

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 972 OF 1996

Present : Hon'ble Mr. D. Purkayastha, Member (J)
Hon'ble Mr. V.K.Majotra, Member (A)

Ganesh Prasad Vishwakarma
S/o Late Jagdish Vishwakarma,
Vill. & P.O. Lohra, PS & Dist.
Jamaui, Bihar,
Junior Draftsman
O/o Sr.Div. Engineer,
E. Rly. Mughalsarai

VS

1. Union of India through the
General manager, E. Rly.
Fairlie Place, 17, Netaji Subhas Road,
Calcutta-1
2. The Chief Personnel Officer (Admn.)
E. Rly. Fairlie Place, Calcutta-1
3. The Div. Railway Manager,
E.Rly. Mughalsarai, U.P.
4. The Sr. Div. Personnel Officer,
E.Rly. Mughalsarai, U.P.
5. The Sr. Div. Engineer, E.Rly.
Mughalsarai, U.P.

.... Respondents

For the applicant : Mr. R.K.Jha, Counsel

For the respondents : Mrs. U.Bhattacharya, Counsel

Heard on : 13.8.2001 : Date of order : 11.9.2001

O R D E R

V.K.Majotra, A.M.:

The applicant has challenged annexure-A3 dated 28.5.96 issued by respondent No. ⁴ ~~Sr. Div. Personnel Officer, E. Rly. Mughalsarai~~ ^{order of 11.9.2001} communicating ~~reversion~~ the applicant from the post of Junior Draftsman to his substantive post of Khalasi, ^{which had been passed by respondents 2.}

2. The applicant was initially appointed as casual Tracer on 18.9.80. According to the applicant, on completion of 120 days of working, he was accorded temporary status. But his services were terminated vide letter dt. 12/18th July, 1984. By letter dt. 19.7.84, the applicant was offered the post of Khalasi in Class IV in the then scale of Rs. 196-232/-. He was medically examined and found

fit in B-1 category in May 1985. He was promoted on a temporary basis to the post of Tracer in the then scale of Rs. 260-430/- in Class III category by the DRM on 8.2.85 (annexure-A). He was found suitable in the suitability test held in November 1991 for the purpose of regularisation of his service as Jr. Draftsman. He was promoted as Jr. Draftsman in the scale of Rs. 1200-2040 (RP) vide order dt. 9.12.91 (annexure-A1) and posted in the Drawing Section. He was made to undergo refresher course training in the Zonal Training School at Bhulli, Dhanbad for a period of one month as per annexure-A2. It is stated by the applicant that the respondent No. 5 vide his order dt. 14.3.96 directed reversion of the applicant to his substantive post of Khalasi and in pursuance of that order, the impugned order dt. 28.5.96 was issued by the Sr. Div. Personnel Officer reverting the applicant to the post of Khalasi. According to the applicant, some similarly placed employees, who had also been reverted, had filed some writ petitions in the Calcutta High Court. The writ petitions were allowed and the termination of such employees was quashed and they were reinstated as Jr. Draftsman. The applicant gave a representation to the authorities for extension of benefit of the judgement of the Calcutta High Court but the same was not granted to him. The applicant has further stated that as per circular dt. 25.6.85 issued by the CPO, even the non-qualified Tracers were to be progressively promoted to the post of Jr. draftsman in the scale of Rs. 330-560/- as and when they completed five years of service or acquired the necessary qualifications vide annexure-A7. According to the applicant, having been promoted as Tracer on temporary basis on 8.2.85 (Annexure-A) and having completed 5 years' service as such, he had qualified himself on 7.2.90 for promotion on upgradation as Jr. Draftsman as per the circular at annexure-A7. The applicant has sought quashing and setting aside of the order of reversion dated 28.5.96 (annexure-A3).

3. In the reply, the respondents have stated that the applicant had been appointed as casual Tracer in an irregular manner and that on

termination of his service as casual Tracer, he was offered the job of Class IV which he accepted. He had worked as Tracer for six months only on an ad hoc basis. He had not passed any test for regularisation as Tracer and that the post of Tracer had been frozen by the Railway Board's order dt. 25.6.85. According to the respondents, the applicant had never been promoted as Jr. Draftsman in the scale of Rs. 1200-2040/-. He was not eligible for the post of the Draftsman without regularisation of his service as Tracer. Thus, the suitability test conducted for the post of Jr. Draftsman in the month of November, 1991 was irregular and erroneous. According to the respondents, those who were working as Tracers on regular basis were adjusted on the posts of Jr. Draftsman as per instructions of the Railway Board dt. 25.6.85 and the left over vacancies of Jr. Draftsman were to be filled up through Railway Recruitment Board by direct recruitment. The respondents have denied that the applicant had worked as Tracer on a temporary basis from 8.2.85 to 7.2.90 and later on.

4. We have heard the learned counsel of both sides and considered the materials on record.

5. The learned counsel for the applicant stated that the applicant was promoted to the post of Tracer on 8.2.85 and held the post thereafter and cleared the suitability test for the post of Jr. Draftsman in November, 1991. Apart from this, the applicant could have been promoted by upgrading his post as Jr. Draftsman as he had completed 5 years of service as Tracer in terms of Railway board's instruction dated 25.6.85 (annexure-A7). The learned counsel also stated that the applicant should have been given the benefit of the judgement dated 15.1.93 in TA 376 of 1987 (Chiranjit Singh - Vs- UOI & Ors (copy at annexure- A9) where in identical case, the petitioner was ordered to be considered for the post of Jr. Draftsman by the respondents in accordance with the instructions contained in the Railway Board's circular dt. 25.6.85.

6. From annexure-A dated 8.2.85, it is clear that the applicant

... of his service as casual tracer, he was offered the job of Class IV which he accepted. He had worked as tracer for six months only on an ad hoc basis. He had not passed any test for regularisation as tracer and that the post of tracer had been frozen by the Railway Board's order dt. 25.6.55. According to the respondents, the applicant had never been promoted as Jr. Draftsman in the scale of Rs. 1200-2040/-. He was not eligible for the post of the Draftsman without regularisation of his service as tracer. Thus the suitability test conducted for the post of Jr. Draftsman in the month of November, 1951 was irregular and erroneous. According to the respondents, those who were working as tracers on regular basis were adjusted on the posts of Jr. Draftsman as per instruction of the Railway Board dt. 25.6.55 and the left over vacancies of Jr. Draftsman were to be filled up through Railway Recruitment Board direct recruitment. The respondents have denied that the applicant had worked as tracer on a temporary basis from 8.2.55 to 7.2.56 and later on.

4. We have heard the learned counsel of both sides and considered the materials on record.

5. The learned counsel for the applicant stated that the applicant was promoted to the post of tracer on 8.2.55 and held the post thereafter and cleared the suitability test for the post of Jr. Draftsman in November, 1951. Apart from this, the applicant could have been promoted by upgrading his post as Jr. Draftsman as he had completed 5 years of service as tracer in terms of Railway Board's instruction dated 25.6.55 (Annexure-A7). The learned counsel also stated that the applicant should have been given the benefit of the judgement dated 15.1.53 in TA 376 of 1937 (Chitranjit Singh - Vs - UOI & Co. copy at Annexure-A9) where in identical case, the petitioner was ordered to be considered for the post of Jr. Draftsman by the respondents in accordance with the instructions contained in the Railway Board's circular dt. 25.6.55.

6. It is next to be seen whether it is clear that the applicant

was appointed to officiate as Tracer in the scale of Rs. 260-439/- on a temporary basis for a period of six months. On 9.12.91 vide annexure-A1, the applicant, who had been working as casual Tracer, was found suitable in the suitability test of Jr. Draftsman in the scale of Rs. 1200-2040/-(RP) on pay Rs. 1200/- vice vacancy in the Drawing Section. It is, therefore, clear that the applicant having been appointed as Tracer on 8.2.85 was continuing as such even on 9.12.91 and had completed more than five years service as Tracer. He had also undergone refresher course training of Draftsman in August/September, 1992. Even if the contention of the respondents that the applicant had been allowed to appear in the suitability test for the post of Jr. Draftsman in November, 1991 in an irregular manner, is taken to be correct, the respondents cannot escape the responsibility of considering his case for promotion by upgrading the post of Jr. Draftsman, the applicant having completed more than five years service as Tracer in terms of Annexure-A7 dated 25.6.85. The relevant paras of the circular dt. 25.6.85 i.e. paras (i), (ii) & (iii) read as follows :-

"(i) Those who possess the diploma in Draftsmanship from recognised institutions will be upgraded as junior Draftsman Scale of Rs. 330-560/-

(ii) Those who do not possess diploma in draftsmanship but have completed 5 years of service as on 1.1.84 will be upgraded as junior draftsman in scale Rs. 330-560/-

(iii) The balance non-qualified Tracers will be progressively promoted by upgrading their posts as Junior Draftsman Rs. 330-560/- as and when they complete 5 years of service or acquire the necessary qualification. The review will be done every six months commencing from 1.7.86. "

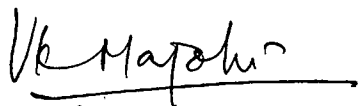
7. In our view, the applicant's case can easily be considered in terms of para (iii) quoted above. The ratio of the decision in Chiranjit Singh's case (supra) is squarely applicable to the facts of the present case. The Tribunal's observations and directions in that

case are as follows :-

" In view of the above position and in view of the fact that the applicant has been working as Tracer even though on ad hoc basis for a pretty long time and to some extent by virtue of the interim order, we direct that even though by virtue of the recruitment rules, Tracer would have to be selected through Railway Recruitment Board, but as a special case and in the light of the judgement of the Patna Bench referred to above, the case of the applicant be considered for the post of Junior Draftsman by the respondents in accordance with the instruction of the Railway Board circular dated 25.6.85 within a period of one month from the date of communication of this order. The order of termination dated 12th July, 1984 be hereby set aside. ..."

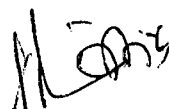
8. Having regard to the reasons recorded and discussion made above, we find that the applicant had been working as Tracer temporarily for over five years and even though by virtue of recruitment rules, Tracers have to be selected through Railway Recruitment Board, ^{but} ~~as~~ ^{as} a special case, ⁱⁿ ~~in~~ the light of the judgement in Chiranjit Singh case (supra) and also in terms of Railway Board's circular dated 25.6.85 (annexure-A7), we direct the respondents to consider the applicant for the post of Junior Draftsman within a period of one month from the date of communication of this order. The order of termination ~~is hereby~~ ^{is hereby} (annexure-A3) ^{dr. 28.5.96} set aside.

9. The application is disposed of in the above terms without any order as to costs.



(V.K. Majotra)

MEMBER(A)



(D. PURKAYASTHA)

MEMBER(J)