

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION NO: 54/2004

this, the 20th day of March 2004.

HON'BLE SHRI S.P. ARYA MEMBER(A)

HON'BLE SHRI M.L. SAHNI MEMBER(J)

Anil Kumar Yadav aged about 40 years S/o Sri G.P. Yadav,
R/o 172/Ashok Nagar Basharatpur Gorakhpur.

....Applicant.

BY Advocate Shri A. Moin.

VERSUS

1. Union of India through General Manager, North Eastern Railway Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.
3. Divisional Railway Manager (Personnel) North Eastern Railway, Ashok Marg, Lucknow.

....Respondents.

BY Advocate Shri Arvind Kumar.

ORDER

BY SHRI S.P. ARYA MEMBER(A)

The applicant by this Original Application has

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prayed for quashing the order dated 3.11.2003 promoting the applicant from the post of Assistant Station Master to, Station Master in the scale of Rs. 5500-9990-;

and for quashing the order dated 29.1.2004 issued on behalf of Respondent No. 1, as contained in Annexure A-2 by which the applicant is being forced to handover the charge of Section Controller and to take over the charge of Station Master Tinich Railway Station and also for directing the respondents to give the applicant atleast three opportunities for facing the selection for the post of Section Controller in the grade of Rs. 5500-9000.

2. We have heard counsel for both the parties and perused the pleadings of the original application and the objections filed by the respondents.

3. The applicant has stated in his O.A. that while working as Assistant Station Master at Gorakhpur, he was asked by the Senior Divisional Operating Manager to discharge the functions of Section Controller in Central Control in the grade of Rs. 5500-9000/- and in pursuance thereto, he took over the charge over the post of controller with effect from 18.11.1991. He has been working as such till 17.1.2004. He has earlier made a representation that the written examination going to be held on 5.4.2003 should be stayed as he has not been informed of such examination.

4. Respondents in the objections have stated that the applicant has made no representation against the promotion and the O.A. suffers for multiple reliefs. The applicant is still continuing as Assistant Station Master in the scale of Rs. 5500-8000/- and has not joined on the promoted post of Station Master. The post of Section Controller in the pay scale of Rs. 5500-9000/- is a selection post and on the basis of the quota provided in AVC for the controllers, the eligible candidates on the basis of their seniority become entitled for their consideration on the post of section controller. The applicant can become entitled only when he has opted for the said promotion in the cadre of section controller. No junior to the applicant has been



considered for such selection. It is also stated in the objection that the applicant has not come with a clean hand, while placing the facts before this Tribunal.

5. Annexure A-5 to the O.A., provides for 75% of the post of Section controller to be filled in from amongst the Passenger Guard/Goods Guard ASM/SM/AYM and HD.TNC. 30% out of these 75% is for SM/ASM. The post of Section Controller is a selection post and nobody has a right to the post without proper selection. As regards the applicant, he reported to central controller to work as controller as per Annexure A-3 of the O.A.. The certificate dated 18.11.97 (Annexure A-4) shows that he was working as controller on that date. Presuming the controller and section controller posts being the same, it has not been made clear, how the applicant has taken over as controller. Mere asking by a senior officer to work on a post would not do away with the selection procedures and rules. The letter of 29.1.2004, (Annexure-A.2) is addressed to the applicant as ASM from which post he has been relieved. The applicant has no *prima facie* ground to claim for any such promotion without facing the selection process in accordance with rules. He can not challenge his promotion to higher grade. The Pay Slip filed by the respondents clearly shows that he was working in the pay scale of Rs. 5000 - 8000/-. A person working in the control room with the pay scale of ASM, cannot be treated as regularly posted when the post of the Control Room is of higher grade. No order appointing the applicant as section controller has been filed by him. The applicant did not exhaust departmental remedy available to him and approached this Tribunal.

6. The counsel for the applicant has relied upon Jetha Nand and others versus Union of India and Others reported in 1990 Vol. 13 ATC 212. The facts and circumstances of the case

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are distinguishable and same is not applicable to present case. It appears from the Annexure A-5, that the applicant on the basis of seniority as ASM/SM has to opt for the section controllers cadre which is different from the cadre to which he belongs, can be considered for selection to the post of section controller if he is senior enough to be included in the selection. While working in the control room, it cannot be accepted that he could not get the information for the written test for selection of the post of section controller stated to be held on 05.04.03.

7. In view of the discussion, we find that applicant has failed to establish the prima facie case and the O.A. deserves to be dismissed. The O.A. is accordingly dismissed at the admission stage. No order as to costs.

Jitendra

MEMBER(J)

24/3/86

MEMBER(A)

Lucknow; Dated:

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