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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 1166 of 1993

K.R.Jain Applicant.

Versus

Union of India & Ors. Respondents.

Hon'ble Mr. T.L.Verma, Member-J

Hon'ble Mr. S.Dayal , Member-A

(By Hon'ble Mr. T.L.Verma, J.M.)

Subject matter of challenge in this application is order dated 26.05.1993 (Annexure A-1) whereby the applicant has been reverted from the post of I.O.W. Grade III to S.O.M. Grade I.

2. The applicant was appointed as Sub-Overseer Mistry (S.O.M. for short) on 20.08.1962 and was thereafter, selected as S.O.M. Grade I by order dated 22.2.1965. He became eligible for promotion to the post of Assistant Inspector of Works, now designated as I.O.W. Grade III in the scale of pay of Rs. 205-280/-. He appeared at the Selection Test for promotion to I.O.W. Grade III. Test held for the appointment on promotion to the said post, however, was cancelled. On representation being filed, the respondents reconsidered their decision to cancel the test and decided that the Division may screen all those who appeared at the selection test for I.O.W. Grade 425-700/- in 1973 and which selection was cancelled by the division. It is alleged that despite the above instructions of the Railway Board, the respondents did not call some of the candidates including the applicant who had appeared at that examination for Viva-Voce test. The applicant however, was promoted /

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as I.O.W. Grade III on adhoc basis in scale 425-700/- w e.f. 6.10.1979. He is stated to have continued to work on the above post continuously since then till the impugned order was passed. The reversion order however, has been stayed by order dated 10.08.1993 directing the respondents to maintain statusquo.

3. The applicant has annexed letter No. 754-E/ Engg./3/I.O.W./Selection/Pt.V(72) dated 17.10.1986 issued from the office of the Divisional Railway Manager Northern Railway, Allahabad regarding selection to the post of I.O.W. Grade III Rs. 425-700 (RS) ^{to be rejoinder} The letter contains list of staff required to attend Viva-Voce test on 30.06.1986. The name of the applicant has been mentioned at Sl. No. 24. It is stated that no test was held on 30.06.1986. The applicant was not called for appearing at the test held on 17.10.1986. Pursuant to the test held on that date, 12 persons were found suitable and appointed on promotion to the post of I.O.W. Grade III. One of the persons namely Pursattam Deo mentioned in the list of candidates selected for Viva-Voce Test, scheduled to be held on 30.06.1986 was also not called for the test held on 17.10.1986. He filed O.A. No. 2224/1988 in the Principal Bench of the Tribunal. The Principal Bench by decision dated May 6, 1991 has issued direction to the respondents to call Pursattam Deo for screening in terms of the Northern Railway Head Quarters letter dated 24.03.1986 and appoint him, if, he is ~~xxxx~~ found suitable on the post of I.O.W. Grade III and also consider him for such promotions as he would have been entitled to the

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had he been regularised pursuant to the interview held on 17.10.1986.

4. The applicant on coming to know of the judgement of the Principal Bench referred to above, filed a representation on 15.06.1994 followed by reminder dated 17.09.1992 to allow him to him, the benefit of judgement dated 6.5.1991 passed by the Central Administrative Tribunal, Principal Bench in Pursottam Deo Vs. Union of India. The respondent No. 3, in reply to the representation of the applicant, informed the applicant by letter dated 7.9.1992 that the benefit of Pursottam Deo's case cannot be given to him. Thereafter, the applicant has been reverted to the post of S.O.M. Grade I.

5. The respondents have contested the claim of the applicant. It has been averred in the Written Reply that the post of I.O.W. is a Selection Post and promotion to that post is subject to passing of the test (Written & Viva-Voce) and placement of ~~The~~ incumbent in the approved panel. It has, further, been averred that the applicant was not placed in the panel because he failed to qualify in the Written Test. He was, however, given a chance for promotion on adhoc basis. The adhoc promotion, it is stated, has not given any right to the applicant to hold the post.

6. Appointment on the basis of Viva-Voce held pursuant to the direction of the Railway Board were made on 17.10.1986. The applicant did not agitate the matter within the period of limitation prescribed. In

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the normal course, we would have held this application filed in 1993 as barred by limitation. The reply dated 7.9.1992 (Annexure A-6) given by the respondents to the applicant in reply to his representation that he was not entitled to the benefit of the judgement of the Principal Bench in the case of Pursottam Deo's case (Annexure A-3) has given further lease⁴ of limitation. This O.A. has been filed well within one year from the date of the said order. In addition to the above, the impugned order, whereby the applicant has been reverted, has been passed in June, 1993. This order also give fresh lease of limitation to the applicant. This application, therefore, is within time.

7. The first question that arises for consideration is whether the applicant is entitled to regularisation of his service without passing ~~in~~ the required examination (Written & Viva-Voce) merely because he has been working as I.O.W. Grade III on adhoc basis for over 10 years. The post of I.O.W. Grade III, admittedly is a Selection post. That apart, according to the provisions of the Indian Railway Establishment Manual a Railway Servant may be ~~xxxxxx~~ promoted to any post whether a Selection Post or a Non-Selection post only if, is considered fit to perform the duties attached to the post..It is not in dispute that for promotion to the post of I.O.W. Grade III, passing of the selection test (Written/Viva-Voce) is a condition precedent. The applicant has admittedly not passed the examination. That being so, we are of the view that ~~xxx~~ merely because the applicant held the post ~~of~~ on adhoc basis will not entitle him to claim regularisation on the

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said post as of right and appointment on adhoc basis or stop gap arrangement does not *ripen* into a substantive appointment merely by lapse of time.

8. In view of the foregoing conclusion, the next question that arises for consideration is whether a direction should be issued to the respondents to call the applicant for screening in terms of the Northern Railway Head Quarters letter dated 24.3.1986 and promote him on regular basis if he is found fit. In this connection, it may be mentioned that the cause of action to the applicant was also Pursottam Deo whose application has been allowed by the Principal Bench has arisen out of the same omission *on the part of* of the respondents. In that view of the matter, the case of Pursottam Deo, decided by the Principal Bench is in parimateria with the case under consideration before us. We have perused the judgement of the Principal Bench and we find that the respondents have substantially admitted that ~~the~~ Pursottam Deo had not been called for screening because he had not passed in the Written test. The Principal Bench examined the material before it and came to the conclusion that no further instructions modifying the instruction issued on 24.3.1986 were issued. *Hence, it is obligatory on the part of the respondents to call him for screening.*

In view of the above, the next question that arises for determination is whether the applicant was entitled for screening held on 17.10.1986 although he had not passed in the written test held in 1973, as a part of selection process for the post of I.O.W. Grade III. In the notice issued on 26.6.1986 annexed to the Rejoinder in pursuance of the instructions dated

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24.3.1986 of the Head Quarters, the applicant was one of the 24 employees called for screening test, scheduled to be held on 30.6.1986. However, the above screening was cancelled and a fresh test was held on 17.10.1986 in which the applicant was not called. This, in our view, was contrary to the instructions issued by the Head Quarters on 24.3.1986. These instructions as would appear from the judgement of the Principal Bench were issued taking into account the fact that the employees were officiating as I.O.s for a number of years. The applicant was appointed to officiate as I.O.s in 1979 and had completed 7 years of officiation by the time the screening was held in October, 1986. There is nothing in the instructions to show or indicate that only those officiating I.O.s who had passed in the written test held in 1973 selection, were called for selection/Viva-Voce test. We are, therefore firmly of the view that the omission on the part of the respondents to screen the applicant was in violation of the instruction of the Railway Board.


9. In view of the above discussions and having regard to the decision of the Principal Bench, which is in parimateria with this case, we ~~will~~ ~~not~~ allow this application and quash order dated 14 June, 1993 (Annexure A-1) reverting the applicant to the post of S.O.M. Gr. I and direct the respondents to call the applicant for screening i.e. Viva-Voce test in terms of the Northern Railway Head Quarters letter dated 24.3.1986 within a period of 3 months from the ^{date of} receipt of this judgement by the respondents. If he is found fit, he shall be regularised on the post of I.O. grade

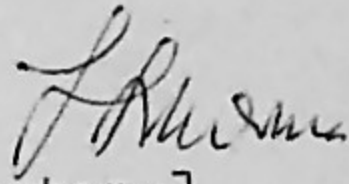
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III but placed below all those who were empanelled in the selection of I.O.s grade Rs. 425-700/- (RS) held in 1977 and the result of which was declared in 1980 and assigned seniority accordingly with all consequential benefits including seniority and promotion. It will however, be open to the respondents to revert the applicant to S.O.M. Grade I if the applicant is found unfit.


Member-A


Member-J

Allahabad Dated: 29.12.1994.

/jw/