

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.906 of 1996

Present : Hon'ble Mr. S.K. Ghosal, Administrative Member

Hon'ble Mr. P.C. Kannan, Judicial Member

SURESH KUMAR BALMIKI
ALIAS SURESH KR. HELA

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. B. Mukherjee, counsel

For the respondents : Mr. P.K. Arora, counsel

Heard on : 4.5.2000


Order on : 4.5.2000

ORDER

S.K. Ghosal, A.M.

Heard ld. counsel for both sides.

2. The applicant who was working as ^{Ad 49} Ambulance Cleaner under the respondents was appointed to officiate as an Ambulance Driver purely on ad hoc basis in place of one Ram Phulena Sing, the Ambulance Driver, who ^{Ad 49} reported sick. The officiating arrangement specifically stipulated that it was purely on ad hoc basis and that it would not confer upon the applicant any claim for future promotion and further that the said ad hoc officiating arrangement may be terminated at any time without any notice. This order dated 10.5.91 on ^{Ad 49} that officiating arrangement is found at Annexure A-3 of the O.A.

3. The applicant is aggrieved by the subsequent order dated 6.6.1996 at Annexure A-9 of the O.A., under which ^{Ad 49} ~~the~~ an employee, who was an Ambulance Driver in some other unit, was transferred to the existing vacancy in the post of Ambulance Driver at the Kanchrapara Hospital and further ^{Ad 49} ~~that~~ one 

contd..2

more employee who has¹³ been declared as suitable for the post of Ambulance Driver was also transferred and posted as an Ambulance Driver to Kanchrapara hospital, where the applicant was working. The contention of the applicant is that at the Kanchrapara hospital there^{are} only two posts of Ambulance Drivers and in the event of the two Ambulance Drivers posted under the order at Annexure A-9, he would be thrown out of the job of the Ambulance Driver. He has sought the following reliefs:-

"(a) Direct the respondents not to revert the applicant from the post of Ambulance Driver at Kanchrapara.

(b) Direct the respondents that the applicant shall be declared fit and suitable and regularised in the existing post of Ambulance Driver, Kanchrapara immediately and he should not be replaced by any other person against the regular post of Ambulance Driver to which he is still working at Kanchrapara under Medical Superintendent, Kanchrapara.

(c) Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper."

The applicant's apprehension is that on the reporting of the two employees in pursuance of the order at Annexure A-9, he^{is} likely to be reverted.

4. It has been stated that the applicant has since been reverted, which is^{in compliance with 13} ~~provided by~~ the order seen at Annexure A-9 dated 6.6.1996 issued by the Divisional Railway Manager, Eastern Railway, Sealdah Division, who is^{the} respondent No.2.

5. The case of the applicant^{is} that he being a Scheduled¹³ Caste candidate and^{possessing} the certificate of competency as a Heavy Vehicle Driver and having rendered service as an Ambulance Driver for a number of years should have been regularised at that post. He has further averred that he had already been found fit for the purpose of Ambulance Driver and, therefore, there was no reason for the respondents to¹³ overlook his claim for regularisation at that post and to transfer two other employees from different units to work as Ambulance Drivers at the Kanchrapara hospital.

6. At the stage of final arguments, the ld. counsel for the applicant has strongly relied upon the document dated 26.3.90 issued by the Assistant Works Manager, Kanchrapara to the effect that the applicant had passed a trade test as an Ambulance Driver. The ld. counsel for the applicant has argued that once the applicant had been subjected to a trade test in 1990 and declared as having passed that trade test, only for the reason that at a subsequent trade test he was declared as failed, his claim for regularisation cannot be denied.

7. The ld. counsel for the respondents has pointed out, ⁴² ~~on the other hand,~~ that under the order dated 19.6.95 issued by the Senior Divisional Personnel Officer, Sealdah seen at Annexure R-5 the option was ~~called~~ from Group 'D' employees, who ^{had} ~~were~~ completed 3 years' continuous service, holding ^{valid} Motor Driving licence and they were required to pass the trade test and also ^{to be} declared as medically fit in order to be appointed as an Ambulance Driver, Gr.III. The defence taken by the respondents is that ⁴² ~~the applicant~~ ^{in response to R-5, 42} through his petition dated nil received by the respondents on 24.7.95 had specifically ^{42 offered} ~~presented~~ himself as a candidate for the post of Ambulance Driver Gr.III. In ⁴² ~~response to~~ ⁴² the communication at R-5, thereafter, the respondents have asserted, ~~that~~ ⁴² a trade test was held and the applicant was declared failed. In support of the latter statement the respondents have furnished a copy of the communication dated 22.2.96 seen at Annexure R-11. We find that the name of the applicant does not figure in the list of the candidates who had passed the trade test and ^{42 were} ~~called~~ upon thereafter to appear for ^{the} higher medical fitness test. The respondents have then argued that it was the option of the applicant which was considered at the time ~~when~~ vacancies in the post of Ambulance Driver in Kanchrapara were sought to be filled and, in that context, the option had been called from ^{all 42} ~~those~~ who were eligible, subject to their passing the trade test and ~~their~~ being

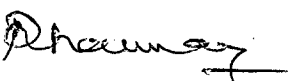
found medically fit. The ld. counsel for the respondents has argued that once the applicant has voluntarily participated in that process and has not been found fit at the selection, it is no longer ^{open to him} ~~upon him~~ to question the regularity ^{and validity} of that selection process.

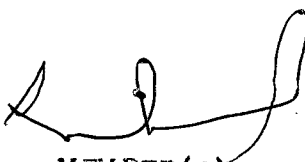
8. It has not been denied by the applicant that there was indeed a trade test held in 1995 for which options ^{had} ~~have~~ been called and where he had participated voluntarily. The contention made on behalf of the applicant that having passed a trade test held in 1990 he should have automatically been regularised against one of the posts of Ambulance Driver at Kanchrapara, in our considered view does not appear very convincing in the light of his own option ^{to appear at the subsequent test} ~~as evidenced~~ under Annexure R-7 dated 24.7.1995, mentioned above, and his participation in the selection process comprising a trade test held in 1995. If the applicant had any grievance about the respondents in respect of holding a fresh trade test in 1995 on the ground that he had already ^{been declared} ~~been decided~~ and found fit for the post of Ambulance Driver, it was open to him to challenge the selection process initiated by the respondents under the communication at Annexure R-5 referred to above by us.

9. It is well settled that a candidate who participates at a selection process and is not declared successful cannot turn around after having been so declared and question the validity of the selection process itself. The Hon'ble Supreme Court has clearly laid down this principle in the form of a case law.

10. On behalf of the applicants no other ground has been advanced for declaring the selection process conducted in 1995 as invalid. We are, therefore, unable to grant the relief ^{sought} ~~as~~ by the applicant.

11. The O.A. is ^{thus} ~~is~~ without any merit and hence it is rejected. No order as to costs.


MEMBER(J)
s.m.


MEMBER(A)