

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

.....
Date of order : 28.04.2000.

CA No. 100/98

1. Amar Chand Sharma son of Shri Srinarain Sharma, aged about 45 years, at present employed on the post of Goods Guard in the office of S.S. Abu Road, Resident of C/o Ashok Kumar Railway Colony Bungalow No. L-64 B Abu Road, W.Rly.
2. Ashok Kumar son of Shri Kadhey shyamji aged about 40 years, resident of Railway Colony Bungalow No. L-64 B Abu Road at present employed on the post of Goods Guard in the office of S.S. Abu Road W.Rly.

..... APPLICANTS

VERSUS

1. Union of India through General Manager, Western Railway Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.

..... RESPONDENTS

CORAM:

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

Hon'ble Mr. Gopal Singh, Adm. Member.

.....

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

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

.....

PER HON'BLE MR. A.K.MISRA, JUDL. MEMBER

The applicant has filed this Original Application challenging the impugned order dated 30.3.98 (Annex. A/1) passed by the respondents.

Notices of the CA were given to the respondents. And detailed reply was filed thereon, in which they have stated that applicants are not entitled to any relief against the proposed action of the respondents which is required to be

200/

taken in view of the judgement of the Hon'ble Supreme Court in the matter. The respondents had demanded that OA be dismissed.

3. We have heard the learned counsel for the parties and gone through the case file. From the pleadings of the parties following facts emerge :-

The applicants who were initially engaged as Casual labour and a substitute respectively worked out their promotion as Traffic Signaller. While working as Traffic Signallers, a circular dated 3.12.92 came to be issued by the Respondent No. 2, in which it was mentioned that there is a possibility of many posts being declared surplus in Traffic Branch on account of reduction of the post of Telegraphic Signallers. Options of such candidates, who were working in Traffic Branch were invited. After conducting the suitability test few of the candidates were absorbed on the post of Goods Guard in scale of Rs. 1200- 2040. The action of the respondents in this regard was challenged by All India Guards Council & ors in the Ahmedabad Bench of Central Administrative Tribunal by filing an OA which was registered at No. 26/1992. This OA was allowed by the Central Administrative Tribunal vide its order dated 10.5.93. In that order it was held that signalars in the grade of Rs. 1200-2040, who have been rendered surplus cannot be absorbed as Goods Guard in the grade of Rs. 1200-2040, because the later post is not in an equivalent grade but is in fact a much higher grade and absorption would therefore amount to be promotion which is unjustified and discriminatory". It appears that the Central Administrative Tribunal, Ahmedabad Bench also decided another OA of the similar nature which was registered as OA No. 395/93, on 25.1.95. This order was challenged by Shri Om Prakash Verma & ors Vs. U.O.I by filing SLP before the Hon'ble Supreme Court. [] In that case Hon'ble Supreme Court held as follows :-

2pm

" In our opinion, no ground is made out for interference with the impugned judgment of the Tribunal. It is, however, clarified that the judgment of the Tribunal does not preclude the Railway Administration from absorbing the petitioners and other similar situated surplus staff in equivalent posts in accordance with the Surplus Staff Absorption Scheme dated 21.4.89 and till the petitioners are thus suitable absorbed, they may be allowed to continue on the present posts."

4. From the file it appears that after the order of the Central Administrative Tribunal and before the matter was finally decided by Hon'ble Supreme Court, the respondents organised special selection for the surplus staff and thereafter proceeded to complete the process and declared the list of selected candidates. Applicants alleged that in this selection, their name appears at Sr. No. 4 & 7 respectively. When the respondents proceeded further in the matter, a Contempt Petition was filed before the Central Administrative Tribunal, Ahmedabad Bench for taking action against the contemners for having wilfully disobeyed the orders of the Court. There is nothing on record to show as to what order was finally passed in the Contempt Petition, but by D.O letter dated 10.3.98, earlier D.O letter dated 6.6.95 was withdrawn and cancelled and consequent thereto letter dated 30.3.98 Annex. A/1, was issued which was been challenged by the applicant on the following grounds :-



(i) That the applicant had passed the requisite suitable test selection for the post of Goods Guard and have been given regular appointment. Therefore the respondents cannot change their stand. Doctrine of estoppel comes into operation against them. The applicants has right to continue on the post of Goods Guard as they were duly selected candidates.

(ii) Before issuing Annex. A/1, no opportunity of hearing was given to the applicants & therefore principle of natural justice has been violated. The action of the respondents is arbitrary & violative of Article 14 & 16 of the Constitution of India.

(iii) By the impugned order Annex. A/1, the applicants have been visited by civil consequences & consequently the order's deserves to be quashed.

2000

5. Both the learned counsel for parties had deliberated their arguments in lines of their pleadings which we have duly considered. In our opinion, after the matter has been deliberated and finally decided by Hon'ble Supreme Court, there is nothing left for us to decide. In this case absorption of surplus Signallars on the post of Goods Guard was held bad and violative of rules by the Central Administrative Tribunal, Ahmedabad Bench. The order was upheld by the Hon'ble Supreme Court. Therefore the applicant cannot claim to continue on the post of Goods Guard on the basis of selection test in this regard. When their absorption on the post of Goods Guard was held violative of rules then no vested right can be claimed by the applicants in this regard. In view of the orders passed by the Tribunal & Hon'ble applicability of Supreme Court, the principle of estoppel against the respondents cannot be claimed by the applicants. The respondents were duty bound to comply the order of the Hon'ble Supreme Court, which had finally settled the controversy in this regard. Therefore, formality of issuing show-cause notice to the affected person was not at all necessary. Even if such notice had been issued, it would have been an empty formality, as the administration could not have taken any other stand or action contrary to the directions of the Hon'ble Supreme Court. Thus by issuing the Annex. A/1, no violation of principle of natural justice can be alleged by the applicants against the respondents. If the last paragraph of Annex. A/1 is read in context of the facts as mentioned in the letter, it would mean that the such applicants are required to give their option for being absorbed in some ^{equivalent} other Cadre i.e., other than the cadres of Goods Guard. So long the applicants are not absorbed in other equal cadre, they are to continue on the present post in terms of the judgment of the Hon'ble Supreme Court.

6. In view of the above facts and discussions, we are of the opinion that the applicants' have no case. The action

20/1

taken by the respondents vide their letter dated 10.3.98, Annex. R/5 and consequent action by order dated 30.3.98, Annex. A/1, ^{be} cannot be said to be violative of rights of the applicants. By both these letters and orders respectively the respondents are only complying the directions of the Hon'ble Supreme Court. Therefore, they cannot be found to be at fault. Consequently the Original Application deserves to be dismissed.

7. The Original Application is, therefore, dismissed at admission stage.

8. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member.

28/4/2002

(A.K.MISRA)
Judl. Member.

(Copy
Signed
S. V.
(S. V. as
per order)

R. (Copy
as per
B. (per order)

Part II and III destroyed
in my presence on 19.10.86
under the supervision of
section officer () as per
order dated 23.1.86

Section officer (Record)