

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 961/97

22.1.99

Date of Decision:

B.D.Yadav

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S.Bawej, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to + other Benches of the Tribunal?

D.S.Bawej
(D.S.BAWEJ)

MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 961/97

this the 22nd day of January 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawej, Member (A)

Brahma D. Yadav,
presently working as TNC
under CCC,
Bandra Loco Shed,
Western Railway,
Mumbai-400 050.

By Advocate Shri G.S.Walia

... Applicant

V/S.

1. Union of India through General Manager, Western Railway, Headquarters Office, Churchgate, Mumbai.
2. Divisional Railway Manager, Mumbai Division, Western Railway, Mumbai Central, Mumbai.
3. Personnel Officer (Mech.), Mumbai Division, Western Railway, D.R.M.'s office, Mumbai Central, Mumbai.
4. Sitalaprasad M. Gupta through Respondent No. 2.

By Advocate Shri V.S.Masurkar

... Respondents

ORDER

(Per: Shri D.S.Bawej, Member (A))

The applicant was initially appointed as a Cleaner in the Loco Shed Bandra, Western Railway. Subsequently, he was promoted as Second Fireman. However, while working as Second Fireman, he met with an accident and was medically de-categorised.

On being medically de-categorised, he was given alternative appointment as Train Clerk. A post of Caretaker fell vacant in the running room at Bandra under the Mechanical Department. A Notification was issued inviting applications from medically decategorised staff awaiting for alternative posting for consideration for the post of Caretaker. The applicant applied for the same and his name was included in the eligibility list issued as per letter dated 23.7.1997. The list contained two names. Apart from Shri Sitalaprasad M. Gupta, the applicant was also included in the list. The applicant alleges that he had not been called for the suitability test and only Shri Sitalaprasad M. Gupta was called for the test. Feeling aggrieved by the same, the present OA. has been filed on 17.10.1997 seeking the relief of directing the respondents to call the applicant for the suitability test and on being found suitable, promote him to the post of Caretaker.

2. The main contention of the applicant is that the applicant is physically handicapped more than person and his disability is 40% and therefore he is most suitable for the post of Caretaker. The applicant met with all the requirements and was placed in the eligibility list and therefore his non-calling for the suitability test is illegal and arbitrary.

3. The respondents have filed a written statement through Shri M.A. Bohra, Divisional Personnel Officer, Western Railway, Mumbai Central. The respondents submit that as per Notification dated 15.4.1997, applications were invited for filling the post of Caretaker of running room Bandra from medically decategorised staff awaiting alternative employment. There was poor response to this notification as only one application of Shri Sitalaprasad M. Gupta had been received. However, some candidates had earlier applied for the post of Caretaker and therefore those names were also considered which included the applicant. Since there was only one vacancy, a list of two eligible candidates was issued with the applicant at Sl.No. 2 being as a stand by. Shri Sitalaprasad M. Gupta who was senior was subjected to suitability test and was found suitable. The order to this effect was issued on 24.10.1997. The respondents therefore have made a plea that in view of issuance of order dated 24.10.1997, the present application becomes infructuous. It is also further stated that the present application is not maintainable due to non-joinder of Shri Sitalaprasad M. Gupta as a party who is a necessary party as he has been selected. The respondents submit that since there was only one vacancy, the senior most person had been called for the suitability test and as such no illegality has been committed in declaring Shri Sitalaprasad M. Gupta having passed the suitability test. The respondents therefore pray that the application is devoid of merit and deserves to be dismissed.

4. An order was passed on 27.10.1997 by way of interim order directing the respondents not to appoint anybody to the post of Caretaker at running room at Bandra as an ex-parte order for a period of 14 days. Subsequently, the official respondents opposed the continuation of interim order on the plea that Shri Sitalaprasad M.Gupta has already been selected based on the suitability test and due to his non impleadment, interim stay order which is adverse to his position not can be passed. At this stage, the applicant was directed to implead Shri Sitalaprasad M.Gupta as a respondent and accordingly the OA. was amended. A notice was issued to Shri Sitalaprasad M.Gupta but the same was received/with the endorsement "Refused". Another notice was issued which was received as "Not known". In view of this, service of notice on the Respondent No. 4 was presumed. The matter been therefore has/proceeded against Respondent No. 4 as ex-parte.

5. The applicant has not filed any rejoinder reply.

6. Since ^{only} a short question of law was involved, the matter has ^{been} taken up for final hearing with the consent of either party at the stage of admission.

7. As per the letter dated 23.7.1997, the name of the applicant was included in the list of the eligible candidates for the suitability test for filling the post of Caretaker in the scale of Rs.1200-1800 for the running room at Bandra under the Mechanical Department. The main ground of the



applicant is that though he was eligible for the suitability test but he had been not called for the same and the suitability test had been confined only to Shri Sitalaprasad M. Gupta. The respondents have taken a stand that there was only one vacancy and the senior most candidate from the eligibility list had been called for the suitability test and he had been found fit in the suitability test. On going through the written statement of the respondents and as well as during the arguments by the counsel for the respondents, an impression was gained that the applicant was also considered for the suitability test. In order to find out the factual position with regard to the suitability test, the respondents were directed to produce the file containing the papers with regard to the suitability test for the post of Caretaker under reference. These records were subsequently made available and on going through the same, it is noted that only Shri Sitalaprasad M. Gupta was called for the suitability test treating the post of Caretaker as non-selection and the senior most person from the eligibility list was only first considered for the suitability test. The learned counsel for the applicant, however, strongly reacted to this contention of the respondents stating that the post of Caretaker is an ex-cadre post and applications were invited from all the eligible staff and therefore all the candidates who had applied and found eligible were required to be subjected to suitability test. The counsel for the applicant was to state questioned whether there are any laid down rules with regard to the avenue of promotion for the post of Caretaker.

The counsel for the applicant could not bring laid down to our notice any/avenue of promotion for the post of Caretaker and instead drew our attention to an extract of Establishment Rules in one of the books published dealing with the establishment rules of the railway staff. He drew our attention to Para 39 at page 274 of the book wherein it is mentioned that for selection against ex-cadre posts all should be effected after considering/persons who have offered themselves for such ex-cadre post. Such selections should not be made on pick and choose basis. The learned counsel for the respondents was also directed to check up whether any rules for the selection of Caretaker in Mechanical Department have been laid down. The learned counsel for the respondents after checking the position in the Department reported that there are no such rules laid down and as per the practice the post is being filled up by following the procedure of suitability test treating the post as non selection post. Keeping these rival contentions in focus, the short question which requires to be determined for consideration of the relief prayed for by the applicant is whether the post of Caretaker is to be treated as an ex-cadre post and all the eligible staff who have offered are to be considered for suitability test.

8. As indicated earlier, neither the respondents nor the applicant could bring before us the relevant filling rules laid down for the post of Caretaker in the Mechanical Department. However, from the copy of the Notification dated 15.4.1997 brought on record



along with the written statement, it is noted that applications had been invited from the medically declassified staff awaiting for alternative posting from all the departments of the division. From this notification, it is quite apparent that the post of the caretaker though belonging to Mechanical department had been thrown open to all the departments and therefore in our considered opinion, the post is to be treated as an ex-cadre post. In the absence of any rules brought on record by the either party, we made a reference to the rules provided in the Indian Railway Establishment Manual Vol. II governing promotion of Group 'C' staff in Chapter II. On referring to these rules, we find that under Para 219 sub-para (i) the rules have been laid down for filling up the those channel of general posts, i.e. outside the normal / promotion for which the candidates are called from different categories of staff from the same department or from the different department. It is provided that for promotion to such posts, selection procedure is to be followed and all eligible staff irrespective of the department in which they may be working who satisfy the prescribed condition of eligibility and volunteer for the post are to be subjected to the selection process. In the present case, having expressed our opinion that the post of caretaker is an ex-cadre post, then keeping in view the provisions of the above referred rules, all the eligible staff should have been subjected to suitability test. Since the name of the applicant was included in the eligibility list along with the

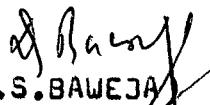
(b)

Respondent No. 4, i.e. Sitalaprasad M. Gupta, the applicant should have been also called for the suitability test. Keeping in view the provisions of rules, we are therefore of the considered opinion that the selection of Shri Sitalaprasad M. Gupta, Respondent No. 4 is in violation of rules and therefore the order dated 24.10.1997 though not impugned by the applicant, deserves to be set aside. The selection should have been made after taking into account the candidature of the applicant also. However, since Shri Sitalaprasad M. Gupta has already passed the suitability test, we are of the view that he should not be subjected to the test again but the applicant should be subjected to a supplementary test.

9. Keeping in view the above deliberations, the OA. is allowed with the following directions :-

- (a) The result of the suitability test as per order dated 24.10.1997 is quashed. A supplementary suitability test shall be conducted for the applicant.
- (b) After conducting the suitability test for the applicant, the result shall be finalised considering the post of caretaker as selection post keeping in view the provisions of the extant rules as mentioned earlier under Para 219 as applicable to the selection for the general post.

- (c) The compliance of the order shall be done within a period of three months from the date of receipt of the order.
- (d) The interim stay order as granted on 27.10.1997 shall stand vacated after the result of the suitability test is finalised considering the candidature of the applicant also.
- (e) No order as to costs.


(D.S.BAWEJA)

MEMBER (A)


Reported 22-1-99
(R.G.VAIDYANATHA)
VICE CHAIRMAN

mrj.