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CENTRAL ADMINISTRATIVE TRIBUNAL (CUSTOMS AND EXCISE)

Original Application No. 337 of 1990(A)

S. M. Singh . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents

Writble No. Justice G.C. Srivastava, V.C.

Writble No. K. Jha, Member(A)

( By Writble No. K. Jha, A.M.)

The applicant who is employed in the Northern Railway has filed this application under section 10 of the Administrative Tribunals Act, 1985, for quashing the order dated 20.1.1990 (Annexure-I) reverting him to his parent division. The applicant has also prayed that he may be confirmed on the post of Commercial Instructor (C.I.) Zonal Training School (Z.T.S.), Chandhasi, reckoning the seniority from the date of his joining on that post.

2. The applicant, on recruitment, was appointed to the post of Assistant Station Master (A.S.M.) in Jodhpur division of Northern Railway on 12.1.79. Later on he was posted as C.I. in Z.T.S. on 8.9.80. According to the applicant he has been working in the Training School ever since his transfer. His work has been found to be satisfactory, but vide order dated 20.1.90 he is being reverted to his cadre in parent division. The contention of the applicant is that after the service of more than 7 years in the Z.T.S., he is eligible to be confirmed on the post of C.I., but the respondents are treating the post as tenure post contrary to statutory instructions and direct recruit-

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ment has been notified for this post. He moved an application before the Principal Bench (C.A. 533/88) along with others challenged in the reversion order. However, that application was rejected as premature as there was no adverse order passed against the applicant. Thereafter another application (C.A. No. 1122/88) was moved again in the Principal Bench after the reversion was passed but that was admitted only in respect of one Mr. Sains as relief in orders were passed in his case and not in respect of others who were not affected. Thereafter the applicant was also served with relief in order. The applicant alleges that the authorities are sore with him because of his union activities as Secretary of Northern Railway Union of Chandulal Branch. It would appear that he has proceeded on sick leave and later on by order dated 19.3.1991 he was directed to report for duty to his parent division i.e. Jodhpur division.

3. The respondents have contested the case and in the counter-affidavit it has been stated that the post of C.I. is an ex-cadre post. Normally the staff is taken for this ex-cadre post for a period of 5 years on deputation and thereafter they have to go back to their parent cadre in their original divisions. The applicant has been given full term and in fact he has exceeded the term. As such he is being reverted to his parent division. It is also stated that earlier he was repatriated on 8.9.87, but that order was set aside by the Principal Bench in C.A. No. 1145/87 as the transfer was felt to be bad as it was at the instance of vigilance department and not in public

interest. However, it was left open to the respondents to proceed with the departmental action and transfer the applicant if that was considered necessary in the exigency of service. The Department proceeded with the disciplinary matter which resulted in punishment of reduction by two stages in the time scale vide order dated 13.6.90. It is also stated by the respondents that the applicant holds a lien in the parent cadre and as a matter of fact he has been confirmed on the post of A.S.N. The rules do not permit any confirmation or permanent absorption in ex-cadre post and as such the applicant cannot be absorbed as C.I. in Z.F.S., Chandausi.

4. The respondents deny any malafides or arbitrariness on their part, in reverting the applicant to his parent in accordance with rules and instructions. In the rejoinder the applicant has stated that he does not hold a lien on the post of A.S.N. On the other hand upon selection, he was appointed as C.I. on adhoc basis. That appointment was by direct recruitment and, therefore, it has nothing to do either with the appointment as A.S.... or his direct recruitment as A.S.N. and the embargo of deputation beyond 5 years period is not applicable in his case. He also states that there are 11 permanent posts of C.Is in Z.F.S. and that he could be absorbed against one of those posts.

5. We have heard the counsel for the parties. The short point involved in this case is whether the applicant is entitled to be absorbed as C.I. in Z.F.S. on permanent basis notwithstanding the fact that his earlier selection was to the post of Assistant Station Master.

6. The learned counsel for the applicant has referred to the Railway Circular No. 5243 (Annexure-A-1) wherein the Railway Board gave instructions that directly recruited instructors who were appointed against permanent or temporary posts may be considered for confirmation as Instructors provided they fulfil the requisite conditions. So far as the promotion is concerned, the Railway Board has given instructions that those who are working in Z.T.S. may be promoted in the parent cadre on proforma basis and avenue should be sought to promote those instructors recruited directly to the Training Institute, Chandausi. The learned counsel also placed reliance on the Circular instructions issued by the Railway Board, copies of which are available as Annexures to the rejoinder, in support of his contentions that the applicant, whose record has been very good, should be absorbed in Z.T.S.

7. We have carefully considered the instructions. These are general instructions as to how to tune up and bring qualitative improvement in the working of the Training Institutes run by the Railways, and on recruitment of suitable persons of ~~with~~ outstanding merit and incentives to be provided to make the posts attractive. These instructions do not speak of absorption of those working in ex-cadre posts. The learned counsel for the respondents pointed out that the training institutes constitute as separate units; so far as recruitment is concerned; there are certain posts for which direct recruitment is made and such of those who enter the

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institutes as direct recruits, start their career in the institute and retire there only; their service prospects, promotional avenues are confined to the posts available within the institutes, and as there is not much scope for their service advancement, certain incentives were provided, so that the posts do not become less attractive. As distinct from the direct recruits there are ex-cadre posts created for getting teaching staff from other departments of the railways, on deputation; this is done with a view to see that different departments of Railways are represented in the institutes and training is imparted on practical aspects of work, from those who come from the field. The learned counsel for the respondents further contended that taking staff from different departments to work in the ex-cadre posts, has been found to be very useful as this enables continuity of flow of experience from the field to the class room and vice-versa; and that the Railway Administration has created the ex-cadre posts in the training institutes as a policy measure in the interest of Administration. From the record available as Annexure-2 to the Rejoinder-affidavit, it is noticed that Z.T.S. has a total strength of 152 of which 149 of permanent establishment. The strength further represents personnel taken from the different department like Operative commercial, mechanical engineering and tele-communication etc. Annexure R.A.-4 clearly indicates that A.S.Ms. who were found fit for the post of transportation inspectors as a result of interview were sent to the institutes in ex-cadre posts. Also it is noticed in annexure R.A.-5 that where certain persons selected to work in Z.T.S.

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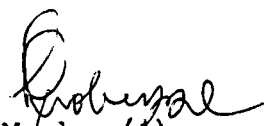
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Chandausi; the transfer involved not only of personnel, but also grade of the posts to that division. From the aforesaid facts it is beyond doubt that persons selected to work in institutes were selected from different departments and that they were working on ex-cadre posts. It is a settled position that no right accrues to incumbents working in ex-cadre posts for absorption in these very posts.

8. The applicant who was appointed as A.S.M.; as a direct recruit, and confirmed subsequently in that post, has no right for absorption in some other ex-cadre posts. He has to seek his career prospects in his own line. His claim for absorption in an ex-cadre post has no merit, and in these circumstances, we do not find any irregularity in the reversion order, by which he is only being sent back to his parent division.

9. The application is liable to be dismissed and accordingly, it is dismissed with no order as to cost.

  
Member (A)

  
Vice-Chairman

Lucknow Dated 17th 9.1992.

(RKA)