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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 9.3.1998

O.A. No. 300/1995

Kishore Prakash son of Late Shri M.L. Sharma, aged about 35 years, at present working as Mali in the grade of Rs. 775-1025 under Inspector of Works (Building), Northern Railway, Jodhpur, resident of Near Jain Temple, Moti Chowk, Jodhpur.

... Applicant.

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Jodhpur.
3. The Divisional Personnel Officer, Northern Railway, Jodhpur.
4. Shri Shiv Ram son of Shri Kheta Ram, SOM (Horticulture), C/o. I.O.W. (bldg.), Northern Railway, Jodhpur.

.... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the Respondents Nos. 1 to 3.

None present for Respondent No. 4.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicant, Kishore Prakash, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the order dated 6.6.1995 (Annexure A/2) and further for issuing a direction to the respondents to conduct the screening of only suitable and eligible staff for the post of S.O.M (Horticulture) and also to consider his candidature for the same.

2. The case of the applicant is that he was appointed to the post of Khalasi in the workshop at Jodhpur on 4.10.1979 and he was transferred to Jodhpur Division on the post of Mali on 3.10.1980. That he was also given the benefit of restructuring vide order dated 29.4.1993 (Annexure A/3) in the grade of Rs. 800-1150. The respondents' order dated 6.9.1995 (Annexure A/2) deals with the promotion to the post of S.O.M (Horti- culture) of one Shri Shiv Ram (respondent No.4). The applicant has challenged this order on the ground that Shri Shiv Ram is an illiterate person and does not fulfil the

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prescribed eligibility conditions. As per the seniority list of Mali/Khalasi (Annexure A/4) furnished by the applicant, his name figures at serial No. 12. The contention of the respondents is that Shri Shiv Ram was senior-most person in the grade of Rs. 800-1150 and accordingly, he was appointed on the work-charge post of S.O.M (Horticulture) on ad hoc basis and that the applicant is much junior in the seniority list and there being no post, his case could not be considered.

3. We have heard the learned counsel for the parties and have perused the records of the case.

4. The applicant has challenged the appointment of Shri Shiv Ram as Shri Shiv Ram was not eligible for consideration. Shri Shiv Ram has since retired from service and moreover, he was appointed as S.O.M (Horticulture) on adhoc basis and as such we do not feel it necessary to consider this aspect at the present juncture. As regards the case of the applicant for consideration for appointment to the post of S.O.M (Horticulture), it is seen that the applicant had also earlier approached this Tribunal vide O.A. No. 50/95. This O.A. was disposed of by this Tribunal on 3.2.1995 with a direction to the respondents to consider the representation of the applicant dated 15.11.1994 and take necessary action on the issues raised therein within a period of two months. This representation of the applicant was rejected by the respondents vide letter dated 21.2.1995 (Annexure A/1) with the result that the applicant had to approach this Tribunal again through the present O.A.

5. During the course of hearing on 1.1.1998, it was pointed out by the learned counsel for the respondents that one work-charge post of S.O.M (Horticulture) had been created and is yet to be filled in. Accordingly, this Tribunal had observed as under :-

"Looking to the submissions made above, we expect the authorities to consider the candidature of the applicant for the post in question, if he is eligible for consideration as per rules. It is observed that if the authorities are proceeding to fill in the post in question then the progress should be reported to the Tribunal by the next date. Otherwise, the O.A. would be heard on merits."

The case came up for hearing again on 3.3.1998 when the learned counsel for the official respondents informed that as per the directions given on 1.1.1998, the candidature of the applicant could not be considered because there was no post of S.O.M (Horticulture) on work-charge basis available for being filled in. It has also been verified from the official file produced by the learned counsel for the respondents before us. The learned counsel for the respondents has also stated that Shri Shiv Ram (respondent No.4) was

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working on a work-charge post and that post ceased to exist with the retirement of the incumbent. It may be mentioned that no post of S.O.M (Horticulture) has been sanctioned on regular basis in the Jodhpur Division. The post is created on work-charge basis as and when necessity arises and presently no post of S.O.M (Horticulture) is available for being filled in. Moreover, we find that the applicant is much junior in his cadre. As such the applicant has to wait till the post of S.O.M (Horticulture) is sanctioned on work-charge/regular basis for Jodhpur Division, for consideration of his candidature for appointment to the said post. We thus find that the applicant has no case for the present. The application is liable to be dismissed.

6. The application is accordingly dismissed with no order as to costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K. Misra
(A.K. MISRA)
Judicial Member

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Section officer (Record)