

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No.1 of 1993

Dated: 25 April, 1995

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

Vedmani Sharma, son of late Indramani  
Sharma, R/o Rly. Quarter No. A, Block  
E-65 Near Parkar School Road,  
Moradabad.

... ... Applicant.

( By advocate Sri A.K. Sinha )  
Versus

Union of India, through General  
Manager (P), Northern Railway, Baroda  
House, New Delhi.

2. D.R.M. Northern Railway,  
Moradabad. ... ... Respondents.

( By Advocate Sri D.C. Saxena )

O R D E R

( By Hon. Mr. S. Das Gupta, Member (A) )

The applicant was a confirmed Railway Servant  
working under the Respondent no. 2. He was promoted  
on adhoc basis to the post of Assistant Superintendent  
with the approval of the D.R.M. Moradabad vide order  
dated 1.5.1987 (Annexure - A 2). Since then, the  
applicant has been working on the post of Assistant  
Superintendent and it has been claimed by the  
applicant that there was no ~~Cause~~ of complaint from  
any quarter. By the letter dated 26.10.1992, a  
notification was issued ~~for~~ holding a regular selection  
for the post of Assistant Superintendent in which  
written tests were to be held on 14.11.1992 and  
21.11.1992. For 7 vacancies notified, 21 candidates  
were called and the applicant's name appeared at

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Sl. No.2. The applicant claims that he fell sick on 2.11.1992 and was under treatment of the railway doctor. He immediately reported this to the respondent no. 2. The Railway Doctor extended the period of unfitness from time to time and finally <sup>h a</sup> he was declared fit on 18.12.1992. A copy of sick certificate is enclosed at Annexure- A 5. The respondent no. 2 issued a letter dated 18.11.1992 asking the applicant to appear in the supplementary written test to be held on 21.11.1992 but the applicant could not appear in the same as he was seriously ill. When he returned for duty on 21.12.1992 after being declared fit, he found that his pay has been reduced from Rs.2250/- p.m. to Rs. 2150/- p.m. On making inquiry, it revealed that the respondent no. 2 had already issued an order reverting the applicant from the post of Assistant Superintendent on 12.11.1992. The applicant has impugned the said reversion order dated 12.11.1992 (Annexure- A 1) and has sought the relief of quashing the same and to direct the respondents to allow him to appear in the supplementary written test.

2. The main ground taken by the applicant is that he could not appear in the written examination and the supplementary examination as he was medically unfit which is supported by medical certificates; therefore, the respondents could not have reverted him by an order passed behind his back without giving him an opportunity to show cause. It has been

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contended that the order of reversion is tainted by malafide since the said order was passed on 12.11.1992 whereas, the written examination was to take place on 14.11.1992 and the supplementary test on 21.11.1992; thus, the respondents could not have anticipated that he would not appear in the written test when the said order of reversion was passed.

3. The respondents have filed a counter affidavit in which the fact of his adhoc promotion has been admitted. It has been averred that on an earlier occasion, the applicant appeared in the written test for selection to the post of Assistant Superintendent but he was found copying from written material during the examination. He was, therefore, given the penalty of withholding of increment for 6 months w.e.f. 1.3.1988. Thereafter, another test was held on 21.12.1990/29.12.0000 1992 but the applicant did not appear in the said test reporting sick w.e.f. 22.12.1990 till 31.12.1990 and thus managed to continue as adhoc Assistant Superintendent.

4. According to the respondents, the applicant reported sick on 2.11.1992 with the Senior Divisional Medical Officer, Nazibabad and not with the Divisional Medical Officer, Moradabad and that he left Moradabad for Nazibabad without any authority. It is a further contention of the respondents that the applicant was declared fit by the Divisional Medical Officer Nazibabad on 14.11.1992 as intimated by the Senior Divisional Medical Officer Nazibabad vide letter

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dated 16.11.1992 (Annexure- C.A. 1). The sick certificate at Annexure- A 5 to the O.A. by which it was stated that the applicant would be unfit to perform his duties till 30.11.1992 was not submitted by the petitioner in the office. It has, however, been admitted that the applicant was declared fit by the Assistant Divisional Medical Officer, Moradabad on 18.12.1992.

5. The respondents have further contended that on being informed by the D.M.O. Nazibabad that the applicant had been declared fit on 14.11.1992, he was asked to attend the supplementary written test to be held on 21.11.1992 by a letter dated 18.11.1992 which had to be pasted on the door of his residence in the presence of two welfare inspectors since the applicant was not available at his residence and his wife and son refused to accept the letter. It is further stated that the Chief Personnel Officer who is the competent authority for allowing the adhoc promotion had passed orders to discontinue his adhoc promotion disallowing the request made in this regard through the union ~~in~~ in compliance of the decision of the Chief Personnel Officer, the applicant was reverted by the impugned order dated 12.11.1992. The respondents contend that the order of reversion is not by way of penalty and, therefore, there is no question of giving him an opportunity to show cause.

6. The applicant has filed ~~the~~ rejoinder affidavit. A part from reiterating the contentions made in the

original application, the applicant has denied that he had adopted unfair means in the written test for the post as alleged by the respondents. It has been stated that some printed matter was thrown by another examinee near the ~~sheet~~ <sup>seat</sup> of the applicant and thus the examiner thought that the applicant was copying. He has also denied the allegation that he managed not to appear in the written test held on 22.12.1990/ 29.12.1990 stating that he could not appear as he was sick during this period. It has been alleged that Annexure- C.A. 1 is a fabricated document, in which it has been stated that despite the Tribunal's interim order directing the respondents to consider and allow the applicant to appear at the supplementary examination, the respondents refused to allow him to appear at the test by an order dated 12.11.1992 (Annexure- A 11). It has also <sup>been</sup> stated that in the meantime, the respondents declared the results of the written test and fixed 25/28.1.1993 for the viva-voce test.

7. We have heard the learned counsel for the parties and have carefully gone through the pleadings of the case.

8. There is no dispute that the applicant was promoted on adhoc basis by the order dated 1.5.1987, ~~as such, T~~ The adhoc promotion did not confer any right on the applicant to continue on the higher post indefinitely and the respondents were certainly within

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*revert to applicant if he*

their rights to refuse the applicant to appear in the selection test or the applicant having appeared and failed to pass the test. The facts, however, revealed that on one occasion, the applicant was found to be adopting unfair means at the selection test for which he was penalised by stoppage of increment. The respondents apparently did not exercise their rights to revert the applicant. Thereafter, another examination was held on 22/29.12.1990. The respondents have stated that the applicant managed not to appear in the said examination by reporting sick. It is not the case of the respondents that the sick medical certificates furnished by the applicant were forged. If the railway doctors themselves have declared the applicant as unfit, it would be difficult to accept the contentions of the respondents that the applicant deliberately managed not to appear in the examination. In any case, even on that occasion, the respondents apparently chose not to exercise their rights to revert the applicant on the ground that he deliberately avoided appearing in the examination.

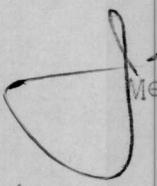
9. ~~the~~ Third time the examination was held on 14/21.11.1992. The applicant had again reported sick. The sickness certificates were given by the railway doctors and not by any private medical practitioner. The letter enclosed at Annexure- C.A. cannot nullify the subsequent certificates produced by the applicant to show that he was declared fit to rejoin duty only on 18.12.1992. There is nothing to indicate that what

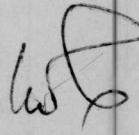
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was the nature of the sickness and whether such sickness was so severe as to prevent the applicant from appearing in the examination. There is not even a whisper in the counter affidavit that any inquiry was made by the respondents to ascertain the nature of sickness of the applicant to come to a conclusion that he was simply malingering or he was really so ill that it was not possible for him to appear in the examination. The first date of the written test was on 14.11.1992. The respondents had no means of knowing that the applicant would not appear in the said test or in the supplementary test held on 21.11.1992 when they issued the impugned order on 12.11.1992. Though, the respondents have tried to explain away this apparent discrepancy in their reversion order ~~as~~ stating that the competent authority had decided not to continue the adhoc promotion, it is apparent from the facts averred that the respondents had already come to a conclusion that the applicant would manage to avoid appearing in the written test and thus, issued the order on 12.11.1992 ~~as~~ even before the actual test, were held. From the facts averred such a presumption is not totally unreasonable yet when the respondents themselves directed the applicant to appear in the supplementary test on 21.11.1992, they certainly fell in error by issuing the reversion order on 12.11.1992. In our view, the proper course would have been to make an inquiry ~~open~~ with regard to the nature of illness and thereafter, come to the conclusion that the applicant was deliberately avoiding appearance

in the examination. It is not the case of the respondents that any such inquiry was made. Since no such inquiry was made, there is nothing concrete to support the conclusion of the respondents that the applicant had been deliberately avoiding appearing in the selection test and in that view of the matter, the impugned order dated 12.11.1992 cannot be sustained.

10. In view of the foregoing, the application is allowed. The impugned order dated 12.11.1992 is quashed. The applicant shall be deemed to have continued on the post of Assistant Superintendent till his retirement on adhoc basis and shall be entitled to retiral benefits on that basis. In view of the peculiar circumstances, we do not ,however, order payment of any difference of wages from the date of his reversal till the date of his retirement. There will be no order as to costs.

  
Member (J)  
(n.u.)

  
Member (A)