

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1487 of 1998.

Allahabad, this the 7th day of July, 2006.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. A.K. Singh, Member (A)

Micheal Rohitas, aged about 39 years,
S/o Shri Anthony Pannalal
R/o 126D-E, Railway Hospital,
Saharnpur.

...Applicant.

(By Advocate : Shri Rakesh Verma)

Versus

1. Union of India, through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Ambala Cant, Ambala.
3. The Senior Divisional Personnel Officer,
Ambala Cant, Ambala. ...Respondents.

(By Advocate : Shri P. Mathur)

ORDER

By Hon'ble Mr. A.K. Singh, A.M. :-

OA No.1487 of 1998 has been filed by the applicant Micheal Rohitas (of the address given in the notice) against order dated 2.7.1998 passed by Divisional Personnel Officer, Ambala Cant, Ambala, who is respondent No.3, in the OA, reverting the applicant from the post of Helper Khalasi/skilled Porter to Khalasi with immediate effect.

2. Brief facts of the case are that the applicant was appointed as Casual Labour Khalasi on 1.2.1978 and he continuously worked on the post, i.e. to say, without any

Amgo

break, till 18.1.1978 and thus completed 317 days of continuous service. The applicant thus become entitled to temporary status and was accordingly appointed as Carriage Khalasi on a substantive basis as per order of the respondents dated 28.2.1983. In pursuance to the aforesaid order the applicant joined the aforesaid post on 9.3.1983. It is a matter of common knowledge that under the rules applicable to casual employee he has necessarily to pass through a Screening/Suitability test and it is only on his being successful at the aforesaid test, that his case is considered for a substantive appointment in Group 'D' cadre. The applicant submits that before his regularisation in the cadre of Carriage Khalasi, he had to pass the Screening/Suitability test and it was only thereafter that he was considered for a substantive appointment to the post. The applicant further submits that he was again screened on 12.3.1987 at Delhi and that he was found suitable for promotion to the post of Helper Khalasi/Skilled Porter by the aforesaid Screening Committee. Accordingly, he was promoted to the post of Helper Khalasi/Skilled Porter as per order of the respondent bearing No.847 E/44/Khalasi/Carriage Wagon/PLB dated 2.9.1993 and posted to Khan Alampura Yard at Saharanpur and accordingly worked on the said post continuously for a period of 5 years in the scale of Rs.800-1125/- and also earned his annual increments every year. To his utter dismay, he received a show cause notice by respondent No.3 namely senior Divisional Personnel

Handwritten signature

Officer, Ambala Cant, Ambala directing him to show cause why he should not be reverted from the post of Helper Khalasi/Skilled Porter to Khalasi. He was also directed to establish that he was a 'duly screened' employee.

3. The applicant submitted his reply to the aforesaid show cause Memo wherein he stated that he was duly screened employee and that even at the time of his regularisation to the post of Khalasi, he was a duly screened and found suitable for substantive appointment for the post. It was also submitted by the applicant that he was again screened during the year 1987 by the Screening Committee at Delhi in which he was again found suitable for promotion to the post of Helper Khalasi.

4. The applicant also clarified to the respondents that no letter certifying the suitability for the post is issued directly to concerned employee, that could be shown to Railway Administration, as and when they so required. Hence, the applicant was unable to produce any document in support of his stand that he was duly screened and found suitable for the aforesaid post. Respondent No.3, thereafter passed the order of reversion of the applicant from the post of Helper Khalasi to that of Khalasi vide his order dated 2.7.1998. Being aggrieved by the aforesaid decision of respondent No.3, the applicant has filed the present OA before us, on the following grounds:-

Mus

- (1) That the applicant was duly screened for the first time before his regularisation on the post of Khalasi and that he was again screened and found suitable for the post of Helper Khalasi by the screening committee in Delhi.
 - (2) That after screening of an employee, no letters are directly issued by the screening committee to the employee and that he had been found suitable for promotion to the above mentioned post.
 - (3) The say of the respondents that the applicant has not appeared at the screening test for the post of Helper Khalasi in Delhi is absolutely false. He emphatically states that he had duly appeared at the aforesaid trade test and had been found suitable for promotion to the post of Helper Khalasi.
 - (4) The applicant had not only been promoted to the post of Helper Khalasi but had also continued on the aforesaid post for a period of more than 5 years. The respondents, in fact, have chosen to revert him from the aforesaid post for absolutely no fault on his part. Infact applicant cannot be made to suffer for the mistake committed by the Railway Administration.
5. On the basis of the above, the applicant prays for the following relief(s) :

- (1) "To issue a writ order or direction in the nature of certiorari quashing the impugned order dated 2.7.1998 passed by respondent No.3, reverting the applicant from the post of Helper Khalasi to that of Khalasi.
- (2) To restore the petitioner on the post of Helper Khalasi/Skilled Porter w.e.f. the date of his removal from the aforesaid post, with full continuity of service.
- (3) To issue any other direction or order which this Hon'ble Tribunal may deem fit under the facts and circumstances of this case."

Anty

6. Respondents on their part have contested the OA on the following grounds:-

- (1) The applicant has utterly failed to come forward with any cogent ground to invoke the extra ordinary jurisdiction of this court in filing the original application in question.
- (2) The applicant had been apprised of the decision to revert him from the post of Helper Khalasi/Skilled Porter to Khalasi on the ground of his not passing the suitability test conducted by the screening committee at Delhi. In the letter dated 2.9.1993, it was clearly mentioned that an unscreened employee cannot be promoted. Since the applicant was unscreened, his order of promotion to the post of Skilled Porter/Helper Khalasi was consequently erroneous and accordingly he was reverted to the post of Khalasi vide impugned order of respondent No.3 i.e. Divisional Personnel Officer, Ambala Cant, Ambala who was the Competent Authority duly authorised to pass such an order.
- (3) As regards the averment of the applicant that he was duly screened at the screening test held in Delhi, the facts in this regard were verified from DRM Delhi who vide letter No.941-E/91/C&W/iii/P-5 dated 1.5.1997 informed that the name of the applicant did not appear in the list of screened candidates. The aforesaid list bears No.220-E/C&W/P-8 dated 14.9.1987. Hence, the reversion of the applicant from the post of Helper Khalasi/Skilled Porter to that of Khalasi was correct in law as the rules clearly provide that no unscreened employee is entitled for promotion to the next higher post/grade.

Map

7. Accordingly respondents submit that the OA in question is devoid of any merits and pray for its dismissal.

8. Applicant as well as Respondents were heard in person through their respective counsel on 4.5.2006. Applicant was represented by Shri Rakesh Verma while respondents were represented by Shri Prashant Mathur Standing counsel for Railways. Both the learned counsels reiterated their arguments as above.

9. We have given our anxious considerations to submissions made by learned counsels in support of their respective case and have also perused the records. We find that the impugned order dated 2.7.1998 of respondent No.3 has been passed in breach of all norms of justice. It is a trite law that no one should be permitted to encash his one mistake or lapse and no one should be made to suffer for no fault on his part.

10. In the case of Bhoop Vs. Matadin Bharadwaj [reported in [(1991) 2 SCC 128] the Apex Court held that "A party cannot be made to suffer for no fault of his own."

11. In another case of Rekha Mukherjee Vs. Ashis Das [reported in (2005) 3 SCC 427] the Apex Court further observed that "a party cannot take advantage of ones own mistake." The case of the applicant has to be tested on the touch stone of the above mentioned dictum of the

[Handwritten signature]

Hon'ble Supreme Court of India. The applicant has been made to suffer for the fault of respondents in this case. Respondents through out have been harping on the rule that an unscreened employee, if he is employed on casual basis can not be regularised, without being screened and found suitable for a particular post. Similarly an employee cannot be promoted to the next higher grade without being duly screened and found suitable for the said post. Respondents also submit that as the applicant was not a duly screened employee, he could not have been promoted to the post of Helper Khalasi/Skilled Porter and hence has been correctly reverted to the post of Khalasi by respondent No.4.

12. If we subject the above arguments advanced by the respondents to a judicial review we find that the same does not stand the test of Judicial Scrutiny. It is an established law, that the burden to prove an allegation or a charge is on the person or the agency who alleges it. In this case, it is the respondents who claim that the applicant is not a duly screened employee, while the applicant submits that he was duly screened and found suitable on both the occasions, First, when he was regularised on the post of Khalasi on a substantive basis as per order dated 28.2.1983 of the respondents and the second time on 12.3.1987 by the screening committee which met in Delhi for determining the suitability of eligible employees for particular category of posts. The applicant



claims that he was promoted to the post of Helper Khalasi/Skilled Porter only on being found suitable for the same and the respondents vide their order No.847 E/44/Khalasi/Carriage wagon/PLB dated 2.9.1993 appointed him as a Helper Khalasi and posted him at Khan Alampura Yard Saharanpur and that he continued to work on the said post till 2.7.1998 when respondents vide the above mentioned order reverted him to the post of Khalasi i.e. the post which the applicant originally held before his promotion.

13. On perusal of full facts on record we find that the respondents did try to verify from DRM, Northern Railway, Delhi whether the applicant was only screened or otherwise as per the averment made by them in para 7 of their counter affidavit dated 1.7.1999, which reads as under :-

".....It is submitted that a letter to this effect had been written from the office of the answering deponent on 13.7.1998 and in pursuance of the same, the competent authority i.e. Divisional Railway Manager, Northern Railway, New Delhi had not verified the genuineness of the document in question."

14. If we rely on the averment of the respondents themselves, the applicant is fully entitled to a benefit of doubt in the matter. The relevant letters of DRM, Northern Railway which are annexed with the counter reply of the respondents as Annexure CA-II reads as under :-

"उपरोक्त विषयान्तर्गत आपको सूचित किया गया है कि इस कार्यालय में उपलब्ध वर्ष 1987 की कै० एवं० बै० खलासी/सफाईवालों की स्क्रीनिंग सूची सं० 220ई/CNW/P3/



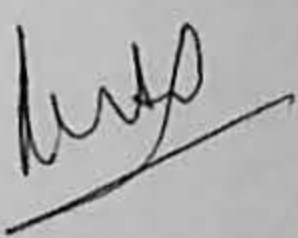
दिनांक 14.9.1987 में आपकी डिविजन में कार्यरत कर्मचारी भी माईकल रोहताश खलासी अधीन कार्यालय मथुरा यार्ड का नाम दर्ज नहीं है। तथा उसी स्क्रीनिंग की मूल फाईल (main file) इस कार्यालय में उपलब्ध न होने के कारण यह स्पष्ट नहीं किया जा सकता कि माईकल रोहताश ने वर्ष की स्क्रीनिंग में भाग लिया था या नहीं।"

15. Even though as per communication enclosed as per Annexure-CA-III, DRM, Delhi has no doubt mentioned that the name of the applicant, does not figure in the screening list bearing No.220-E/CNW/P8 dated 14.9.1987, nonetheless merely on that basis above it cannot be said with certainty whether the applicant appeared at the aforesaid screening test or otherwise. The relevant extract of the aforesaid communication reads as under :-

"उपरोक्त विषयान्तर्गत आपको सूचित किया जाता है इस कार्यालय में उपलब्ध वर्ष 1987 की खलासियों की स्क्रीनिंग सूची सं0 220ई/ CNW/P3/ दिनांक 14.4.1987 में भी माईकल रोहताश खलासी अधीन खानआता मथुरा यार्ड कर्मचारी का नाम दर्ज नहीं है जिसके आधार पर स्पष्ट नहीं किया जा सकता कि अमुख कर्मचारी वर्ष 1987 की स्क्रीनिंग में appear हुआ था या नहीं"

DRM Delhi as per his communication bearing No.220-E/C&W/Screening/91/P-5 dated 13.7.1998, has further stated "It is not possible to verify the appointment letter in absence of the original records at this distant date."

16. All these evidences, don't lend any substantive support to the stand of the respondents that the applicant has not been duly screened at either of the two stages referred to above.



17. If we analyse and evaluate these evidences we find that the same don't extend any positive support to the stand taken by the respondents that the applicant has not been screened at either of the two stages. The words used in these communications clearly fail to testify the version of the respondents. The concluding line of Annexure CA-II, which bears the most important communication of DRM, Northern Railway, Delhi dated 1.5.1997, reads as under:-

".....स्क्रीनिंग की मूल फाइल (Main file) इस कार्यालय में उपलब्ध न होने के कारण यह स्पष्ट नहीं किया जा सकता कि माइकल रोहताश ने वर्ष 1987 की स्क्रीनिंग में भाग लिया था या नहीं".

18. Thus, all the above mentioned evidences themselves leave enough room for extension of benefit of doubt to the applicant in the matter. In the absence of any positive evidence or evidences to support the story of the respondents to draw any other conclusion which supports or vindicates the stand taken by the respondents will lead to complete miscarriage of justice in this case. The respondents have clearly not been able to establish their case by any in convincing substantive evidence whatsoever.

19. In the second place, respondents in para 09 of their counter affidavit dated 1.7.1999, state as under :-

".....However, a bare perusal of the documents on record would reveal that there was no evidence of the screening being conducted prior to

[Handwritten signature]

appointment as substitute Khalasi..... In this regard, it will not be out of place to mention that an individual cannot be appointed as substitute and his services can only be regularised after due process of proper screening by duly nominated screening committee consisting of three officers of the organisation and after due screening, the name of an individual is kept on the panel for consideration of his candidature for regularisation/absorption against the regular vacancy in the organisation. In this eventuality, the very averments made by the applicant in the para under reference cannot be substantiated by him in any manner....."

20. In para 12 of their counter affidavit under reference respondents further state:-

".....It will not be out of place to mention that by way of working in the organisation, an individual is screened only for once and after screening an individual is placed on the panel duly approved by the duly nominated screening committee and after placement on the panel, an individual gets in dispensable right for consideration of his candidature against the regular vacancy, absorption in the department. The question of second screening, as mentioned in the para under reference itself shows the anomaly in the statement made by the applicant in the para under reference....."

21. Taking the contents of paras 7 & 9 as referred to above, it is impossible to believe that the Railway Administration could have committed such a serious blunder in regularising and promoting the applicant and that too twice at two different intervals or point of time without proper screening as prescribed under the rules. If believe the respondents, the applicant was first appointed as a Carriage Khalasi as per their own order dated 28.2.1983 without proper screening and thereafter he was again promoted as Helper Khalasi/Skilled Porter vide respondents

Handwritten signature

POLICE

DS

order No.847 E/44/Khalasi/Carriage wagon/PLB dated 2.9.1993 and posted to Khan Alampura Yard, Saharanpur without proper screening and assessment of his suitability for the post.

22. On the basis of the averments of respondents in para 7 & 9, referred to above, if we believe that applicant had been regularised on the post of Carriage Khalasi after due screening, he was not required to be screened again. It is impossible to believe that the respondents could have committed such a serious blunder only in this case. The whole story of the respondents appears to be incredible.

23. Even if we accept the stand taken by the respondents, the applicant cannot be punished for the fault of respondents, as per the principles enunciated by the Apex Court in the case of Bhoop Vs. Matadin Bharadwaj [(1991) 2 SCC 128] that "A party cannot be made to suffer for no fault of his own." Moreover, as held by Hon'ble Supreme Court in another case of Rekha Mukherjee Vs. Ashis Kumar Das [(2005) 3 SCC 427], "A party cannot take advantage of ones own mistake."

24. On the basis of the above, we find that the impugned order of reversion dated 2.7.1998 passed by respondent No.4, is clearly not sustainable in law and deserves to be quashed.

[Handwritten signature]

25. In addition to the above grounds, we also find that in case of Nayagarh Cooperative Central Bank Limited and another Vs. Narayan Rath and another [(1977) 3 SCC 576], the Apex Court in a similar situation held as under:-

"The Writ Petition filed by the respondent No.1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as secretary was decided upon in a meeting over which the Registrar of cooperative Societies had himself presided. The Writ Petition, in substance is directed not against any order passed by the co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent No.1 as Secretary of the Bank."

26. It was not open to the Registrar in our opinion, to set aside the respondent No.1's appointment as Secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointment should be invalidated that appointment should be invalidated in this manner after a lapse of several years.

27. The applicant in the present case has completed a continuous and satisfactory service of around 5 years. Nothing has been noted by the respondents against his performance during this period. The applicant was appointed to the post of Skilled Porter/Helper Khalasi vide a valid order No.847-E/44/Khalasi/Carriage wagon/PLB dated 2.9.1993 and he remained posted on the aforesaid post till 2.7.1998 when his services were suddenly terminated vide order dated 2.7.1998 of respondent No.4. When an employee is appointed to a post in a substantive capacity against a valid order, and holds the post for several years, he does

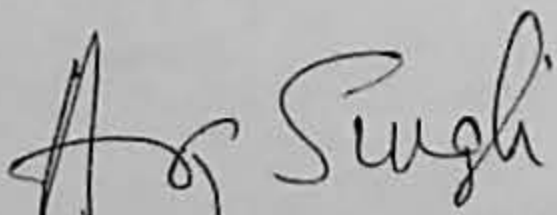
[Handwritten signature]

POL

DS

acquire a vested right to hold the post. It is also not at all established on record, that this order of appointment was in breach of any rules or that he had not passed the necessary screening or trade tests as provided under the Rules. Since we have fully discussed this matter above, we will not like to re write or to reproduce the same against.

28. On the basis of above, we come to the conclusion that the impugned order of the respondents dated 2.7.1998 reverting the applicant from the post of Skilled Porter/Helper Khalasi to Khalasi is not at all sustainable in law and deserves to be quashed and set-aside. We accordingly quash and set aside the same and direct the respondents to reinstate the applicant in the aforesaid post of Skilled Porter/Helper Khalasi with effect from the date of his reversion from the said post to the post of Carriage Khalasi. The applicant is consequently entitled to all benefits including seniority arrears of pay and other benefits in consequence of his reinstatement in the above mentioned post. In consequence the OA is allowed.


MEMBER (A)


VICE-CHAIRMAN

RKM/