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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.893 OF 2005

ALLAHABAD THIS THE 4th DAY OF oct 2007

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J
HON'BLE MR. P. K. CHATTERJI, MEMBER-A

Anil Kumar Singh,
Son of Sri Girijesh Singh,
R/O Village & Post Office-Kusumaul,
District-Gorakhpur.

.Applicant

By Advocate : Sri B. Tiwari

Versus

1. Union of India
through the General Manager,
N. E. Railway, Gorakhpur.
2. Divisional rail Manager (C),
N. E. Railway,
Varanasi.

.Respondents

By Advocate : Sri P. Mathur

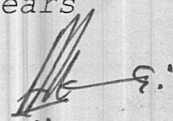
O R D E R

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

This application is filed seeking the following
reliefs:-

(i) To issue an order or direction setting aside the impugned orders/letters dated 06.04.2005 issued by Divisional Rail Manager @, N.E. Railway, Varanasi and 04.07.2002 issued by General Manager(P), N. E. Railway, Gorakhpur (Annexure Nos. A-1 and A-2 respectively to this original application).

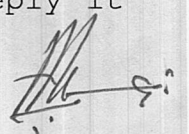
(ii) To issue an order or direction commanding the respondents to grant promotion to the applicant in scale of Rs.5000-8000/- w.e.f. 01.11.2003 after giving regularization in scale of Rs.3200-4900/- as Commercial Clerk and to give benefit of increment, seniority and arrears



of pay in comparison with his junior Smt. Anamika.

(iii) To issue an order or direction commanding the respondents not to compel the applicant to face Screening Test for the post of Group-D employee and only screening proceedings may be conducted for the post of Commercial Clerk in scale of Rs.3200-4900/- as conducted earlier in case of applicant".

2. The brief facts of the case are that the applicant was appointed as Mobile Booking Clerk at Bodarwar Railway Station, and subsequently his services were discontinued after working 120 days. The applicant and others filed OA No.1061/1991, which was decided on 13.2.1992 by virtue of the said order the applicant was reinstated in service, and he was given temporary status by the order dated 29.12.1992 w.e.f. 25.8.92. The applicant was posted in the year 1998 as Junior Commercial Clerk. Screening test was held on 14.03.2002 for the post of Commercial Clerk in scale of Rs.3200-4900, applicant appeared in the said test and the result was declared on 04.07.2002 in which the applicant's name figured as a failed candidate at serial no.10, but the copy of this result was not published on the notice board, nor was it communicated to the applicant. The applicant was posted as an Assistant Cash Witness and joined at Gorakhpur on 04.10.2004, till date he is working in the same capacity. The screening proceedings held on 14.03.2002, the applicant was asked to submit his certificate of high school examination and subsequently asked whether the applicant had passed high school with English subject or not. In reply it

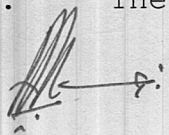


is stated that he had not taken English subject in High School, but the applicant has worked in English and he has acquired knowledge of English during the course of his employment. In spite of having knowledge the applicant and other persons were declared unsuccessful in this screening proceedings as they have no certificate of High School in English subject and due to this reason the Railway Administration declared them unsuccessful. By the order dated 06.04.2005 the Divisional Railway Manager asked the applicant to appear for the screening test to be held on 16.04.2005, but the applicant has not appeared and sent a representation stating that due to illness and another reason also the communication received by him at about 1.00 P.M. on 16.4.2005. The applicant further states that One Smt. Anamika who was junior to the applicant had been promoted in the scale of Rs.5000-8000 as Head Commercial Clerk w.e.f. 01.11.2003, and as such the case of the applicant be considered for promotion in the scale of Rs.5000-8000. The applicant further states that before passing the reversion order at least two additional opportunity should be given to clear the selection test and till then the employees is not liable to be reverted, in view of the Full Bench judgment of the Tribunal. Based on this judgment the applicant's case be considered as only one screening test the applicant was called for is against the judgment of the Full Bench. For these reasons seeks the relief.



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3. On notice the respondent have filed the counter affidavit. The sum and substance of the Counter Affidavit is that the decision taken by the respondents is just and proper under the circumstances of the case of the applicant, since the applicant was declared failed in the screening test and the same was communicated to the applicant by means of letter dated 26.11.2002. They further denied that there is any post of Assistant Cash Witness in the division as stated by the applicant. On the other hand, the permanent employees like Commercial Clerks and Assistant Station Masters working at different stations are being utilized as Cash Witness for counting the cash received from different stations from booking etc. The applicant was utilized as Assistant Cash Witness due to mistake of Supervisory staff, showing his post as Commercial Clerk. The erring supervisor who committed the mistake was taken up under discipline and appeal rule 1968 and disciplinary enquiry was initiated against him, as the aforementioned wrong committed by the supervisory staff was detected, thereafter the applicant was spared with immediate effect from 18.2.05 to report to the Divisional Office, but the applicant left cash office unauthorisedly without any intimation to the authority concerned, and absconded from duty and has not reported to divisional office. By the letter from the headquarter screening of Mobile Booking Clerk was done only with regard to educational status/qualification of the candidates and not the subjects. The



respondent further stated that Smt. Anamika was appointed in the railway service through the trade training (Railway Commercial) a selection for which was held by Railway Recruitment Board Gorakhpur on permanent basis, and therefore the post held by the applicant is a temporary as Mobile Booking Clerk and as such they are not similar in nature, consideration of promotion does not arise at all. In view of these reasons sought for the dismissal of this OA.

4. The applicant has filed the Rejoinder Affidavit to the Counter Affidavit reiterating the said contentions. Respondents have filed a supplementary counter to the rejoinder, produced certain documents in support of ^{their} ~~his~~ contentions and sought for the dismissal of this OA. The applicant has filed the supplementary reply for the same admitting certain things and denying other averments. Further stated he was not absconding, but due to illness as already informed by his letter dated 23.05.2005 (as the applicant was mentally disturbed), he was unable to attend his duty. He had also informed that after becoming well he would attend his duty.

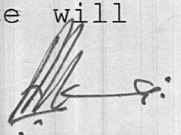
5. We have heard the learned counsel for the parties and perused the pleadings and the materials on record. On having regard to the facts and circumstances of the case and the pleadings on record call for the interference of the order passed by the respondents. The main grievance of the applicant is that he



continued in service continuously, but he was reverted after being declared failed in the screening test held on 14.03.2002 without giving him any more opportunity. The learned counsel for the applicant submits that sufficient opportunity should have been given by the respondents before passing the order of reversion. Therefore the order is illegal as the respondents has not given chance to the applicant to qualify. The learned counsel relied upon the Full Bench decision of the Principal Bench decided on 5.5.1989 in the case of Sh. Jetha Nand and Others versus Union of India & Others, in the said judgment it is held page no.354

"Held, if he has been appointed in a stop-gap arrangement, he can be reverted at any time. If he has qualified in the test and has continued in ad-hoc capacity for more than 18 months, he cannot be reverted except after following the Discipline and Appeal Rules. Further, we have also held that a person who has so far not qualified in the selection test and is holding an ad-hoc post in the promotional post, he should be given several chances to qualify in the selection test and if even after repeated chances to qualify in the selection test and if even after repeated chances given to him he fails, there would be no other alternative but to revert him. The cardinal principle is that he must have qualified to the selection test to become suitable for the post".

Perusal of the aforementioned judgment could indicate that this would hold good in such cases ^{where} ~~were~~ the person fails in the selection in the first chance. The selection may be through a written examination or an interview. The implication of the judgment was that a person in an adhoc capacity working for a long period should not be discarded merely because he fails in the selection in the first chance. Justice will

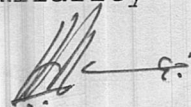


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require that more than one opportunity is given to him.

~~An~~ The instant case is however, is different. Here the applicant was called upon for screening only for the purpose of verifying the educational qualification. There was no provision for a written test or viva voce in the screening. While checking the testimonial it was found that the applicant did not possess the requisite qualification i.e. the HS in English. Repeated opportunity will not enable the applicant to obtain a certificate in English at the school level for which he has to begin from stages earlier. Therefore, we are unable to accept the contention of the applicant and give him any relief.

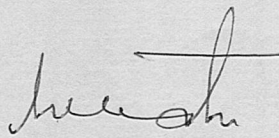
6. Having regard to this the other contention raised by the applicant and the relief sought for, we are of the opinion that it cannot be granted in view of the fact that the services of the applicant was utilized as Assistant Cash witness due to mistake of supervisory staff as set out in the counter affidavit by the respondents, which clearly goes to show that the case of the applicant was not considered in accordance with the rules for the said post by the competent authority concerned. In the absence of the same the contention of the applicant cannot be accepted. With regard to the contention that one Smt. Anamika who was appointed in the railway service on the permanent basis the applicant claiming similarity



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and seeking the relief based on the same cannot be granted having regard to the fact that Smt. Anamika was appointed on permanent post by the Recruitment Board whereas the applicant is working temporarily as such the contention of the applicant cannot be accepted.

7. In view of the foregoing reasons we are not able to provide the relief prayed for by the applicant. The respondents are, however, directed ^{to call} him to appear for the screening test for the post of Group 'D' employee. The applicant may appear for the same and the respondents may take appropriated action on the basis of the results of the screening test. As the applicant was not able to appear in the screening test for group 'D' to which he was called earlier vide order dated 06.04.2005, the respondents will fix another date for screening, intimate him sufficiently in advance and take further action on the basis of the results of the test and in accordance with rules. With these orders this OA is disposed of. No cost.



Member-A



Member-J

/ns/