railway Service Commission are waiting to be appointed to the regular vacancies the Class IV employees officiating in those posts even though for a period exceeding 18 months can have no right to hold those posts. They have to be reverted if necessary for the appointment of the qualified candidates. In Jetha Nand's case the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, those who have failed to qualify in the selection test should be allowed to officiate in the Class III posts blocking the entry of the regularly selected candidates. Such a view would be putting premium on inefficiency which has never been intended in the judgment in Jetha Nand's case. Therefore we hold that the Railway servant who is allowed to

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officiate in higher post on temporary basis need not always be allowed at least 3 or more opportunities to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968 and that he can be reverted if such reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates."

As the applicant was aware that qualifying in P-7 course was obligatory and he had failed in the said course, he was apparently looking out for ways and means to avoid reversion. There is no other justification for his unauthorised absence for long periods. In the circumstances we are not persuaded to direct the respondents to put him back on duty in a Class III post, as by his repeated failure to qualify in the P-7 course he has forfeited his right to hold that post. While the applicant has no legal right to continue in a Class III post till he qualifies in the P-7 course, he has every right to be put back on duty in his substantive post in Class IV. The respondents may accordingly issue his order of posting to his substantive post immediately but not later than 8 weeks from the date of communication of this order. They may also take necessary action to regularise his period of absence as leave of the kind due in case he reports for duty and applies for the same or in any other manner in accordance with law. This will, however, not preclude the respondents from ^{detain} ~~deputing~~ the applicant as Commerical Clerk (BC/PC) on adhoc basis in absence of any qualified hand. The respondents are further directed to book him for appearing in the supplementary test at the earliest possible so that he is able to avail

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of the third chance for clearing coaching theory paper in the partially cleared P-7 course in the third chance after he reports for duty. We also observe that in the provisional panel, notified after selection of the Coaching Clerk notified vide order dated 18.4.1986 the applicant's name at serial number 50 is written as Gopal Das Meena although every where else he is mentioned as Gopal Singh Meena. We assume that there is a typographical mistake in Annexure A-1.

The O.A. is disposed of, as above with no order as to costs.

J. P. Sharma
(J.P. SHARMA)

MEMBER(J)

January 17, 1992.

I. K. Rasgotra
(I.K. RASGOTRA)

MEMBER(A)

1/1/92