

In The Central Administrative Tribunal
Calcutta Bench

OA No.750 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Rabindra Nath Ghosh

... Applicant

- VS -

- 1) The General Manager, South
Eastern Railway, Garden Reach,
Calcutta-43.
- 2) The Divisional Railway Manager,
S.E.Rly., P.O. Adra, Dist: Purulia.

... Respondents

For the Applicant : Mr. B. Chatterjee, Counsel

For the Respondents: Mr. S. Chowdhury, Counsel.

Heard On : 9-9-1999

Date of Judgement : 9-9-1999

O R D E R

D. PURKAYASTHA, JM

Applicant Shri Rabindra Nath Ghosh (R.N. Ghosh), Ex-Hotweather Watermen under S.S./Kotshila, S.E. Railway filed this application, alleging that the respondents arbitrarily denied engagement of the applicant by way of absorption against the post of Group 'D' category though the junior persons to the applicant in the approved list as per Annexure A-3 to the application were absorbed. According to the applicant, as per approved list of Hotweather Waterman (Annexure A-3) the name of the applicant has been placed at Sl.No.175 and the respondents absorbed all the persons junior to him as placed at S.L.No.176 to 246 ignoring the case of the applicant. Thereby, action of the respondents is arbitrary, illegal and violation of Article 14 of the Constitution. Applicant made a representation to the authority for

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absorption in the Group 'D' post on the basis of seniority in the approved list (Annexure A-3); but respondent vide letter dated 2.2.96 (Annexure A to the application) denied the claim of the applicant stating, inter-alia, that initial engagement of the applicant was found irregular. Feeling aggrieved by and dissatisfied with the said order of refusal vide letter dated 2.2.96 (Annexure A) applicant approached this Tribunal for direction upon the respondents to absorb him in the Group 'D' post from the date when his juniors were absorbed in the Group 'D' posts from the said approved list and to grant all benefits of service in accordance with the Rules.

2. Respondents filed written reply and denied the claim of the applicant. It is stated by the respondents in their reply that applicant could not be absorbed in Group 'D' post when his juniors were absorbed from the approved list on the ground that applicant's initial engagement was found irregular and that fact has been communicated to the applicant vide letter dated 2.2.96. Moreover, applicant did not appear in the Screening Test. So, his name was deleted from the list. So, question of absorption did not arise since the applicant did not appear in the Screening Test. Therefore, application is devoid of merit and is liable to be dismissed.

3. Mr. Chatterjee, Id. Counsel appearing on behalf of the applicant contended that action of the respondents is discriminatory since all the junior persons to the applicant, as per approved list, were engaged by way of absorption in the Group 'D' post but applicant was left out without disclosing any valid reason whatsoever. It is stated by Mr. Chatterjee that in the letter dated 2.2.96 (Annexure A) they did not disclose the reason why the applicant's initial engagement was found irregular. Therefore, applicant is entitled to get the order of engagement by way of absorption in the Group 'D' post from the date when his juniors were absorbed including the cost of the application.

4. Mr. Chowdhury, Id. Counsel for the respondents contended that applicant's case was not considered since he was found over-aged. Moreover, he did not appear in the Screening Committee. Therefore, his

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name has been deleted. So, application is devoid of merit and is liable to be dismissed. It is also stated by the Ld. Counsel Mr. Chowdhury that the approved list dated 20.3.89 (Annexure A-3) was issued for *limited* purpose.

5. We have considered the submissions of Ld. Counsel for both the parties and we find that the railway respondents published the approved list in respect of employment against the Hot Weather Establishment for the period from 1.4.89 to 30.6.89 and that list has been approved by the authority for employment of them on compassionate ground from the period from 1.4.89 to 30.6.89 where it is specifically mentioned that no staff should be engaged by any officer or by any Unit Supervisor except those candidates whose names appear in the selection list. It is admitted that name of the applicant was placed at Sl.No.175. It remains undisputed from the side of the respondents that the persons placed at Sl.No.176 to 246 were engaged. But applicant was not engaged since his initial appointment was irregular. Therefore, it is found that all the junior persons in the panel have been considered and engaged by way of absorption in the Group 'D' post. But respondents did not produce any paper before us in support of written statement filed by them as to why applicant was not found suitable for absorption when his juniors were absorbed against the Group 'D' post from the said approved list. In the absence of any paper we cannot accept the contention of the Ld. Counsel Mr. Chowdhury that applicant's initial appointment is found irregular. And in the said letter dated 5/14-12-94 (Annexure R-1) respondents did not disclose any reason as to why the applicant's initial appointment was found irregular. In the reply filed by the respondents they have come with a story that applicant was found over-aged. Since the respondents could not produce any paper in support of the ^{written} statement, therefore, we have no alternative but to presume that the statement made by the respondents in respect of disqualifying the applicant for the purpose of absorption is not acceptable since respondents did not come with a true story of the fact. Naturally the question of discrimination comes when the junior persons were absorbed. Therefore, we are of the view that action of

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the respondents denying the absorption of the applicant when the juniors were engaged by way of absorption in the Group 'D' post is discriminatory and violative of Article 14 of the Constitution. So action of the respondents in this case is liable to be quashed. In view of the aforesaid circumstances, we set aside the order dated 2.2.96 (Annexure A-1 to the application) by which the respondents deprived the applicant of being absorbed in the Group 'D' post. At the same time it would be appropriate to direct the respondents to consider the case of the applicant for the purpose of absorption from the date when his ^{immediate} juniors were engaged or absorbed in the Group 'D' post and applicant should be appointed accordingly. Since the applicant did not work in the intervening period, therefore, he would not get any ^{pay}. But his pay should be ~~notionally~~ ^{retrospectively} fixed from the date of absorption of his immediate juniors till the date of appointment. Order of appointment in favour of the applicant may be issued within two months from the date of communication of this order. With this observation application is disposed of awarding no costs.

G. S. Maingi
9.9.99
(G.S. Maingi)
Member (A)

D. Purkayastha
8/9/99
(D. Purkayastha)
Member (J)

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