

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Allahabad this the 24th day of October 1994.

Registration no. 647 of 1988

Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

1. Ram Anuj Pandey, S/o Sri R.L. Pandey.
2. Ram Bilash Singh, S/o Sri Bali Ram Singh,
3. N.G. Saha, S/o Sri B.C. Saha,
working as Chief Train Examiner,
U/A.M.E.(C & W), E. Rly.,
Moghalsarai. Applicants.

By Advocate Sri S.K. Day.

Versus

1. Union of India, through the General Manager,
E. Rly, 17, Netaji Subhash Road, Calcutta.I.
2. The Sr. Divisional Personnel Officer, E. Rly.,
Moghalsarai.
3. The Sr. Divisional Mechanical Engineer,(C & W),
E. Rly., Moghalsarai.

..... Respondents.

By Advocate Sri G.P. Agarwal.

O R D E R

By Hon'ble Mr. K. Muthukumar, A.M.

1. The subject matter of the dispute giving rise to this application is non regulation of the ad-hoc promotion of the applicants to the post of Chief Train Examiner. The applicants were initially appointed in Railway Service as Train Apprentices and after completion of Apprenticeship they were posted as Train Examiner. They were later promoted as Head Train Examiner from 1.1. 1984. They were promoted to the post of Chief Train Examiner

on ad-hoc basis for two months by the order of the respondent no. 2. This ad-hoc appointment was continued from time to time. For appointment against the existing vacancies the Competent Authority held a selection test for 22 posts of Chief Train Examiner and as per the eligibility list for the said test, the applicants were also shown as eligible in the selection test for promotion to the grade of Chief Train Examiner. The results of the test were declared by the Competent Authority (Annexure-10 to the application). Against the 60 candidates who were shown as eligible to take the test, only 23 candidates were declared successful in the written test for promotion to the Chief Technical Examiner Grade-II held on 19.3.1988 and 26.3.1988. The applicants did not qualify in the above test and consequently they were not considered for regular promotion to the grade of Chief Technical Examiner and were not regularised in the said post. Aggrieved by this, the applicants have approached this Tribunal with a prayer to have the written test and the results thereof quashed and for issue a suitable direction to the respondents to regularise the applicants as Chief Technical Examiner by regularising the ad-hoc promotion to the post.

2. The main averments made in the application by the applicants are that:-

(i) By virtue of the seniority suitability and satisfactory service as Chief Train Examiner, they are entitled to be confirmed in the post.

(ii) They were directed to appear in the written test without any pre-selection training as contemplated and also were asked to appear in the test after performing the respective shift duty.

(iii) Two separate question papers were set up.

(iv) Written test was highly irregular in view not providing a pre-selection training and not providing ^{aratory} prep leave and setting up two separate papers on two different dates.

(v) The selection of the successful candidates whose results were published on 11.8.1988 was irregular and arbitrary and the applicants were declared unsuitable due to pick/ ^{and} choose policy of the authorities and the juniors were declared suitable.

3. In view of the above averments the applicants had prayed for quashing/ ^{the} written test and for direction to the respondents to regularise them as Chief Train Examiner.

4. In reply to the averments made by the applicants, respondents have contended that the applicants were offered ad-hoc promotion for two months which were later on extended from time to time till the selected candidates were available and it was clearly mentioned that by virtue of the ad-hoc promotion, the applicants would not be entitled to/ promoted earlier to the seniors and the selected candidates candidates were available on the basis ^{be} by the selection of the selection board and the applicants were reverted to the original post, as the applicants were not declared successful in the selection test and consequently were not found suitable for promotion on the

regular basis. The respondents have further affirmed that ad-hoc promotion does not confer any right to regular promotion to the staff concerned and they have also contended the plea of the applicants that the vacancies in the grade of Chief Train Examiner were due to re-structuring and have stated that these vacancies were normal retirement vacancies or promotional / anticipated vacanc/ for one year.

They have also averred that the promotional training was given as per ext^{ant} rules. In the light of these averments the respondents have resisted the contentions of the applicants.

5. The learned counsel for the applicants strenuously argued that in terms of para 211 A of Chapter 2 of the Railway Establishment Manual (Extract in Annexure-2) Railway Servant may be promoted to fill any post/s whether a selection post or non selection post only if he is considered fit to perform the duty attached to the post. The applicants who were Head Train Examiner were promoted to the post of Chief Train Examiner though on at-hoc basis only after they were considered fit for duties and therefore, they were entitled to regularisation. Besides the Learned Counsel for the Applicant also pointed out that the written test had two question papers which vitiated the test and, therefore, on the basis of the result of the said test the promotions order in respect of other candidates who / suitable were found would be irr^{eg}ular.. The learned counsel also brought to our notice the Eastern Railway Circular dt. 26th October 1988 and the Senior Divisional Personnel Officer internal circular dt. 28.12.1988 wherein it was provided that though staff who were

officiating on ad-hoc basis for more than 18 months were to be considered for regularisation and they should be shown in a separate list and in respect of past cases one time regularisation had been decided on the basis of their services record C.R.'s and the performance and the higher grade should be considered if found satisfactory, without any further test. The learned counsel for the respondents strongly resisted these arguments and have pleaded on the points raised in the counter affidavit and also strongly denied the contentions of the learned counsel for the applicant.

6. We have heard the learned counsel for the parties and perused the record.

7. The provisions in the Railway Establishment Manual cited by the Learned counsel for the applicants clearly provided that the General Manager or Head of the Department or a Divisional Superintendent may prescribe the passing of specified departmental or other test as condition precedent to a Railway Servant to be considered fit to hold specified post. So the contentions of the learned counsel for the applicants are misconceived and not acceptable. The fact remains that on the basis of the prescribed test for which the applicants were also allowed to appear on the basis of the seniority alongwith the other candidates, the applicants were found unsuitable and, therefore, they were rightly reverted to the original post on regular candidates on the basis of the availability of the selection test for appointment against notified regular vacancies.

8. The irregularity of the written examination as averred by the applicants has been strongly denied by the respondents. Merely because the written test

were held on two dates and two different question papers were prescribed, it can not be held that the test was irregular. The applicants have not placed before us any material to conclude that the written test was held in ~~the~~ mala fide manner to choose the successful candidates on the basis of so called "pick and choose policy" adopted by the respondents. Further, merely because of the seniority and on the basis of their ad-hoc appointment, the applicants did not derive any vested right in the promotion post. Before concluding it is also necessary to dispose of another matter raised by the learned counsel for the applicant during the hearing regarding the circulars of the Eastern Railway dt. 26th October, 1988, and the internal circular dated 28.12.1988 of the Senior Divisional Personnel Officer. We have carefully looked into the circular and find that these circulars are of no assistance to the applicants' claim. It must be observed that in the case of the applicants, the test was held on 19th March 1988 and 26th March 1988. The circular cited by the learned counsel for the applicants are dt. 26th October 1988 and 28.12.1988 wherein the question of ad-hoc appointments and the regularisation of the same against anticipated vacancies was considered and it was decided that the panel should be formed at regular intervals for ad-hoc appointment so that the empanelled hands/ would be always available to the promotion to the higher grade posts in advance. It was also provided that in cases where ad-hoc appointments are likely to continue beyond a period of 18 months, the candidates should be separately examined observing the same procedure as

applicable for filling up the selection posts i.e., by means of a test and this test was only for the continuance beyond the period of 18 months and only if the candidate is found suitable he should be allowed to continue on ad-hoc appointment; otherwise his ad-hoc appointment should be discontinued. Only after the regular panel is formed of the ad-hoc appointees they need not be tested again for employment and they should be given the due position in the panel according to seniority and subject to his satisfactory service without any adverse report. Only in such of past cases, who were working on ad-hoc basis beyond the period of 18 months one time regularisation was provided and they can not be considered for empanelment without any further test. This above procedure and course of action was decided to stream line the procedure of ad-hoc appointment. The applicants are admittedly governed by the para 211 A of the Railway Establishment Manual and they were holding ad-hoc appointment from 9.1.1987 and at the time when the test was taken, they were not in continuous ad-hoc appointment beyond the period of 18 months. Only in respect of past cases of persons who are working beyond the period of 18 months, one time relaxation was provided for empanelment without any further test. Obviously the applicants who had ad-hoc appointments less than 18 months can not claim relaxation from the test on the basis of aforesaid circular dt. 26th October 1988. In any case the applicants had not taken this plea to establish their right to such regularisation in the matter. In view of this, the ~~above~~ contention of the learned counsel is not acceptable.

9. In the light of the above discussions
the application lacks in merit and is dismissed accordingly.
There shall be no order as to costs.

Y.S.
Member (A)

J. Ahern
Member (J)

Oct. 24, 1994

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