

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 3rd day of May 2001.

Original Application no. 1077 of 1995.

Hon'ble Mr. S.K.I. Naqvi, Member-J
Hon'ble Maj Gen K.K. Srivastava, Member-A

Vinod Kumar Bajpai,
S/o Sri M.P. Bajpai,
R/o 20 LIC Burra-2,
KANPUR

... Applicant

C/A Sri R.C. Pathak
Sri I.P. Srivastava

Versus

1. Divisional Railway Manager,
Division Allahabad Railway,
Allahabad.
2. Divisional Personal Officer,
Division Allahabad Northern
Railway Allahabad.
3. Union of India through its Secretary,
Railway, New Delhi.

... Respondents

C/Rs. Sri A.V. Srivastava

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O R D E R (Oral)

Hon'ble Mr. S.K.I. Naqvi, Member-A.

The applicant has sought for relief to the effect that the respondents be directed to appoint the applicant at the post of Ticket Collector in Northern Railway and to give him seniority with other similarly situated Ticket Collectors, who have joined after passing the examination. The applicant has also claimed the salary as Ticket Collector.

2. As per applicant's case he was appointed as Portor on 8.6.84 in Allahabad Division of Northern Railway and he joined on the same date. It was in the year 1986 that he was promoted to the post of Switchman in the pay scale of Rs. 1200 - 2040. While he was working as Switchman there was derailment of 8 Dn Passenger train. The applicant was subjected to disciplinary proceedings and on 25.2.88 he was reverted to the post of Portor for a period of 3 years. During the period of punishment, the applicant appeared in the written test for the post of Ticket Collector and qualified the same. He was ^{for} also sent for training, which he completed successfully. He also completed the practical training of Ticket Collector. To join the post of Ticket Collector, the applicant surrendered the post of Switchman which he held at that time i.e. in February 1991. This surrendered of post was accepted vide letter dated

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13.5.91, copy of which has been annexed as annexure
When
5 to the O.A. /the applicant contacted to get the
for the post of Ticket Collector
posting order, it was refused to him. The applicant
preferred a representation, but without any success.
Therefore, he has come up before the Tribunal.

3. The respondents have contested the case, filed counter affidavit, mainly on the ground that at the relevant time the applicant was holding the post of Switchman and a Switchman was not eligible to appear in the qualifying test for the post of Ticket Collector. The applicant's candidature was cleared because in his application he mentioned himself to be a Portor whereas a Porter could very well appear in the examination for selection to the post of Ticket Collector.

4. Heard learned counsel for the rival contesting parties and perused the record.

5. It is quite evident from the facts as has come out from the pleadings that only those candidate could appear in the selection test for Ticket Collector, who were holding post below the post of Ticket Collector. It is also not in dispute that the post of Switchman is higher in Grade than that of Ticket Collector and having better scale of pay. The applicant mentioned himself to be a Portor to get cleared his candidature to appear in the

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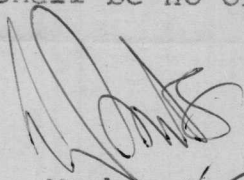
examination for the post of Ticket Collector, though actually he was on the role of Switchman and he was reverted for a limited period as per order by the disciplinary authority and thereby his substantive post at that time was that of Switchman and, therefore, he was not eligible for selection as Ticket Collector. Learned counsel for the applicant vehemently mentions that at no point of time the applicant concealed any relevant facts and he was allowed, to appear in the test and ⁶undertake the training, by the competent authority. Therefore, at subsequent stage his candidature could not be cancelled only on technical ground. We are unable to accept this contention as there cannot be any estoppel against the law and that includes the statutory rules framed by the Railway Board and, therefore, the relief sought for, to direct the respondents to appoint him as Ticket Collector cannot be granted. But at the same time we cannot ignore the fact that under legitimate expectation, the applicant surrendered the post of Switchman and it is clear from the bare perusal of Annexure A-5 that his surrender was accepted because of his having been empanelled as Ticket Collector and it will not be in the interest of justice to kick the applicant from both sides, first by disqualifying from being a candidate for the post of Ticket Collector and at the same time to take away his genuinely earned promotion from the Post of Portor to the post of Switchman because he

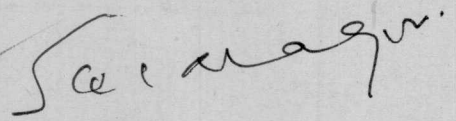
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surrendered, no doubt unconditionally, but obviously under compelling circumstances to make him eligible to be posted as Ticket Collector, ^{though} ~~for which~~ the applicant has not sought any relief, ^{still} ~~therefore~~, we find it in the fitness of circumstances ^{and in the interest of justice} to give him an opportunity to approach the departmental authority to ^{get} ~~released~~ his promotion to the post of Switchman.

6. For the above we decide this O.A. with the observation that in case the applicant prefers a representation within 4 weeks, in the light of above observation, the same may be considered sympathetically and decide within 3 months, thereafter.

7. There shall be no order as to costs.


Member-A


Member-J

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