

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.699 of 1998.

Allahabad, this the 22nd day of August, 2006.

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

Tearath Ram son of Shri Dhani Ram,
Aged about 49 years, resident of Railway
Quarter No.179-B, C.S.P. Railway Colony,
Subedarganj, Allahabad.

...Applicant.

(By Advocate : Shri S.S. Sharma)

Versus

1. Union of India owning and representing
'Northern Railway' notice to be served to the
General Manager, Northern Railway,
Headquarters Office, Baroda House,
New Delhi.
 2. The Chief Engineer/T.M.S.
Northern Railway, Baroda House,
New Delhi.
 3. The Deputy Chief Engineer/T.T.
Northern Railway, Allahabad.
 4. The Senior Civil Engineer/T.T./Line,
Northern Railway, Shivaji Bridge,
New Delhi.
- ...Respondents.

(By Advocate : Shri A. Tripathi)

O R D E R

By Hon'ble Mr. P.K. Chatterji, A.M.

The applicant in this OA has prayed before the
Tribunal to direct the respondents to regularise his
services in the post of Chargeman in Grade Rs.5000-
8000/- (Revised) in Track Tamping Organisation of

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Northern Railway as he had already passed the selection for this post duly conducted by the Competent Authority and thereafter worked satisfactorily on this post for more than 12 years.

2. The applicant was appointed as regular Khalasi on 27.4.1972 in Track Temping Department, Northern Railway, Lucknow. He was promoted as Semi-Skilled Fitter and thereafter Skilled Fitter after passing requisite Trade Test. The Concrete Sleeper Plant (for short C.S.P.) was established in Subedarganj, Allahabad in 1977. At the time of installation of Concrete Sleeper Plant, options were invited from employees of Northern Railway working in different Divisions and Units. The applicant opted for his posting and it was accepted and he was transferred to C.S.P. as Skilled Fitter. He joined the Organisation on 6.6.1980 and his name was included in the seniority list. The applicant was promoted to the post of Fitter Grade-II and in 1982 he was promoted to the post of Mistry. Following that he was promoted to the post of Chargeman vide order No.14/83 dated 15.3.1983 by Senior Engineer C.S.P. It on was ad-hoc basis initially for two months, but he continued to work there as ad-hoc Chargeman. As stated by the applicant for his satisfactory performance, he was

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sent on deputation to Algeria for working therein at a Concrete Sleeper Plant and he worked there for one year.

3. In 1992, a selection for promotion to the regular post of Chargeman was conducted in C.S.P., Allahabad. The panel of Chargeman was approved by Chief Engineer/TSP, New Delhi and promotion order of the applicant was issued vide order No.18/92 dated 1.4.1992. Vide this order the services of the applicant was regularised as Chargeman alongwith some other persons namely Shri Uggan Prasad, Munnoo Lal and Tarak Kumar Haldar who were also promoted as Chargeman.

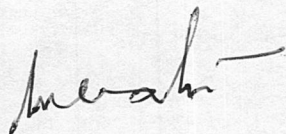
4. In the year 1995, the post Tension Unit of Concrete sleeper Plant was shut-down and total number of 111 employees became surplus. The applicant was one of them. He was directed to report for further duty in T.T. Organisation as Chargeman by the Senior Engineer/CSP, Allahabad. In the T.T. Organisation the applicant was posted as Master Craftsman, which is below the rank of Chargeman. The applicant made a representation against this down gradation and also protested that some other officials like Shri Uggal

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Prasad who were junior to the applicant as Chargeman and were also made surplus in the C.S.P. were allowed to work as Chargeman in the same T.T. Organisation.

5. Thereafter the Senior Civil Engineer T.T. Line called the applicant alongwith other officers for selection to the post of Chargeman which were held on 20.4.1996 and 27.4.1996. The applicant made a representation informing that he was already qualified as Chargeman as he was selected before hand in the C.S.P. However, his representation was not heeded. He was also compelled to appear in the trade test and while he came out successfully in the written test, he was declared not passed in the interview. Thereafter, he was relegated to the post of Master Craftsman which is below that of Chargeman.

6. With these submissions, the applicant has requested the Tribunal to direct the respondents to treat his services in the Chargeman grade as regular and to direct the respondent No. 1 and 2 to include the name of the applicant in the panel of Chargeman as declared in the letter dated 2.7.1996 (Annexure-12) and give him all consequential benefits.



7. Sri A. Tripathi appearing for the respondents has stated that it was in May 1999 that the Tribunal asked him to take notices on behalf of respondents and he accepted notices and thereafter made several efforts including meeting in-person some of the respondents (namely respondent NO.3 and 4) asking them to send parawise narrative so reply may be prepared and filed, but nothing has been done so that far. Even on expiry of 6 or 7 years he is not in a position to assist the Tribunal. Sri S. Tripathi has also tried to convince us that he may be permitted to withdraw from the case.

8. Sri S.S. Sharma is present for the applicant and states that this case is of 1998 and it transpires from perusal of the record that notices were sent to the respondents earlier in any case after 20.5.99 when Sri Tripathi took notices for them whether of his own or on the direction of the Tribunal. The question as regards the service of the notices on the respondents seems not in doubt. The Tribunal of the view that the matter cannot be adjourned and if the Authorities are indifferent towards the matter, this Tribunal cannot help. The duty of the Tribunal is give opportunity and it can not compel anybody to come and have his say. It is not a criminal matter or not in the shape of contempt proceeding.

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9. We have heard Sri S.S. Sharma counsel for the applicant on this O.A. Sri A. Tripathi is not in a position to say anything in the circumstances mentioned above.

8. During the hearing learned counsel for the applicant drew our attention to the Apex Court case R.C. Srivastava Vs. Union of India & Anr. Arising out of SLP (c) 9866 of 1993. In this case the question whether an officer who has already been selected for same promotion should again be made to undergo the process of selection was considered. In that case the Railway Board's circular No.75-E (SCT) 15/48 dated 9.12.1975 was considered. In this circular the Railway Board had directed as follows:

"Panels should be formed for selection posts in time for ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad-hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the stage of consideration should be saved from harassment."

This deals with the question of regularisation of ad-hoc promotes even in such cases the Railway Board directed that appropriate authority who ensure that ad-hoc promotes who had been working satisfactory are not eliminated at the stage of viva-voce.

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11. In the instant case, the applicant was not ad-hoc promotee. He was earlier regularisation through the due process of selection, therefore, as pleaded strongly by the learned counsel for the applicant, he should not have been disqualified at the stage of viva-voce. Learned counsel further said that it would be relevant to extract the relevant portion of the judgment of the Apex Court in the case of R.C. Srivastava (supra), which is as under:

"It is no doubt true that a circular of the Railway Board cannot override a statutory rule but a Circular, which is in the nature of administrative direction, can certainly supplement the rules on matters on which the rules are silent. A reading of the Circular Dated March 19, 1976, would show that it does not run contrary to any statutory rule. Indeed, the said circular only gives guidance in the matter of exercise of the power by the Selection Committee while considering the suitability at the stage of interview and says that a person who has been working on the post for which selection is being made on ad hoc basis and whose work is quite satisfactory should not be declared unsuitable in the interview. The learned counsel for the respondents has not been able to show that this direction is inconsistent with any statutory rule. We are, therefore, unable to hold that the said direction in the circular dated March, 19, 1976 is inconsistent with any statutory rule.

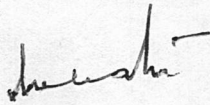
In the instant case, the appellant had secured 29.15 marks out of 50 marks for Professional ability, which covers written test and viva-voce. He had obtained 24.15 marks out of 35 marks for the written test and 5 marks out of 15 marks for viva-voce. Since he did not secure 30 marks under Professional ability, which was necessary for the purpose of empanelment, he was not selected. If the appellant had been given 6 marks, he would have qualified because he would have secured 30.15 marks. It is not the case of the respondents that the work of the appellant on the post of Law Assistant on ad hoc basis was not satisfactory. It must, therefore, be held that the appellant was entitled to the benefit of the direction contained in the circular dated March, 19, 1976. Applying the said circular, it must be concluded that the appellant was wrongly denied selection on the basis of the marks given to him in the viva voce test.

The appeal is, therefore, allowed and the impugned judgment of the Tribunal dated June 11, 1993 is set aside and it is declared that the appellant

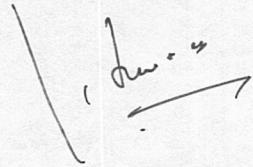
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should be considered to have been selected for the post of Law assistant in the selection for the said post as per the panel dated November 29, 1992. No costs."

11. We are of the view that the judgment of the Apex Court is fully relevant and applicable in this case and for this reason we allow this OA to succeed. We hereby direct the respondent No. 1 & 2 to restore him to the post of Chargeman from the date he was regularised in the C.S.P. and give him the consequential benefits. No costs.



MEMBER-A



VICE-CHAIRMAN

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