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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,

J. O. D. H. P. U. R.

Date of order : 6.7.1998.

O.A. No. 374/96

Abdul Hamid S/o Shri Abdul Mazid by caste Mohammedon, aged about 45 years R/o at present working as Chief Telephone Operator, Northern Railway in D.R.M.s Office Bikaner.

... Applicant
Vs.

1. The Union of India through General Manager, Northern Railway, Headquarter Building, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Bikaner.
3. The Senior Divisional Personal Officer, Northern Railway, Bikaner. ... Respondents.

For the applicant, Mr. S.N.Trivedi, Advocate.

For the respondents, Mr. R.K.Soni, Advocate.

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HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

MR. A. K. MISRA :

The applicant has filed this O.A. with the prayer that the order dated 5.11.1996, (Annex.A-1) passed by the Senior Divisional Personal Officer, Northern Railway may be quashed and set aside and the applicant be allowed to continue on the post of Chief Telephone Operator in the Grade of Rs. 1600-2660 with all consequential benefits

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The applicant has further prayed that consequences of the impugned order dated 5.11.1996 may not be given effect and the applicant may be deemed to be continued on the post of Chief Telephone Operator w.e.f. 5.9.94 with all consequential benefits.

2. Notice of this O.A. was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant. The respondents have stated in their reply that procedural lacuna was found in the selection of applicant to the post of Chief Telephone Operator therefore with the approval of the competent authority the panel is sought to be cancelled. The applicant was given notice thereof and after considering the representation of the applicant the panel dated 5.9.94 issued earlier was treated as cancelled. Therefore the OA has no force and is liable to be rejected.

3. We have heard the learned counsel for the parties and gone through the case file. In order to appreciate the rival contentions facts relating to the controversy in hand are briefly narrated as under :

4. It is alleged by the applicant that he was appointed as Khallasi in the Signal and Telecommunication department on 22.12.1970 and thereafter from time to time the applicant was promoted to next higher post. The applicant was promoted as Head Telephone Operator in the pay scale of Rs. 1400-2300 in the year 1990 (On 29.6.1990 as mentioned by the respondents). It is further alleged by the applicant that the applicant was promoted to the post of Chief Telephone Operator w.e.f. 5.9.1994 after facing the selection and since then the applicant

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is continuing on the post of Chief Telephone Operator. This selection of the applicant is sought to be cancelled vide Annex.A/1 dated 5.11.1996.

5. From the record it appears that while the applicant was working as Head Telephone Operator in the pay scale ~~re-~~ Rs. 1400-2300 cadre/structuring was done w.e.f. 1.3.1993. Earlier to the cadre re-structuring there were two posts of Chief Telephone Operator. As a result of cadre re-structuring one more post was created in the cadre of Chief Telephone Operator. Thus the total number of posts of Chief Telephone Operator were raised to three. The post of Chief Telephone Operator is a selection post and as per the Railway Board's instructions a modified selection was conducted for filling of the three posts and the same were filled-in by the candidates empanelled in the list dated 5/8.11.1993. As a result of cadre re-structuring ~~the~~ one more post of Superintendent Telephone Operator was created which was headquarter controlled post. By the letter of the General Manager (P) dated 25.2.1994 this post was de-centralised and placed under the control of Division with immediate effect. From the averment of the respondents it appears that the answering respondents were authorised to fill-up the post. Since no eligible candidate was available for being promoted to the post of Superintendent Telephone Operator the post was down-graded to that of Chief Telephone Operator and selection to the post was conducted by sponsoring the three candidates as per letter dated 19.7.1994 (Annex.A/3). All the three candidates thereafter participated in the written examination and viva voce test but only the applicant was declared successful candidate

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for being promoted to the post of Chief Telephone Operator vide panel dated 5.9.1994 (Annex.A/4). Thereafter the applicant was promoted to the said post as stated earlier vide order Annex.A/5. In compliance of the promotion order the applicant had taken over the charge on the promotional post on 6.9.1994 on which he continued to work till he was proposed to be reverted as per Annex.A-1 and thereafter under the orders of the Tribunal upto till now.

6. It was argued by the learned advocate for the applicant that the applicant was selected for being promoted to the post of Chief Telephone Operator after holding the selection process. The applicant has since been working on the post satisfactorily. No procedural lacuna has been pointed-out in the letter proposing to cancel the panel. He was further argued that the panel dated 5.9.1994 is being cancelled under the pressure of Union. The administration had already decided to cancel the panel and as a matter of formality had given notice to the applicant to represent against the proposed action. This pre-decisional action is violative of natural justice and deserves to be quashed. He has further argued that the applicant had already worked for more than two years before the administration decided to quash the panel. Therefore, the panel cannot now be quashed and the applicant cannot be reverted. The promotion was given to the applicant after due selection. On the other hand, the learned counsel for the respondents has argued that the post of Superintendent Telephone Operator was placed at the disposal of the Divisional Railway Manager but

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there is no approval of the higher authorities for down grading the post. Therefore, the action of the Divisional Railway Manager to fill-up the post by downgrading the same was not in order. Consequently, the panel and the promotion order dated 5.9.1994 and 5.11.94 are liable to be quashed.

7. We have considered the rival arguments. There is no dispute in respect of the post of Chief Telephone Operator being a selection post. The post of Superintendent Telephone Operator was to be filled in on the basis of seniority cum suitability from amongst the Chief Telephone Operators at the divisional level. The respondents themselves have stated that ~~since~~ no eligible staff having two years service in the lower grade was available in the Division. Therefore, the ~~answering~~ respondents decided to down-grade the same and held the selection and the applicant has been placed on panel and was promoted. In our opinion when the ~~answering~~ respondents were given ~~xxxxxx~~ liberty to fill-in the post of Superintendent Telephone Operator then it was for the ~~answering~~ respondents to see whether eligible candidates were available to fill-up the post. If for providing promotion to one of the Head Telephone Operator the post ~~was~~ down graded it cannot be said that any procedural irregularity was committed. The ~~answering~~ respondents had undertaken the procedure of selection to fill-in the post of Chief Telephone Operator in which Shri Mirza Moinnuddin who is said to be senior most Head Telephone Operator at that time had participated. It appears that the Union is sponsoring and propagating

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the cause of Shri Mirza Moinuddin by alleging the procedural lacuna in selection of the present applicant.

In our opinion if down grading of the post of Superintendent Telephone Operator was not in order and the selection to the post of Chief Telephone Operator was not procedurally correct then the senior most Head Telephone Operator Shri Mirza Moinuddin should have raised the dispute at that time. But Shri Mirza Moinuddin himself participated in the selection process by appearing in written examination and facing the viva voce. Therefore, it cannot be said that any procedural wrong has been done in undertaking selection process.

In our opinion having remained un-successful in selection Shri Mirza Moinuddin seems to have taken the help of Union for cancelling the selection of the applicant.

Needless to say that the applicant was promoted by order dated 5.9.94 and the same was given effect to by the applicant by taking the charge on the next day.

Shri Mirza Moinuddin could have challenged the promotion immediately thereafter. But it appears that having missed that opportunity Shri Mirza Moinuddin has caused the concerned Union to initiate his cause otherwise there was no reason for the Union to have raise the dispute and there was also no occasion for the respondents to undertake cancellation of the selection process. At the cost of repetition we may adhere that the respondents have not ~~done~~ shown as to what was the procedural irregularity which was committed by the answering respondents in filling the post of Superintendent Telephone Operator by down grading the same. Within the total strength of the department

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person can be allowed to work on the lower post as against the strength of the promotional post. Therefore, in our opinion the promotion of the applicant on the post of Chief Telephone Operator cannot be said to be procedurally wrong promotion. The applicant cannot now be reverted to his original post by cancelling the panel after more than two years of applicant's promotion. The action of the respondents Vide Annex.A-1 dated 5.11.96 cannot be treated as valid and legal. In our opinion, the panel isnot required to be cancelled. The order dated 5.11.96, Annex.A-1 deserves to be quashed. The O.A. deserves to be accepted.

8. The O.A. is therefore accepted. The order issued by the Senior Divisional Personal Officer, Northern Railway, Bikaner dated 5.11.1996, Annex. A-1 is hereby quashed. The respondents are directed to continue the applicant on the post of Chief Telephone Operator as a duly selected candidate.

9. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Administrative Member

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

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by Regd Adm violet no 2931
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Applicant
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dated 28/2/2006

Section Officer ()

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