

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 21st day of ^{November} ~~September~~, 2000

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 484 of 1992.

Kandhai Lal
aged about 40 years
Assistant Station Master,
N.E. Railway,
Railway Station Aurnihar Jn.
Distt. Ghazipur.

. . . Applicant.

Counsel for the Applicant: Sri S.K. Om, Adv.

Versus

1. Union of India through Secretary, Ministry of
Railway, Rail Bhawan, New Delhi.
2. General Manager (P.) N.E. Railway,
Gorakhpur.
3. Chief Operating Superintendent,
N.E. Railway Gorakhpur.
4. Divisional Railway Manager, N.E.
Railway, Varanasi.
5. H.P. Singh, Traffic Inspector,
N.E. Railway, Varanasi.

. . . Respondents.

Counsel for the Respondents: Sri G.P. Agarwal, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A))

This application has been filed for the

following reliefs:-

- i) Setting aside order of General Manager, N.E. Railway Gorakhpur dismissing the application of the applicant dated 21.8.89 communicated to the applicant by letter dated 30.10.91.
- ii) For setting aside order of the Divisional Railway Manager dated 17.7.86 by which the applicant was reverted to the post of T.I. to the post of ^{Asstt.} Station Master.
- iii) For setting aside order dated 20.11.85 of Divisional Railway Manager, Varanasi in so far as it mentioned that the appointment of the applicant as T.I. is temporary on local arrangement.
- iv) Direction to the respondents No. 1 to 4 to treat the applicant as T.I. from 20.11.85 and give him proper seniority in the cadre of T.I. and promotion to the post of T.I. in the grade of Rs.1600-2660 from 1.2.89 and consider him for selection to the next higher post in the scale of Rs.2000-3200.
- v) Direction to the respondents No.1 to 4 to give him the arrears of pay, allowances and other benefits as T.I. from 20.11.85.

2. The case of the applicant is that he was promoted to the post of Asstt. Station Master on 1.12.87. He appeared for selection as Area Controller in the scale of Rs.455-700 and was selected for the post as per order dated 21.3.85. He joined the post of Area Controller in Chhapra, Kutchehri N.E. Railway on 16.5.85. Sri V.N. Singh was also selected and posted as Area Controller at Chhapra Kutchehri of North Eastern Railway. The posts of Area Controller were abolished vide order dated

2.9.89 (2.9.85 as per counter reply). The applicant claims that his case was considered for absorption by Senior Divisional Operating Superintendent who asked the Divisional Personnel Officer North Eastern Railway to absorb the applicant and Sri Virendra Nath Singh for the post of Traffic Inspector. This order is stated to have been confirmed by D.R.M. on 16.11.85. The applicant along with Sri Virendra Nath Singh was posted as T.I. broad gauge at Chhapra Junction. Their training was waived and it was decided that they would be sent for training afterwards. It is contended by the applicant that he along with V.N. Singh were absorbed on the post of T.I. and it was wrongly and illegally mentioned that they were being posted temporarily and were on local arrangement. The applicant suddenly reverted by order dated 27.7.86 as Assistant Station Master on the ground that the work of broad gauge came to an end. It is contended that the reason given for reversion was wrong as one Sri H.P. Singh was posted as T.I. in North Eastern Railway/^{at} Varanasi on 18.7.86. The applicant represented against his reversion on 23.10.86. The applicant gives a copy of the note of the Office Superintendent dated 14.8.88 and claims that it was favourable to him. The Chief Operating Superintendent, however, did not decide his representation despite repeated reminders and the applicant approached General Manager North Eastern Railway Gorakhpur by letter dated 21.8.89. He was informed by D.R.M. Varanasi by letter

dated 30.10.91 that General Manager (P.) had held that the applicant could have been considered for the post of Traffic Inspector if he had been selected as Traffic Apprentice and succeeded in training. The applicant claims that this has resulted in his not getting considered on the next higher post for Traffic Inspector although his junior Sri H.P. Singh was so considered. These facts have led to this application of the applicant.

3. The arguments of Sri S.K. Om for the applicant and Sri G.P. Agarwal for the respondents have been heard.

4. The main contention of learned counsel for the applicant is that the applicant had been regularly absorbed against the post of Traffic Inspector on the abolition of the post of Area Controller. This contention of the applicant is based on copy of notings allegedly existed in file No. Ka/Pari/254/11/CHE.N1 and file No. Ka/Pari/210/11-Ya/N.1. The noting has been produced as Annexures 2,3 and 4 to the O.A. It is the contention of learned counsel for the applicant that these notings led to his appointment as Traffic Inspector. The applicant had sought the production of the above mentioned files in which the notings existed and directions were given to the respondents to produce these files by order dated 4.4.2000. The respondents have filed supplementary counter in which an affidavit of one Sri Devendra Mani

Tripathi, Assistant Personnel Officer has been annexed stating that the file was sent by the office of D.R.M. North Eastern Railway, Varanasi to the Head Quarter of North Eastern Railway Gorakhpur but the Head Quarter have inimated that the file is not available. There is a letter of the office of General Manager, North Eastern Railway Gorakhpur also annexed to supplementary counter reply in which it has been stated that there was no proof that the file had been sent in 1992 to the office of G.M. Be that as it may, the net result that the file is not available. The learned counsel for the applicant prays that adverse inference be drawn against the respondents and Annexures 2, 3 and 4 be taken as proved.

5. We find that the order given to the applicant regarding his posting as Traffic Inspector was as follows:

कार्यालय आदेश संख्या 395
 एम्प्लॉयमेंट ऑफ द इन्डियन नॉर्थ ईस्ट रेलवे संस्थानि अमानत
 दौरे के फलस्वरूप एम्प्लॉयमेंट नियंत्रक (455-700)
 पद पर नियमित रूप से कार्यरत रहने का कार्य
 लाल उषा जी अंशु शिंदे को अमानत संस्थागत
 व्यवस्था के अन्तर्गत अतिरिक्त रूप से अमानत
 लेने में उक्त लेखन पर एम्प्लॉयमेंट के आलापन
 परीक्षण (बी.टी.) लेखन 455-700 के रिक्त
 पद पर किया जाता है। इनके उचित शर्तक प्राप्ति पर
 की व्यवस्था सुविधागुण आदि में किया जायेगा।
 यदि वे ई.पी.के. अनुमोदन से जारी किया जावे
 है।

दि. 20-11-85

The order is quite clear that the applicant was being posted on the basis of local arrangement temporarily as Traffic Inspector in the scale of

Rs. 455-700. We have considered the copy of notings produced by the applicant but we do not consider the nothing annexed as Annexure-2,3 and 4 as the one which could have led to order dated 20.11.85 excerpted as above. We also do not agree with learned counsel for the applicant for the same reason that adverse presumption should be drawn against the respondents. The applicant by virtue of order dated 20.11.85 was promoted as local arrangement on temporary basis. The period of the currency of the post of Traffic Inspector held by the applicant having ended, the applicant can no longer claim to have a vested right for absorption in the cadre of Traffic Inspector.

6. The issue raised by the applicant that his junior Sri H.P. Singh continued as Traffic Inspector has been explained by the respondents by stating that Sri H.P. Singh was selected through Railway Service Commission in the direct recruitment quota of Traffic Apprentice and after three years of training he has been posted as Traffic Inspector. Therefore his case cannot be compared with the case of the applicant. Besides the applicant was appointed as Traffic Inspector on local arrangement and temporary basis, therefore the claim of the applicant that there was hostile discrimination can not be accepted.


7. The learned counsel for the applicant drew attention to the counter reply filed by one Sri Ram Sukh, Assistant Personnel Officer North Eastern Railway Varanasi on 9.9.98 after having served on learned counsel for the applicant on 16.9.98 that the respondents admit

that the applicant was empanelled for the post of Area Controller and was promoted in Officiating capacity (Para 4 of the C.A.). It is also admitted that the post was abolished on 2.9.85 (Para 8 of the C.A.). It has been stated that the applicant belonged to the category of Area Controller and the next junior of promotion as Traffic Inspector (Para 10 of the C.A.). Thus the applicant has a claim for being considered against post of Yard Master on the basis of his having worked as Area Controller in the scale of Rs.455-700. The respondents should have posted him as Area Controller on discontinuance of the post of Traffic Inspector allowing him seniority in the cadre of Area Controller and should have considered him for further promotion in that cadre. The applicant is entitled to be considered for promotion as Yard Master or the next any other higher post of promotion from the date persons junior to him in the cadre of Area Controller were promoted.

8. In effect, the relief claimed by the applicant cannot be allowed. The respondents are directed to consider the claim of the applicant on the post of Yard Master after granting him seniority in the cadre of ^{of} Controller within three months from the date of receipt of a copy of this order along with representation if the applicant files a representation to that effect within a month.

9. No order as to costs.


Member (J.)


Member (A.)

Nafees.

We have considered the copy of no. King's...
Rs.455-700 hence we do not consider the noting
annexed as Annexure 2, 3 and 4 as the ^{one} which
could have led to order dated 20.11.85 excerpted
as above. We also do not agree with learned
counsel for the applicant for the same reason
that adverse presumption should be drawn against
the respondents. The applicant by virtue of order
dated 20.11.85 was promoted as local arrangement
on temporary basis. The period of the post of
Traffic Inspector, ^{only for the applicant} having ended, the applicant
can no longer ^{be considered for absorption} claim to be absorbed in the cadre
of Traffic Inspector.

6. We, however, find from the counter reply ^{for the applicant}
filed by one Sri Ram Sukh, Assistant Personnel ^{drawn against}
Officer North Eastern Railway Varanasi on 9.9.98
after having served on learned counsel for the
applicant on 16.9.98 that the respondents admit
that the applicant was empanelled for the post
of Area Controller and was promoted in officiating
capacity (Para 4 of the C.A.). It is also admitted
that the post was abolished on 2.9.85 (para 8
of the C.A.). It has been stated that the appli-
cant belonged to the category of Area Controller
and the next junior of promotion was Yard Master
and was not eligible for promotion as Traffic
Inspector (para 10 of the C.A.). Thus the appli-
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The respondents who have posted him as Area Con-
troller on discontinuance of the post of Traffic

