

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

Original Application No. 34 of 1988

Date of decision: February 21, 1989

Amarendra Singh Samanta, S/o Chakradhar Singh Samanta
Junior Clerk, Office of the DEN/Reg/CTC, S.E.Railway,
At/P.O./Dist. Cuttack. Applicant

-v e r s u s -

1. Union of India through the General Manager, S.E. Railway, Garden Reach, Calcutta-43
2. Divisional Railway Manager, S.E.Railway,
At-Khurda Road, P.O.Jatni,
Dist.Puri.

... Respondents

For the Applicant Mr.G.A.R.Dora, Advocate

For the Respondents ... Mr.Ramesh Ch.Rath, Addl.Standing
Counsel, Railway Administration.

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
A N D
THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgement ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes

JUDGMENT

K.P. ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the cancellation letter vide Annexure-A/11 and to command the respondents to appoint the applicant as Ticket Collector.

2. Shortly stated, the case of the applicant is that he is a Graduate and initially he joined as Class IV employee in the Engineering Department on 12.8.1975 and was posted at Khurda Road. The applicant was confirmed as Class IV employee with effect from 24.8.1976 and having passed the test for promotion to Class III category, the applicant was appointed as a Junior Clerk with effect from 12.9.1980 in the Construction line. While the matter stood thus, the applicant prayed for a change over from the post of a Junior Clerk to the post of a Ticket Collector. This prayer of the applicant was allowed at different levels and ultimately, the applicant is said to have been relieved from the post of a Junior Clerk and took training ^{at} ~~at~~ Zonal Training School, Sini vide Annexure-A/6 for the post of a Ticket Collector. After completion of the training the applicant came back and since his appointment as Ticket Collector was delayed he was temporarily retained as Junior Clerk. No orders regarding the applicant's appointment as Ticket Collector having been passed, the applicant felt aggrieved and has approached this Bench with this present application with the prayer as mentioned above. The whole thing that centres around is Annexure-A/11 dated 10.9.1987 in which it is stated that the competent authority has approved that the

change of category of the applicant to the post of Ticket Collector ~~stands~~ ^{stands} cancelled.

3. In their counter, the respondents maintained that such a change over is not permissible for incumbents serving in the construction line/Division. In addition to the above, it is also maintained that promotion having been given to the applicant in the construction line and his lien having been maintained in Group IV post it is no longer open to the applicant to claim a change over to the post of a Ticket Collector which is in the category of Class III. The crux of the stand taken by the respondents in the counter is that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G. A. R. Dora, learned counsel for the applicant and Mr. R. C. Rath, learned Standing Counsel for the Railway Administration at some length. Before we deal with the contentions of the respective counsel it is worthwhile to state that the admitted case of the parties is that the applicant after getting promotion to the post of a Junior Clerk made an application for a change over to the post of a Ticket Collector. Further admitted case is that both the posts i.e. Junior Clerk and Ticket Collector are in the grade of Class III and both the posts carry the same scale of pay. Further admitted case is that the applicant's application was considered at all relevant levels and in such levels the case of the applicant was cleared for final orders to be issued by the competent authority and the competent authority finally allowed the application and in pursuance thereto the applicant was sent to Zonal Training School at Sini for

training and the applicant successfully completed the training. In view of this admitted position it now remains to be considered as to whether an incumbent in the construction line/Division is not permitted for a change over to the category of a Ticket Collector and it also requires determination as to whether there is vacancy in the category of Ticket Collector. Mr. Rath, learned Standing Counsel for the Railway Administration strongly relied upon Annexure-R/D which has been filed on behalf of the Respondents. The contention of Mr. Rath is that the guidelines laid down forming subject matter of Annexure-R/D creates a bar for recruitment of any person to the category of Ticket Collector from the Construction Division. We have carefully gone through the contents of Annexure-R/D. In paragraph 3.1 the eligibility criteria have been laid down and those are as follows :

- " a) Should be a Matriculate/School Final.
- b) The age should not be more than 35 years including Scheduled Castes/Scheduled Tribes.
- c) Should be borne in the non-technical category.
- d) Should be medically fit in B/2 category.
- e) Should agree to accept bottom seniority.
- f) Should be substantive holder in scale of Rs.260-400 (RS)/Rs.260-430 (RS) and has put in not less than 5 years non-~~fortuitous~~ service in this grade. "

5. At the outset we may say that there was no dispute presented before us that the applicant has complied with the eligibility criteria laid down in serial Nos.1, 2, 4, 5, & 6. The only dispute which was presented before us by Mr. Rath is that the applicant not having been borne in a non-technical

category his case does not come within the eligibility criteria laid down in Annexure-R/D and therefore, he cannot be permitted for a change over from the post of a Junior Clerk to the post of a Ticket Collector. Despite vehement argument advanced by Mr.Rath on this matter we do not feel inclined to accept the contention of Mr.Rath because it is said against serial no.(c) that the concerned incumbent should be borne in the non-technical category. By no stretch of imagination it could be conceived that the post of a clerk is of technical category. We do hold that the post of Junior Clerk which was being held by the applicant belongs to a non-technical category. The contention of Mr.Rath that the applicant was in a technical category is hereby overruled. Further contention of Mr.Rath was that the applicant does not satisfy the criterion laid down against serial no.(f) because according to Mr.Rath the applicant is not a substantive holder of the post of a Junior Clerk. Doubtless, the applicant has not been confirmed in the post of Junior Clerk but that does not necessarily mean that he does not hold the substantive post. Confirmation will take place in usual course, but so long the confirmation has not taken place, it cannot be held that the applicant is not holding substantive post. As regards, Other criterion that an incumbent must hold the post for five years as non-forfuitous service, it is submitted that admittedly the applicant has served in the post for more than five years and in case of fortuitous service it has not been disputed by the respondents in their counter. In such circumstances, we also do not find any merit in the contention of learned Standing

Counsel appearing for the Railway Administration. Before we close this aspect it is worthwhile to mention that had not the applicant complied with all the criteria laid down in Annexure-R/D the competent authority would not have allowed his application. We feel that it is too late in the day for the competent authority to now ^{say} ~~say~~ that the applicant had not complied with the eligibility criteria. From the records and from the facts of the present case we have no hesitation in our mind to hold that the applicant has fully complied with the eligibility criteria laid down in paragraph 3.1 of Annexure-R/D and therefore, the competent authority had rightly allowed his prayer.

6. Next contention of Mr. Rath is that there is no vacancy at present to absorb the applicant in the post of Ticket Collector. At paragraph 8 of the application, the applicant has stated that Shri S.P. Mukherjee, Chief Ticket Collector retired on superannuation on 1.5.87. Shri G.A. Narasimha, T.T.E. retired on 1.8.87 and Shri B.B. Das, T.T.E. resigned in June, 1987, and these posts have not been filled up by the date of filing of this application i.e. 27.1.1988. In reply thereto the respondents maintained in paragraph 7 of their counter that there was no vacancy for the direct recruit quota and therefore, he would have a fresh look into the matter. The matters mentioned in paragraph 7 of the counter is stated to be the reply to paragraphs 6.5 and 6.6 of the application but there is no reply to the averments in paragraph 8 above. Conceding for the sake of argument,

Q 15

though not admitting that the averments made in paragraph 7 of the counter is a reply to paragraph 8 yet, fresh look proposed to have been given by the respondents is a happy thing but the fresh look should not act against the interest of the applicant who has already successfully completed the training and also runs the risk of losing his job as a Junior Clerk of the Construction line. In Annexure-A/8 namely the letter dated 26.3.1987 addressed to the Divisional Personnel Officer, S.E.Railway, Khurda Road by the District Engineer (REG), Cuttack it is stated as follows :

" Your attention is invited to item no.3 of this Office order No.40 of '87, Endt. No.E/4/470 dt.12.3.87. Sri Samanta has been temporarily taken to duty to avoid financial hardship to him but it is strongly recommended that he should be taken back from my district as early as possible as his services are not required by me. "

The Divisional Railway Manager, S.E.Railway, Khurda Road vide Annexure-A/9 dated 30.4.1987 addressed a letter to the Chief Commercial Superintendent, South Eastern Railway, Calcutta on the subject. In last paragraph of the said letter it is stated as follows :

" I once again request that Shri Amarendra Singh Samanta may be posted as a T.C. in any other division. "

Once the Chief Personnel Officer had cleared the case of the applicant, the principles of estoppel would strictly apply to the Chief Personnel Officer to go back upon the action already taken by him in favour of the applicant. In the premises of the aforesaid facts and circumstances, we feel that Annexure-A/11 is not sustainable. Therefore, we do hereby quash Annexure-A/11 and direct the respondents to absorb the applicant in

12

the post of a Ticket Collector either in Khurda Road Division or or in any other division subject to the condition that his seniority would go to the bottom of the list.

7. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Keerti 71.2.89.
.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN, *I agree.*



Anubha 24.2.89
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 21, 1989/Sarangi.