

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 13 DAY OF 4 2010)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No.223 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Anand Shukla, Son of A.K. Shukla, Resident of 515-A, Railway Colony,
Company Bagh, Tundla.

..... Applicant

By Advocate : *Shri V.K. Singh*

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager Northern Railway, DRM Office Allahabad,
3. Divisional Personnel Officer Northern Railway DRM Office Allahabad.

..... Respondents

By Advocate : *Shri A. Tripathi*

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

By this Original Application, filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for a direction to the respondent No. 3 to interpolate and include his name for the post of Section Controller Grade 1400-2600, (RPS) in the modified panel dated 09.02.2001 (Annexure-10 of O.A) coupled with prayer for a direction to the respondent No. 2 to include the name of the applicant in the panel for the post of Section Controller Grade Rs. 1400-2600 (RPS) dated 31.07.1997 (Annexure - 12 of O.A) and to pay salary to him in revised grade Rs. 5500-9000 for the period from 15.08.1990 to 08.01.2002 and other consequential relief/s.

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2. The facts of the case, in brief, are that the Applicant, who was initially appointed as Assistant Station Master in the year 1982 under DRM, erstwhile Allahabad Division of Northern Railway, was allowed to work as Section Controller in grade 1400-2600 (RPS) on ad hoc basis vide order dated 17.01.1990 issued by the Assistant Operating Superintendent, Northern Railway, Tundla (Annexure -1 of O.A) and joined the post on 15.08.1990 and continued to work as such without any break at Tundla. The DRM of erstwhile Allahabad Division of Northern Railway / respondent no.2, issued a notification dated 22.06.1990, inviting applications from amongst Assistant Station Master on prescribed form for promotion to the post of Section Controller grade 1400-2600(RPS) against 75% quota (Annexure A-3), and the applicant being eligible candidate, submitted his application. As per the Notification dated 22.06.1990, the selection for promotion on the post in question comprised of written test as well as Viva-voce test. The written test was held on 02.02.1991 and 09.02.1991, in which the applicant including one Sri D.P. Singh and 10 similarly situated adhoc Section Controllers were not allowed to appear. Being aggrieved the applicant and D.P. Singh filed O.A. No. 484 /95, jointly, whereas O.A. No.355 of 1991 and 708 of 1991 were filed by other similarly placed adhoc Section Controllers posted at Tundla. This Tribunal vide judgment and order dated 07.05.1993 passed in O.A. No.355 of 1991 and 708 of 1991 directed the respondents to allow the applicants of that O.As. to appear in the supplementary written examination and in compliance thereto, the DRM of erstwhile Allahabad Division of Northern Railway vide order dated 05.10.1994 (Annexure No.4 of O.A)

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directed Chief Controller, Tundla and Allahabad to allow 10 applicants of that OAs to appear in the supplementary written test scheduled for 08.11.1994. The Tribunal in another O.A No. 484/1995 also issued similar direction to the respondents to permit the applicant and D.P. Singh to appear in the supplementary written test scheduled to be conducted on 08.11.1994 and in compliance thereto, the Chief Controller Northern Railway Tundla vide letter dated 07.11.1994 (Annexure No.5) allowed the applicant and D.P. Singh also to appear in the supplementary written test held on 08.11.1994. The result of Written Test was declared on 16.02.1995 in which the applicant as well as D.P. Singh, Jai Pal Singh and Dilip Sarashwat were not declared successful. Being aggrieved Jai Pal Sharma and Dilip Singh filed Original Application No.198 of 1996 before Principal Bench of this Tribunal, in which as an interim measure, the respondents were directed to allow them to appear in viva-voce and in compliance thereto, Chief Controller Northern Railway, Tundla vide letter dated 19.03.1995 (Annexure No.6) allowed the applicant and D.P. Singh alongwith Jai Pal Sharma and Dilip Saraswat as well as other similarly situated employees to appear in the viva voce examination. The Respondents declared panel dated 04.10.1995 (Annexure No.7) containing the names of selected candidates for the post of Section Controller grade 1400-2600 (RPS).

3. Learned counsel for the applicant invited our attention to the Railway Board circular dated 19.03.1976 (Annexure No.8 of O.A) and submitted that while deciding the Original Application No. 198/1996 (Jai Pal Sharma and another Vs. U.O.I & Ors.) vide judgment and order

dated 10.11.1999 (Annexure -9 of O.A), the Principal Bench of this Tribunal, placing reliance on the circular dated 19.03.1976 has allowed the said O.A in following terms: -

“5. Considering that the applicants herein had rendered satisfactorily adhoc service for a period of more than 7 years, we find they are also entitled to the benefit of the aforesaid circular dated 19.03.1976. Admittedly they have passed the written examination and it is only on the basis of the interview that they were included in the panel and not found suitable on the basis of the merit position. In terms of the aforesaid circular they should not have been declared as failed in the interview. Following the ratio of the Supreme Court in P.C. Srivastava's case (Supra), we find that the applicants are entitled to be declared successful in the examination and for inclusion of their names of the impugned order dated 4.10.1995 (Annexure A-1).”

9. Learned counsel for the applicant would contend that the writ petition no. 3411 of 2000 filed by the respondents before High Court Delhi against judgment dated 10.11.1999 (referred to above) was dismissed vide judgment and order dated 26.07.2000. Learned counsel for the applicant further would contend that after the judgment dated 10.11.1999, which was upheld by the Hon'ble Delhi High Court, respondents issued order dated 09.02.2001 modifying the panel dated 04.10.1995 and 04.07.1997 by deleting 7 names from the panel dated 04.10.1995 and 04.07.1997 and included 9 names and finally declared a provisional panel of 17 candidates.

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4. Learned counsel for the applicant submitted that in modified Panel dated 09.02.2001 although name of D.P. Singh (similarly situated employee) has been included but the applicant has been singled out, which is against the circular of the Railway Board dated 19.03.1976 (Annexure-8 of O.A). Learned counsel for the applicant further submitted that the action of respondents in not including the name of the applicant in the modified panel dated 09.02.2001 is also discriminatory inasmuch as A.K. Srivastava, S.K. Dubey, D.P. Singh, S.K. Srivastava, P.N. Tripathi etc, who were also similarly situated adhoc employees have been included in the panel for the post of Section Controller Grade 1400-2600 (RPS). Learned counsel for the applicant further submitted that the applicant was also not allowed the officiating allowance and other monetary benefits as has been paid to other similarly situated employees for the period from 15.08.1990 to 08.01.2002. For redressal of his grievance, the applicant preferred representations dated 20.02.2001 (Annexure-18 of O.A) and 29.07.2002 (Annexure -19 of O.A) for inclusion of his name in the modified panel dated 09.02.2001, but the respondents did not pay any heed to the same.

5. On notice, the respondents filed Counter Affidavit. Learned counsel for the respondents submitted that the name of the applicant could not be included in the panel of section controller grade Rs.1400-2600/5500-9000 declared on 04.10.1995 revised on 09.02.2001 and panel dated 31.07.1997 due to his lower seniority. Learned counsel for the respondents further submitted that the case of the applicant is entirely different to those candidates, whose names were included in the panel

dated 31.07.1997 or 09.02.2001, and who were actually put to officiate as Section Controller on ad hoc basis by a formal order, whereas no such orders were issued by the competent authority of Divisional Office, Allahabad in favour of the applicant to officiate as adhoc Section Controller. The applicant is not entitled for inclusion of his name in the modified panel dated 09.02.2001. Learned counsel for the respondents invited our attention to the Annexure CA-1 and submitted that it is settled principle of law that promotion cannot be claimed as a matter of right but consideration for promotion is the right of an employee.

6. The applicant has filed Rejoinder Affidavit reiterating more or less facts as stated in the Original Application.

7. We have heard V.K. Singh, learned counsel for the applicant and Sri A. Tripathi, learned counsel for the respondents and perused the pleadings as well.

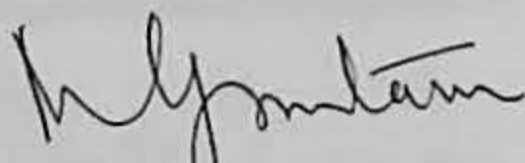
8. A perusal of Panel dated 09.02.2001 (Annexure-10 of O.A) would reveal that the names of nine employees, who were similarly situated to the applicant, were included in compliance of the direction contained in judgment dated 10.11.1999 passed in O.A No. 198/1996 and also in other O.As. We may also observe that while passing the judgment dated 10.11.1999, which was upheld by the Hon'ble Delhi High Court, the Principal Bench of this Tribunal took into account the Railway Board's Circular dated 19.03.1976, a photocopy of which has been enclosed as Annexure -8 of O.A. We have also given our thoughtful consideration to

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the said Circular dated 19.03.1976 and in our considered view the applicant deserves for consideration of his empanelment in the Panel dated 09.02.2001.

9. In view of the observations made above, the O.A is partly allowed. The applicant is directed to file a certified copy of this order alongwith fresh representation annexing therewith the copy of Railway Board Circular dated 19.03.1976 as well copy of judgment and order dated 10.11.1999 passed in O.A No. 198/1996 before the competent authority within one month from the date of receipt of certified copy of this order. If such a representation is filed within stipulated period of time, the competent authority is directed to consider the same taking into account the Railway Board Circular dated 19.03.1976 and other rules & circulars, if any, and pass appropriate reasoned and speaking order within a period of three months on receipt of certified copy of this order (as contemplated above).

10. There will be no order as to costs.


MEMBER -A.


MEMBER-J.

/Anand/