

12

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 13th day of September 2000

Original Application No.1386 of 1993

District : Varanasi

CORAM :-

Hon'ble Mr. Rafiuddin, J.M.

Hon'ble Mr. S. Biswas, A.M.

Harikesh Rai,

S/o Late Mangaru Rai,

R/o Vill-Pithapur PO-Paura(Tulsi Ashram),

Varanasi.

(Sri A.K. Sinha, Advocate)

..... Applicant

Versus

1. Union of India through the
Divisional Railway Manager,
Eastern Railway, Mughalsarai,
District-Varanasi.

2. Sr. Divisional Signal & Telecommunication
Engineer, Eastern Railway, Mughalsarai,
Varanasi.

3. Sr. Divisional Personnel Officer,
Eastern Railway, Mughalsarai,
District-Varanasi.

(Sri G.P. Agrawal, Advocate)

..... Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. Rafiuddin, J.M.

The applicant by means of this OA has sought for quashing the order dated 27-5-1993 and a direction to the respondents not to revert him from the post of Telephone Operator(Grade Rs.950-1500/-) till regular selection is held for the said post. The applicant

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- 2 -

also seeks a direction to the respondents to permit him to appear at the said selection and to act according to the result of the selection.

2. In brief the facts of the case ~~is~~ ^{are} that the applicant who has been working as Helper Khalasi in Grade 'D' in Signal & Telecommunication Department of Eastern Railways, Mughalsarai, was promoted as Telephone Operator on ad hoc basis. The applicant was initially promoted on that post for three months on 4-10-1990 but later on he continued to work on that post for about two years 8 months until he was reverted to his substantive post. The applicant also claims that he is eligible for promotion as Telephone Operator in the same department. The applicant also claims that one Sri Sukumar Dey, who was a Jeep Driver in the R.P.F., which is a separate department controlled by the Govt by Chief Security Officer, Eastern Railway, Calcutta, was appointed as Telephone Operator in place of the applicant. It is also contended by the applicant that the said Sri Sukumar Dey is not entitled for promotion in the department of the applicant and he cannot be said to be a selected candidate. Therefore, he cannot replace the applicant as Telephone Operator. The applicant also understands that the respondents did not deliberately held any selection for regularisation of the services of the applicant and deprived him of his valuable right of regularisation on ad hoc posts of Telephone Operator.

3. We have heard counsel for the parties and perused the record carefully.

4. It is not in dispute that the applicant was promoted to the post of Telephone Operator purely on ad hoc basis. It is also not in dispute that the post is a selection post and the same is filled up by proper

- 3 -

Counsel R

selection. It is no doubt that the applicant is eligible for selection of telephone operator. However, the fact remains that his promotion was purely on ad hoc basis and consequently de hors rules. Therefore, the applicant cannot claim his regularisation merely on the basis that he had worked for more than two years and 8 months as ad hoc telephone operator until selected according to rules. It was held by the Apex Court in the case of Dr. Samar Singh Jamwal and another Vs. State of Jammu & Kashmir & Ors reported in AIR 1996 SC 275 that ad hoc employees are not entitled to regularisation but can continue till regularly selected candidates are appointed.

5. Similarly in UOI Vs. Krishna Gopal Vyas, 1995(34) A.T.C. 793, the Apex Court has again expressed the view where a Khalasi in Railway Class IV post of Clerk/Store Keeper, without holding proper selection and without following the rules, was held entitled to absorption/regularisation in the latter post because it would amount to denial of other eligible candidates. In the present case also we find that admittedly the applicant was not appointed on the post of Telephone Operator on the basis of regular selection and was appointed on ad hoc basis. Thus, he has no legal right to regularisation on the said post.

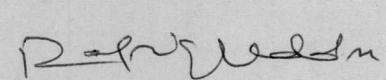
6. Learned counsel for the applicant has further contended on the basis of the circulars dated 12-12-1970 and 01-05-1968 wherein it has been provided that in all cases of local ad hoc arrangements which are likely to continue beyond three months, should be referred to the Headquarters for obtaining prior approval of the General Manager. Such ad hoc arrangement should not, however, be continued beyond six months in any case, unless promotees have in the meantime qualified in the selection. *R*

7. We, however, ~~feel~~ ^{find} to understand how these instructions help the applicant if he is continuing beyond six months of the service. Since the selection cannot be held by the respondents within six months, it does not give any legal right to the applicant for regularisation on the post.

8. Learned counsel for the applicant has also questioned the appointment of Sri Sukumar Dey in place of the applicant illegal because he ~~is~~ ^{is} belonging to the R.P.F. and he has no legal right to get appointment as Telephone Operator in the Railway, which is a separate department. We do not find any force in this argument because the applicant has not impleaded Sri Sukumar Dey in the present case while challenging ^{his} the appointment. It is further noticed that the aforesaid Sri Sukumar Dey was posted on the post in question when he was medically decategorised for the post of Jeep Driver and he was given the post in question on the basis of existing rule and the post was available. We do not find any illegalit or irregularity in his appointment and it is upto the authorities concerned to see and watch the interest of the employees of their branch. We also find that the counsel for the applicant has not been able to place before us the correct provisions of law.

9. As regards the prayer of the applicant for direction to the respondents to regularise him on the post of Telephone Operator, it has been clearly admitted by the applicant in their rejoinder affidavit that regularisation on the post is on the basis of selection. Therefore, there remains to question to issue the direction for this purpose.

10. For the reasons stated above, we do not find any merit in this case. The OA is accordingly dismissed with no order as to costs.


Member (A) 
Member (J)

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