

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(7)

DATE OF ORDER : 09.07.1999.

O.A.NO. 26/98

Bhanwari Lal S/o Late Shri Behari Lal By Caste Jatav R/o Rampur, PO Gabhana Dist. Aligarh (UP) at present Assistant Permanent Way Inspector (Gr.III), Railway Station, Churu.

.....APPLICANT.

VERSUS

1. The Union of India through the Ministry of Railways, New Delhi.
2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Behind Railway Station, Bikaner.
4. Divisional Personnel Manager, Northern Railway, Bikaner.

.....RESPONDENTS.

CORAM :

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

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

Mr. D.K. Chouhan, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

PER MR. A.K.MISRA, JUDICIAL MEMBER :

The applicant has filed this OA with the prayer that the order of the respondent No. 3 dated 9.10.1997, Annex.A-1, be quashed and the respondents be directed to

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regularise the applicant on the post of Permanent Way Mistry Grade-III.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed.

3. We have heard the learned counsel for the parties and gone through the case file.

4. It is alleged by the applicant that applicant was promoted as a Permanent Way Mistry in the scale of 1400-2300 vide order dated 8.2.1977, Annex.A-3. Thereafter, he was promoted on ad hoc basis as Permanent Way Inspector Grade-III in September 1981. Since then, the applicant has been working on the post of Permanent Way Inspector and is entitled to be regularised on this post but unfortunately the applicant has been ordered to be reverted to his substantive post of Permanent Way Mistry vide order Annex.A-1. The applicant has further stated that the order reverting the applicant deserves to be set aside on the ground of long officiation of the applicant on the higher post. All the points raised in the O.A. were also high-lighted during the course of arguments by the learned counsel for the applicant. He has also cited AIR 1986 SC Page 638 - Narendra Chaddha and Ors. Vs. U.O.I. and Ors. in support of his contention and has argued that in view of the principles laid down in this case, the applicant is entitled to be regularised on the post of Permanent Way Inspector Grade-III. The respondents in their reply have stated that the applicant was promoted as Permanent Way Inspector Grade-III purely on ad hoc basis pending

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passing selection and further passing P25 promotional course. The applicant participated in selection test organised in the month of July 1995 but could not qualify the written test. The applicant again participated in selection test organised in the month of September, 1996 but again he could not qualify the written test and consequently vide Annex.A-1, was reverted to his substantive post of Permanent Way Mistry, in the scale of Rs. 1400-2300. It has also been alleged by the respondents that such reversion orders are liable to be challenged under Rule 18 Sub Clause 5 of the Railway Servants (Discipline & Appeal) Rules, considering the applicant has not exhausted ~~any~~ such remedy by way of appeal, therefore, the applicant cannot get any relief here in the Tribunal. Such ad hoc promotion ~~does~~ ^{simply} not confer any right on such promotee because he has worked on such promotional post for number of years. The O.A., therefore, deserves to be dismissed.

5. Highlighting all these points, the learned counsel for the respondents has argued that the applicant is not entitled to any relief in the O.A. as mere officiation would not enable him to seek regularisation.

6. We have considered the rival arguments and gone through the pleadings of the parties.

7. The applicant and few others were promoted to the posts of Permanent Way Inspector, Grade-III on ad hoc basis vide respondent's letter dated 15.4.1983 (Annex.A-4) which clearly mentions that all the existing vacancies of Permanent Way Inspectors Grade-III are filled on ad hoc basis pending passing selection for the post as well as pending passing promotion ~~course~~. It

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is also mentioned in the Promotion order that these promotion orders are purely temporary and it would confer no prescriptive right on the candidates for such promotion in future. ~~on this basis~~. This clearly shows that the applicant and few others were given ad hoc promotion just to fill-in the Permanent Way Inspectors Grade-III post and provide monetary benefits of ~~xxi~~ such promotional post to the applicant and few others on temporary basis. This promotion order was subject to passing selection ~~test~~ and passing promotional course. The applicant in spite of two chances could not clear the selection test. There is also nothing on record to show that the applicant has passed promotional course during this period. There is also nothing on record that the respondents organised any such selection test prior to 1995. Therefore, mere continuance of applicant on promotional post for number of years would not confer any right on the applicant for regularisation on that post. The applicant has been ordered to be reverted to his substantive post soon after he failed in second attempt of selection test. The applicant had not continued on this promotional post for a number of years after having failed in the selection test. Therefore, it cannot be argued by the applicant that he has been continuously working on promotional post for number of years so as to enable him to be regularised on that post. We have also gone through the ruling cited by the learned counsel for the applicant. The applicants in the cited case were promoted and were allowed to work for 15 to 20 years on that promotional post and when ~~matter of fixation~~ of their seniority vis-a-vis the

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direct recruits was sought to be fixed and applicants were sought to be reverted because of non availability of posts etc. it was held by Hon'ble Supreme Court that such persons cannot be demoted after they had worked for such a long number of years on the promotional post. In this case, the promotion of the candidates was not subject to passing of any selection test etc. but in the instant case the applicants were promoted to the post of Permanent Way Inspector Grade-III clearly on the condition that the promotion is subject to passing selection for the post and passing promotional course. Therefore, the rule propounded in the cited ruling cannot be applied in the instant case where passing selection test and passing promotion course are conditions precedent to promotion on the higher post. Thus un-successful candidates cannot be allowed to work on the promotional post simply on the ground of long officiation. In our view, the applicant cannot get the relief of regularisation on the post of Permanent Way Inspector Grade-III due to long officiation on that post because of his remaining un-successful in the selection test twice. The O.A. in our opinion is without any force and deserves to be dismissed.

8. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)

Adm. Member

8/7/99
(A.K.MISRA)
Judl. Member

.....
MEHTA

Recd copy
S. S. 1977

Reckling

Part II and III destroyed
in my presence on 11-7-2006
under the supervision of
Section Officer (j) as per
order dated 11-7-2006

Section officer (Record)