

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI**

ORIGINAL APPLICATION NO: 1356/95

DATE OF DECISION: 7th Dec., 98

Shri Navendra Laxman Jambhulkar Applicant.

Shri R.K. Srivastava, Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri P.S.Lambat. Advocate for
Respondent(s)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

(1) To be referred to the Reporter or not? No.

(2) Whether it needs to be circulated to Yes,
other Benches of the Tribunal?

(3) Library. Yes

S.L.JAIN
(S.L.JAIN)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 1356/95

the 7th day of December, 1999.

CORAM: Hon'ble Shri B.N.Bahadur Member(A)

Hon'ble Shri S.L.Jain, Member(J)

Navendra Laxman Jambhulkar
Resident of Plot No.7,
Bhoslewadi
Behind K.B. Cooler Industries
Lashkari Bagh, Nagpur.

...Applicant

By Advocate Shri R.K. Srivastava.

V/s

1. Union of India
Ministry of Railways
Rail Bhawan,
New Delhi
Through its Secretary.
2. The South Eastern Railways
Gardenrich,
Calcutta through
its Personnel Officer.
3. The Divisional Manager,
South Eastern Railway (MIB)
Nagpur.
4. Works Manager,
South Eastern Railways
Nagpur.

...Respondents

By Advocate Shri P.S.Lambat.

O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the
Administrative Tribunals Act 1985 seeking the relief of setting
aside of Communication No.448 and office order No. 73 dated
13.11.1995 whereby the applicant has been reverted from the post

S.L.Jain —

...2...

of Tracer in the pay scale of Rs. 975 - 1540 to the post of Junior clerk in the pay scale of Rs. 950 - 1500 declaring it to be illegal, violative of Article 14 and 16 of the Constitution of India, to regularise the services of the applicant as Tracer with retrospective effect and in alternative if the applicant is compelled to work as Junior Clerk he may be paid the difference of salary between Junior Clerk and Tracer alongwith interest @ 18% per annum.

2. There is no dispute between the parites in respect of the facts that the applicant was appointed as Khalasi in Class IV cadre on 1.3.1982, promoted as Material Checker on 17.8.1983, further promoted as Officiating Junior Clerk on 12.3.1988. On 15.7.1989 respondents issued a notice inviting applications for filling up the posts of Tracer in Drawing office temporarily in the scale of Rs. 975 -1540. The applicant being eligible applied for the same, was selected and appointed on 31.10.1990. Since then worked as such till 13.11.1995.

3. He approached for regularisation on 28.1.1994, 21.3.1994 followed by reminder dated 12.4.1994 which was forwarded to the respondent No.4 with a recommendation for regularisation, which was to be done in view of letter dated 11.11.1993. The respondent No.4 vide order dated 13.11.1995 posted the applicant as Junior Clerk in the scale of Rs. 950 - 1500.

SL-DM/

...3...

4. The order dated 13.11.1995 is challenged on the ground that it is illegal, arbitrary, he was liable to be regularised and can be reverted only in the event of availability of regularly selected candidates. Others have been regularised, a step motherly treatment and non forwarding of the name of the applicant by the authorities cannot jeopardise his right. Hence this OA for the aforesaid relief.

5.....The respondents have resisted the claim of the applicant on the ground that mere continuation on adhoc basis cannot create any claim/rights in favour of an employee to hold the post and that such a right accrues only to those employees who have successfully undergone the selection test and also have been empanelled. In 1989, there was a vacancy of Junior Drafts Man in the scale of Rs. 1200 -2040. No empaneled candidate selected through Railway Recruitment Board was available for appointment, post was to be filled up by such candidates only. No promotion was possible against departmental quota, hence in exigencies of services it was decided to lower down / down grade the post of Junior Drdafts Man in the scale of Rs.1200 - 2040 to the lower grade of Tracer in the scale of Rs. 975 - 1540 for the time being and to fill up

the down graded post purely on adhoc basis, though there was no post of Tracer in existence in 1989. Hence applications were called for and after a formal suitability test, the applicant was appointed. As there was no sanctioned post of Tracer, the question of selection for promotion on regular basis did not arise. The claim for regularisation is not covered by any Rule.

PL-81/-

6. On account of representations by the applicant his case was referred to Dy. Chief Personnel Officer (M&EL) South Eastern Railway, Garden Reach Calcurra-43 with a request to examine the case, which was disposed of by letter dated 16.10.1995 with an intimation to the Union as well as vide the reference to their letter dated 29.12.1994. The adhoc arrangement made as stated above, is discontinued vide office order No.73 dated 13.11.1995. The applicant was offered promotion to the post of Junior Clerk on regular measure being a departmental empanelled candidate which he did not carry out. Earlier also, after selection to the post of Junior Clerk he was offered the post of Junior Clerk on 27.6.1994 which he did not carry out.

7. In respect of order dated 11.11.1991, the then existing posts of Tracers were to be frozen as directed by the Railway Board vide letter No.E(N6)II-85/RC-2/7 dated 27.2.1985 which were circulated to all. Regularisation of 22 posts of Tracer were in respect of the posts before the above orders regarding frozen of posts were passed, they were working prior to 1.3.1986. The applicant's appointment was after the said dates and his appointment is not covered by CPO'GRC's guidelines dated 8.12.1986. The claim deserves to be rejected.

8. The regularisation of 22 posts of tracers who were appointed prior to 1.3.1986 was done vide order dated 30.11.1991. The applicant was appointed on 31.10.1990. Hence the question of step motherly treatment or discrimination which violates Article 14 and 16 of the Constitution does not arise for the reason that they are placed in different situation. They create a class separately.

D.A.-8M/

9. The post can be regularised only in a case when the appointment is against a sanctioned post. In view of the peculiar circumstances mentioned in para 5 of the order the applicant was appointed on adhoc basis by lowering down the post of Draftsman which even does not continue now in view of order No.73 dated 13.11.1995, no regularisation can be ordered, as no right is created in favour of the applicant.

10. In the result OA is liable to be dismissed and is dismissed accordingly with no order as to costs.

PLX/ -
(S.L.JAIN)

Member (J)

NS

B.N.BAHADUR

(B.N.BAHADUR)
Member (A)