

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1178 of 1994

Allahabad this the 12th day of July, 2001

Hon'ble Mr.S. Dayal, Member (A)
Hon'ble Mr.S.K.I. Naqvi, Member (J)

Iqbal Khan Son of Shri Yunus Khan, aged about 40 years
resident of 54, Inside Sainyergate, Jhansi.

Applicant

By Advocate Shri M.P. Gupta

Versus

1. The Union of India through the General Manager,
Central Railway, Bombay V.T.
2. The Divisional Railway Manager, Central Railway,
Jhansi.
3. The Chief Personnel Officer(HQ), Central Railway,
Bombay V.T.

Respondents

By Advocate Shri G.P. Agrawal

O_R_D_E_R (Oral)

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

This application has been filed for a
direction to the respondents to consider the app-
licant for the post of A.P.O. class II and promote
the applicant after taking his viva voce test, if
he is found to be otherwise qualified.

2. The applicant has claimed that he was promoted to the grade of Rs.1600-2660 on ad hoc basis by order dated 26.6.89. The said post fell vacant on promotion of Shri M.C. Garg to the higher grade. In response to the applications for the post of A.P.O. Class II invited by the respondents by their letter dated 14.12.1992, the applicant applied. The applicant has mentioned that letter dated 14.12.92 invited applications from the persons who had been promoted in the scale of Rs.1600-2660 on regular basis. By a subsequent letter dated 20.1.1993, a clarification was issued that only those persons who had completed non-fortuitous service, will be eligible to apply. The applicant appeared in the written test and succeeded. He was called for viva voce test to be held subsequently but was not allowed to appear and was informed that he had not completed 3 years non-fortuitous service and, therefore, he was not eligible for promotion to the post of A.P.O Class II. The applicant has filed this O.A. on account of said act of the respondents.

3. We have heard the arguments of Shri M.P.-Gupta, counsel for the applicant and Shri G.P.Agrawal, counsel for the respondents.

4. Learned counsel for the applicant has contended before us that the applicant had completed 3 years of non-fortuitous service as he had been promoted on ad hoc basis by order dated 26.6.89 and on regular basis by order dated 21.06.90. Thus, on the date when applications were invited i.e. on 14.12.92 he had completed 3 years of non-fortuitous service.

He states that the applicant was entitled to be ...pg.3/-

promoted to the grade of Rs.1600-2660 although he was appointed on ad hoc basis and that he was actually promoted to the said grade on regular basis w.e.f. 21.06.90

5. The second contention of learned counsel for the applicant is that the persons who were junior to him, were selected while the applicant was not allowed to appear in the interview. He has in this connection mentioned the name of Shri M.K. Agarwal, Shri S.L. Varshney, Shri R.C. Bkhtani, and Shri D.K. Singh.

6. As regards first contention of learned counsel for the applicant, the requirement mentioned in the letter dated 14.12.1992 regarding the nature of service, was that the applicants of specified categories should have been regularly promoted and working in the grade of Rs.1600-2660 as on 31.12.1992. Subsequently a clarification was given by letter dated 20.01.1993 that the Railway Board by their letter dated 22.12.1992 (---) had clarified that only those employees who had put in three years of non fortuitous service in the grade of Rs.1600-2660 and above were eligible for selection against 70% quota of vacancies of Assistant Personnel Officer. The Chief Personnel Officer, Central Officer instructed the D.R.M. to scrutinise the applications and on the basis of revised condition of eligibility and sent the applications to the Chief Personnel Officer by 08.2.1993 (annexure A-6). The Chief Personnel Officer by his letter dated 25.4.94 had mentioned that ad hoc services could not be treated as non-fortuitous one and that the applicant did not

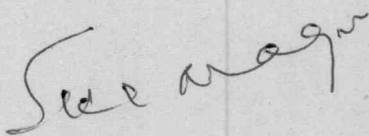
fulfil the service condition and, therefore, not eligible to appear in the viva voce test. The contention of learned counsel for the applicant that the requirement of regular service having been changed to non-fortuitous service would make the applicant eligible for the post of A.P.O. Class II, is not valid because the fact that the requirement was of regular service which was later on clarified as non-fortuitous, the applicant who has tendered almost one year ad hoc service, could not be considered to be eligible for the post because ad hoc service can neither be treated as non-fortuitous nor regular. A person is regularly promoted only when his promotion has been made after following the due procedure. The contention of learned counsel for the applicant that ad hoc promotion is also a promotion made after following due procedure, cannot equate ad hoc service with regular service and does not make ad hoc service a non-fortuitous service.

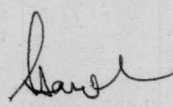
7. As regard the argument of learned counsel for the applicant that persons junior to him were considered for the promotion of A.P.O. class II and included in the select list, the respondents have replied that Shri R.C. Bhaktani belonging to the cadre of O.S. Grade I, Shri S.L. Varshney belonging to the cadre of P.A., Shri M.K. Agarwal and Shri D.K. Singh belong to the cadre of S.L.W.I. The claim of the applicant that they were junior to him is not borne out by the details given by the respondents in the chart at page 6 of the C.A. Shri R.C. Bhaktani was promoted in the grade of Rs.1600-2660 on 16.11.98 and Shri S.L. Varshney was promoted in the

same grade on 06.10.88. Shri M.K. Agarwal was promoted in that grade on 12.05.86 and Shri D.K.Singh was promoted on 23.12.1987. Thus, the so called juniors had completed more than 3 years regular service in the grade of Rs.1600-2660 while the applicant was found in wanting in this respect.

8. Learned counsel for the applicant has submitted that Shri P.N. Arya was junior to him in the scale of Rs.2000-3200 and should, therefore, be considered junior to him in the pay scale of Rs.1600-2660 also. We find this contention of learned counsel for the applicant to be not valid as the respondents in their supplementary counter-affidavit have filed the seniority list of Personnel Inspector Grade II in the scale of Rs.1600-2660 as on 01.1.1994, in which Shri P.N. Arya is shown at serial no.5 and Shri Iqbal Khan-the applicant is shown at serial no.11 with the date of continuous and non-fortuitous holding of post by Shri P.N. Arya as 31.03.1983 and Shri Iqbal Khan-the applicant as 14.05.90.

9. We, therefore, find neither of the contentions of learned counsel for the applicant to be valid. The O.A. is, therefore, dismissed as lacking merits. No order as to costs.


Member (J)


Member (A)

/M.M./