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Central Administrative Tribunal, Jodhpur Bench,
Jodhpur

Date of order : 4.4.2001

O.A.NO. 64/2001

Jakir Ali S/o Shri Yasin Ali Caste Mohammadan aged 36 years
working Vehicle Driver, Northern Railway, Divisional Railway
Manager Office, Bikaner, R/o Behind Dak Bunglow Railway
Quarter HQ E-3, SMT Office, Bikaner.

... Applicant.

Versus

1. Union of India through General Manager, Northern
Railway Headquarter Office, Baroda House, New
Delhi.

Divisional Railway Manager, Northern Railway,
Bikaner.

Divisional Personnel Officer, Northern Railway,
Bikaner (334 001).

4. Divisional Superintendent Engineer-I, Northern
Railway, Bikaner (334 001).

5. The Assistant Personnel Officer, Northern Railway,
Divisional Office, Bikaner - 334 001.

6. The Assistant Divisional Engineer, Northern Railway
Bikaner (Rajasthan) 334 001.

... Respondents.

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CORAM :

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

Hon'ble Mr. Gopal Singh, Administrative Member

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Mr. Bharat Singh, Counsel for the applicant.

Mr. Manoj Bhandari, Counsel for the respondents.

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Per Mr.A.K.Misra, Judicial Member :

The applicant had filed this O.A. with the prayer that the order dated 15.3.2001 (Annex.A/1) passed by respondent No. 3 be quashed and the respondents be restrained from reverting the applicant from the post of Vehicle Driver in pursuance of Annex.A/1. The applicant has also prayed that all orders subsequently passed in pursuance of Annex.A/1 be also quashed. The applicant had also prayed for staying the operation of order dated 15th March, 2001 permanently and has sought a direction against the respondents to declare the result of the trade test held on 8.10.97 in respect of the applicant and the applicant be directed to be promoted on the post of Vehicle Driver in case he is reverted.



2. By the impugned order dated 15.3.2001, the applicant and two others were directed to be posted on their substantive post as a consequence of decision arrived at after show cause notice.

3. Notice of the OA was given to the respondents who have filed their reply in which it is stated that applicant was trade-tested on 8.10.97 but he could not clear the trade test. A list of the successful candidates was declared on 5.1.98 which is Annex.R/1. The applicant was utilised on the post of Driver as a stop-gap-arrangement till regularly selected candidates were available. The post of Driver is a selection post and without being selected the applicant cannot claim continuance on the said post. Mere continuance of the applicant on temporary basis on the said post does not confer any right on the applicant to continue on the said post. It is also stated by the

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respondents that as a consequence of abolition of work-charge post and selected candidate being available, the applicant is being posted to his substantive post as per law. It is also stated by the respondents that applicant is not a regularly selected Driver, therefore, applicant's continuance inspite of his being un-successful in the trade test of a Driver does not confer any right on the applicant to continue on the same post. The applicant is basically a Gangman and when the work charge post came to an end, he was posted on ^{the} substantive post and, therefore, the O.A. has no merit. It is also stated by the respondents that the applicant had earlier filed an O.A. against the said order but withdrew the same without any liberty, therefore, the same order cannot be challenged by him again.

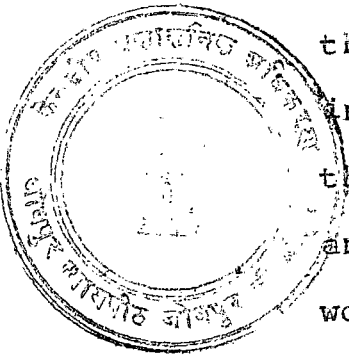


4. We have heard the learned counsel for the parties and have gone through the case file. The letter dated 5.1.98 (Annex.R/1), is the letter regarding successful candidates who were trade-tested for the post of Driver in pursuance of the examination held on 8.10.97 onwards. The applicant's ~~name~~ name does not figure in the list of the successful candidates, that means, that the applicant had remained unsuccessful in the said trade test. The list of un-successful candidates is not published in the departmental examination. Therefore, if the name of a candidate does not figure in the list of such successful candidates that entails that he had remained un-successful. Thus, the argument of the learned counsel for the applicant that ~~applicant~~ no result was published is of no consequence. In our opinion, the applicant could not be selected because of his performance, therefore, this continuance on the post of Driver on temporary local arrangement basis does not confer any right on him to further continue on the same

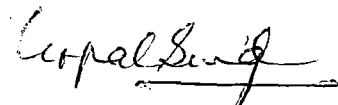
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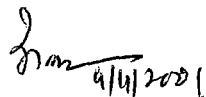
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post, more specially, when the regularly selected candidates are available to replace him. We have got no reason ~~not~~ to dis-believe the submissions of the respondents that the work-charge post has since come to an end. The applicant can be allowed to continue on the post of Driver provided work-charge posts or temporary posts are available but if no such posts are available then he cannot claim ~~the~~ continuance on such a post, more specially, when he has been un-successful in the trade test. In Sanjay Kumar Versus Haryana Urban Development Authority, reported in 2000 (4) SIR 718, it was held that "where an employee is given duties as Clerk in Grade III while appointed a Class IV employee, the Court cannot issue any direction to regularise his services on a Class III post. It is illegal to post a Class IV employee against a Class III post and the Court cannot perpetuate the illegality." Thus, in the instant case also directing the respondents to continue the applicant as a Driver when basically he is a Gangman and has not been able to clear the trade test of a Driver would amount to perpetuating the illegality.



5. In our opinion, the applicant has no right to continue on the post of a Driver in view of the circumstances narrated above. The O.A. is without any merit and deserves to be dismissed. The O.A. is, therefore, dismissed with no orders as to cost.


(GOPAL SINGH)
Adm. Member


(A.K. MISRA)
Judl. Member

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Received Copy
Michele 2/14/2001

Read copy
and
12/14/01

Part II and III destroyed
in my presence on 28-3-02
under the supervision of
section officer as per
order dated 19-12-01

Section officer (Record)

