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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

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Date of Decision: 23.7.97

OA 210/96

Tola Ram, Driver (Group-C) in the office of CIOW, Ranapratap Nagar, Udaipur.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Sr.Divisional Engineer (E), Western Railway, Ajmer.
4. The Chief Inspector of Works, Western Railway, Ranapratapnagar, Udaipur.

... Respondents

CORAM:

HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR.O.P.SHARMA,ADMINISTRATIVE MEMBER

For the Applicant

... Mr.J.K.Kaushik

For the Respondents

... Mr.S.S.Vyas

O R D E R

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, Shri Tola Ram has prayed that the order dated 6/14.6.96 (Ann.A-1), passed by the Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer (Respondent No.2), placing a ban on operating the post of Driver, may be declared illegal and be quashed and the applicant may be allowed to continue to work on the said post. He has further prayed that the respondents may be restrained from reverting the applicant from the post of Driver scale Rs.950-1500 and if any order of reversion is passed, the same be quashed and all consequential benefits be allowed to the applicant.

2. The applicant's case is that he was initially appointed on the post of Beldar in the Railways at Ranapratap Nagar, Udaipur, on 21.4.84 for a period of six months, which period was further extended from time to time. Before appointment of the applicant on the post of Driver, a medical examination was conducted, in which the applicant was found fit and was also subjected to trade test, which he passed. The applicant was continued on the post of Driver without any interruption and there is still one sanctioned post of Driver available with respondent No.4 i.e. the Chief Inspector of Works, Ranapratap Nagar, Udaipur, as indicated in the position of sanctioned posts as on 16.5.90 (Ann.A-5). The applicant sought promotion to the post of Driver Grade-II as he has not been given promotion for more than a decade. However, instead of granting promotion to him, an order has been passed by respondent No.2 on

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6/14.6.96 (Ann.A-1) stating therein that the post of Truck Driver scale Rs.950-1500, sanctioned as a work-charged post, has been created from 19.2.90 for a period of six years four months and fifteen days and that after 5.7.96 this post shall not be operated. The applicant was informed verbally that he would now be reverted to his original post of Beldar after 5.7.96. He now apprehends his reversion. Earlier, an order dated 30.12.94 (Ann.A-6) was passed, by which the applicant was sought to be reverted but that order was not given effect to, because there was a sanctioned post of Driver available.

3. According to the applicant, he has been working on the post of Driver after due selection and he had enjoyed all the benefits of the post of Driver for the last 12½ years since 1984. He has a vested right to hold the said post and he cannot be reverted to any lower post except as a measure of penalty. Order Ann.A-1 dated 6/14.6.96 has been passed with a view to spoiling his career prospects. Since he has worked on the post of Driver for more than 18 months and appointment was given to him after considering the candidature of all the candidates in the zone of consideration, he cannot now be reverted to the lower post.

4. The respondents in their reply have stated that the applicant was initially appointed as a Truck Driver against a work-charged post for a period of 12 months and the period was subsequently extended. However, further extension for the said work was not obtained by the competent authority and accordingly order Ann.A-1 dated 6/14.6.96 has been passed, rectifying this irregularity. It has been clarified in Ann.A-1 that sanction for the post of Truck Driver has been granted upto 5.7.96 and that it shall not be operated thereafter. The applicant is however still working against the said post on account of a stay granted by the Tribunal vide order dated 12.7.96. The post of Truck Driver is not a cadre post. The applicant has, therefore, no right to continue on the said post after 5.7.96. Since the post of Truck Driver is a safety category post, the applicant was required to pass the prescribed trade test as well as the medical examination before he was posted as such. There is no sanctioned post of Truck Driver available with the respondents at present. The applicant will have to revert to his original substantive post after the period of the work-charged post has expired.

5. The applicant filed a rejoinder as well as an additional affidavit. In the rejoinder it has been stated that more than one motor vehicle is available for being driven at Ranapratap Nagar. Certain other persons have been given the duty of driving these vehicles at Ranapratap Nagar. The post of Truck Driver is not a safety category post and since the applicant had worked for more than 18 months on the said post, he cannot be reverted. In the additional affidavit, the point regarding availability of vehicles at Ranapratap Nagar for being driven has been reiterated.

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6. The respondents have filed an additional reply, wherein they have reiterated that the applicant was appointed on the post of Driver on work-charged basis. Initially a notification Ann.R-4 dated 2.4.84 was issued for appointment to the post of Driver on work-charged basis. In pursuance of the said notification, one post of Driver was created for a period of 12 months, for filling up which a provision of trade test of the incumbent was made. The applicant applied for the post and was appointed as Driver on work-charged basis vide Ann.R-5 dated 11/17.4.84 for a period of six weeks, on ad hoc basis, with stipulation that he will have to pass the trade test. After he cleared the trade test, the applicant was appointed temporarily on the post of Driver for six weeks but his term was further extended from time to time. Applicant's working on the post of Driver was subject to the sanction of the work-charged post. They have denied that a clear sanctioned post of Driver is available at Ranapratap nagar itself. The two persons mentioned by the applicant as working as Driver at Ranapratap nagar had retired in 1986 and 1991 respectively. They were working on Open Line, whereas the applicant was engaged as Driver against a work-charged post. It has been reiterated by the respondents that the Driver's post is a safety category post. No sanctioned post of Driver is at present available. The applicant has no right, therefore, to continue on the said post.

7. The learned counsel for the applicant stated during the arguments that since the applicant was subjected to a trade test and a medical examination before appointment on the post of Driver and since he has worked on the said post for more than 12 years, now he has a right to continue on the said post. He drew our attention to Ann.A-2 dated 6.8.84, by which he was appointed on the post of Driver. In this letter there is no mention that he was appointed against a work-charged post, although there is indeed a reference therein to his appointment on temporary basis. Therefore, the respondents are not justified now in turning around and stating that the post is a work-charged one and once the post is abolished, the applicant has no right to continue on the post of Driver. What has been stated in Ann.A-1 is something which the applicant has not been apprised of earlier. He reiterated that one post of Driver is still available at Ranapratap Nagar, against which the applicant could be allowed to work.

8. The learned counsel for the respondents stated during his arguments that order Ann.A-2 dated 6.8.84, by which the applicant was appointed, makes a reference to Ann.R-5 dated 11/17.4.84, in which it is clearly stated that the post is a work-charged one and that the applicant's appointment on this post is purely temporary. Thus, the applicant was aware that the post against which he was working is a work-charged one and once there is no post of Driver available, the applicant cannot continue thereon regardless of the number of

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years for which he has worked on the said post.

9. We have heard the learned counsel for the parties and have perused the material on record.

10. It is true that the applicant was subjected to a trade test and also a medical examination before appointment on the post of Truck Driver. These requirements have been mentioned in Ann.R-4 itself, which is the notification for filling up the said post. Subsequently, the applicant was appointed on this post vide Ann.R-5 dated 11/17.4.84. In Ann.R-5 itself it is clearly stated that the post is on work-charged basis. Ann.A-2 dated 6.8.84 is in continuation of Ann.R-5. Thus, it is not that the applicant was unaware of the fact that he was working as a Driver against a work-charged post, the duration of which was extended from time to time. Once the work-charged post is not available, there is no question of the applicant's continuing on the said post. Other facts stated by the applicant such as that two persons were functioning as Driver at Ranapratap Nagar or that the post of Truck Driver is not a safety category post do not seem to be relevant for deciding this OA.

11. In the circumstances, we are of the view that once the post has been abolished, the applicant does not have a right to continue on the said post. The relief claimed by the applicant to continue on the post of Driver and other reliefs, as prayed in the relief clause, are rejected. However, the applicant can go back to his original post from which he came on the post of Driver vide orders passed in 1984.

12. The OA is disposed of accordingly, at the stage of admission, with no order as to costs. The interim direction issued on 12.7.96 stands vacated.

(O.P.SHARMA)

ADM.MEMBER

(GOPAL KRISHNA)

VICE CHAIRMAN

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