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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1370 of 1992

Allahabad this the 9th day of March 1995

Hon'ble Mr. S. Das Gupta, Member(A)
Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Om Kumar Raizada S/o Sri R.P. Srivastava, Junior
Divisional Cashier, U/DAO, E.Rly, Moghalsarai.
Applicant.

By Advocate Shri S.K. Dey.

Versus

1. Union of India through the General Manager,
E.Rly. Calcutta.
2. The Chief Cashier, E.Rly. Calcutta.

Respondents.

By Advocate Shri A.K. Gaur.

O R D E R

By Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Sri C.K. Raizada came to this Court
pleading that being in railway service since long
he was promoted as Junior Cashier and then a Senior
Cashier in the year 1984 and 1986 respectively.
The next promotional post is Junior Divisional
Cashier in the scale of 1600-2660(RP) which is
a non-selection post as laid down in the Appendix-6
of Railway Establishment Manual to which promotion
is made on the basis of seniority-cum-suitability
as laid down in para 212 of the Railway Establish-
ment Manual. Being the seniormost cashier and

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having expressed his willingness for appointment to the post of Junior D.C., when the others had refused the same, he was promoted to this post and posted after transfer at Moghalsarai vide order dated 26.12.1991(Annexure A-1). Vide Annexure A.2, he joined this post. Since then, he continued working on this post, and finding his services to be satisfactory he was given a certificate of competence and a cash award of Rs.150/- as shown by Annexure A-3. He pleads that either because of deliberate mistake or mischief, the applicant was called for selection to the post of Junior D.C. vide letter dated 01.7.92 Annexure A-4. Having no alternative, he appeared in the said test on 29.7.1992 alongwith 4 other persons for the 5 vacancies of Junior D.C. He apprehended that the respondents will adopt pick and chose policy and thus, he has impugned the selection so held. He pleads that no test could be held since he already stood promoted as Junior D.C. vide order dated 26.12.1991. He pleads that after holding this test, the respondents will form a panel which will be illegal and the petitioner will be reverted. He, thus, prayed for quashing the selection proceedings and formation of a panel for the post of junior D.C.

2. During the pendency of this petition, a final panel was prepared in which the name of the petitioner figured. He filed a misc.application

no.1368 of 1994 mentioning therein that he has been promoted and posted as Junior D.C. vide order dated 20.12.1993 w.e.f. He prayed for a direction to the respondents to regularise his ad-hoc promotion and give effect to his those promotion order w.e.f. 26.12.1991 since when he had been working on this post. This application was, however, disposed of vide order dated 02.9.1994 by this Court rejecting the same with the observation that this relief had been prayed by the petitioner in the main C.A. which could be granted at the disposal of the main petition only.

3. The respondents pleaded that all Senior Cashiers and Shreiffs were asked to give their consent for empanelment for the post of Junior D.C. in the pay scale of 1600-2660/-. They have pleaded that this post is a selection post and a panel has to be formed by a positive way of selection which would consist of a written test and viva-voce. It was observed that since formation of panel may take some time, ad-hoc promotion from amongst willing candidates may be considered in administrative interest. The petitioner appeared in the written test but failed to secure the qualifying marks and thus, was not asked to appear in the viva-voce. Five

willing candidates were promoted on ad-hoc basis on the basis of their seniority vide order dated 18.11.1991(Annexure C.A.-1). It is pleaded that Railway Board has circulated a letter dated 05.2.1987 to the effect that post of D.C. Junior is a selection post and thus, procedure for preparation of the panel for this post had to be formed. They pleaded for dismissal of the petition.

4. As far as ~~panel~~ ^{panel}ment of petitioner is concerned, admittedly, that has been done and he, as per his own admission, stands promoted to the post of Junior D.C. vide order dated 20.12.1993 copy of which is annexed with misc.application no.1368 of 1994. His claim in main petition was to declare the "Selection Process" held on 13.7.1992 as illegal. He had, admittedly appeared in that. As to whether it was a selection process or a suitability test, we find that the documents on records shows that it was a process to determine suitability for preparing the panel for promotion to the post of Junior D.C. The contention of the petitioner that the respondents could not have held such a test is found to be without any force. Annexure-B letter dated 26.9.1959 which is circular no. A.E. 217814 shows that the Railway Board had considered the determination of seniority of staff who are promoted to non-selection post

after passing the departmental examination or trade test (emphasis is ours). It was decided that as a general rule senior most candidate should be promoted to the higher next senior post subject to his suitability. Thereafter, circular no.207/88 dated 26.10.1988 (Annexure-C) was issued giving some clarification on ad-hoc appointments. It was observed that ad-hoc appointments should be discouraged as while forming panels for promotion, some appointees who had been working on this post were found not suitable. It was directed that panel should be formed at regular intervals. The board took notice of the fact that there will still be instances- where ad-hoc appointments are continued for a long periods. It was directed that in case of such ad-hoc appointments likely to be continued beyond the period of 18 months, the candidates concerned should be examined observing the same procedure which was applicable for the filling up of selection/non-selection posts. It was clarified that such test is only for such candidates continuation beyond the period of 18 months. Incase he is - found suitable, he should be allowed to continue on ad-hoc basis otherwise his ad-hoc appointment should be dis-continued. When regular panel is to be formed, the ad-hoc appointment need not be

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tested again for empanelment. As to the persons who had been working on ad-hoc basis upto the date of that circular, as a one time relaxation their consideration for empanelment without any further test, was allowed to be considered on consideration of their service records and the C.A.'s. This is the letter on which the petitioner places reliance.

5. The record and the pleadings show that before his promotion on ad-hoc basis to the post of Junior D.C., the petitioner had not passed any such suitability test or a test for empanelment. The exception in letter dated 26.10.1988 was made only as one time relaxation in the year for the persons who had been working for long period prior to that. For all other persons those who were in the test held in July, 1992 was a first test for him. Even as per Annexure-B for a promotion to a non-selection post passing of a departmental examination or a trade test is mentioned for determination of suitability. We, thus, find nothing illegal in calling upon the petitioner to appear in the test in July, 1992. It appears that he had taken that test and failed.

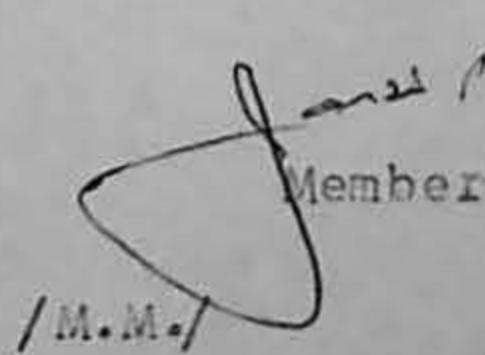
6. Regarding his claim to regularisation w.e.f. the date of his ad-hoc promotion on 26.12.91

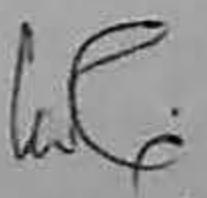
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and giving effect to his promotional order dated 20.12.1991 from the date of his ad-hoc promotion is concerned, that cannot be accepted. Settled law is that an ad-hoc appointment to a post, be it a promotional post, gives no substantive right to the incumbent. If, the process of empanelment, by a trade test or suitability test is there besides the seniority, the person cannot have any claim till he passes that suitability test. In the case of the petitioner, he had not been empanelled by such seniority-cum-suitability test at the time of his ad-hoc appointment to the post of Junior D.C. on 26.12.1991. Since he already stands promoted, the main prayer in the petition has become infructuous.

7. For all the reasons mentioned above, this petition is dismissed being without any merits.


Member (J)
/M.M./


Member (A)