

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.518 of 1993

New Delhi, this the 28th day of August, 1993

**Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)**

Shri Trilochan Singh, S/o Late Shri Gurcharan Singh, Ex-Telephone Operator under D.R.M., Northern Railway, Moradabad. C/o Shri B.S.Mainee, Advocate, 240 Jagriti Enclave, Delhi - 110 092

-APPLICANT

(By Advocate Shri B.S.Mainee)

Versus

Union of India through :

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

-RESPONDENTS

(By Advocate Shri P.S.Mahendru)

O R D E R(Oral)

By Mr. N. Sahu, Member(Admnv) -

The impugned order in this case is dated 22.11.1991 by which the applicant's temporary appointment was treated as cancelled on expiry of 30 days from the date of the issue of the order.

2. The applicant was appointed on compassionate ground as Telephone Operator by an office order dated 1.12.1980. There was a condition in the offer of appointment dated 14.5.1980 (Annexure-1A) that the applicant should pass the High School Examination within a period of two years. The applicant had not passed the examination and on the contrary, by Annexure-A-6 dated 24.12.1991 he made an appeal to the Divisional Railway Manager, respondent no.2 to the effect that because of personal problems he could

not prepare himself to study for the matriculation examination and as he was appointed on compassionate ground he should be exempted from appearing in the matriculation examination. He pointed out that there were large number of non-matriculates who were junior to him were working as Telephone Operators. He also pointed out that they were initially appointed as Class-IV employees. He submitted that after rendering three years of service even as a non-matriculate he should have become eligible for consideration as a Class-III employee - Telephone Operator. Shri Maine, submitted that the respondents did not question the continuance of the applicant from 1980 -1991 for a period of 11 years and they are estopped from raising this issue at this stage. He stated that if the applicant had not been selected to Class-III and if the educational qualification had not been relaxed; and had been given an appointment in Class-IV post, he would have by now secured a promotion to Class-III post after three years of service as Class-IV employee. He says after this lapse of time the applicant cannot seek a job elsewhere because he could not equip himself meanwhile with any further qualification. He pleaded that the applicant has small children to look after and if his compassion was the ground for offering him the appointment the same ground should prevail over the respondents to continue him as such. He finally states that as per the last para of the impugned order the respondents are obliged to consider him to a Class-IV post.

3. Shri Mahendru, learned counsel for the respondents stated that there was a stipulation which was a conditionality in the appointment order. The appointment was subject to his completing matriculation. If for some reasons the respondents could not revive the matter of the validity of the continuance of the applicant it did not mean that they had waived that condition. There can be no question of estoppel in such matter. He further stated that the applicant in his application did not seek a Class-IV job. As a matter of fact Annexure-A-6 dated 24.12.1991 does not speak of the applicant's request for a Class-IV job. It speaks of exemption and continuation. Shri Mahendru submits that after 11 years the applicant cannot be considered for a Class-IV job.

4. We have gone through the counter filed by the respondents. The respondents have stated that the applicant in his application dated 15.9.1982, in reply to their letter dated 10.9.82, had stated that he had appeared in the High School Examination held in the year 1981-82 but due to some adverse circumstances he could not qualify the same and he had requested for one more chance. The Railway Board had agreed to his request and he was given a third chance also. Again on 29.8.1983 the applicant informed the respondents that he had failed again and requested for one more chance but he again failed to qualify the examination. The learned counsel then pointed out that under the recruitment rules matriculation or its equivalent was an essential

qualification for appointment to a Group 'C' post and it is now settled both by the departmental circulars as well as by judicial decisions that the departmental authorities can relax all other conditions but not educational qualification. The relaxation, therefore, of this educational qualification was temporary with a stipulation that the applicant should pass the matriculation examination. That apart, the respondents have noted at pages 4 & 5 of their counter the long periods of his unauthorised absence and the penalties awarded to him of stoppage of increments, stoppage of privilege passes, etc. etc. The respondents state that the record of the service of the applicant was totally negative and it is a case where he can not be considered for continuance as LDC even otherwise if he had passed the matriculation examination.

5. We have considered the submissions of both the counsel. We are of the view that there is no case absolutely whatsoever for continuance of the applicant as LDC. It is very clear that a compassionate appointment is not a normal appointment. It was a compassion done in view of long years of service rendered by the parent of the applicant who being sole bread winner left the family destitute on his death. It is in these circumstances that in order to give assistance to the family and because of the long years of service of the deceased parent to the organisation, that the compassionate appointment was made. It is very clear that in such

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cases the condition imposed by the employer must be scrupulously fulfilled. If it is not fulfilled, this being a temporary appointment the applicant does not have any vested right for continuance. In this case two more chances were given to the applicant on his representations to the Railway Board. He could not qualify even after availing those two chances also. The Railway Board, therefore, considered him to be unfit for continuance. The fact they have allowed a few more years to lapse will not go against the respondents as it is more a case for further compassion than any case of acceptance of the applicant's position. We are, therefore, of the view that the applicant does not have a case and the impugned order does not call for any interference.

6. Shri Maine, finally stated that the applicant should have been considered for appointment in a Class-IV post as per the promise in the order dated 22.11.1991. We agree with him.

7. In the impugned order dated 22.11.1991 respondent No. 2, stated that the applicant may approach the administration for appointment in a Class-IV post commensurate to his qualification. We direct the applicant to furnish an application to respondent no.2 within a period of 4 weeks from the date of receipt of a copy of this order. Whereupon the respondents shall consider - (i) the qualification; (ii) the earlier service; and (iii) suitability of the applicant; and consider him for a Class-IV post, consistent with their own assurance



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given in the last para of the impugned order dated 22.11.1991 within a period of six weeks from the date of receipt of the application. The O.A. is disposed of with the above directions. No costs.

A Vedavalli
(Dr.A. Vedavalli)
Member(J)

N. Sahu
(N. Sahu)
Member(Admnv)

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