

Nand Lal Meena : Applicant

Vs.

Union of India and others. : Respondents

Mr.F.H.Mathur, counsel for the applicant

Mr.V.D.Bhargava, counsel for the respondents

CORAM:

HON'BLE SH. O.F.SHARMA, MEMBER (ADMINISTRATIVE)

HON'BLE SHRI PATAI PRADIP, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI O.F.SHARMA, MEMBER (ADMINISTRATIVE))

1. In this application under Section 19 of the Administrative Tribunal's Act, 1985, Shri Nand Lal Meena has prayed that the order Annexure A-1 dated 28.8.1992 by which the applicant has been reverted from the post of Electrical Chargeman appointed on adhoc basis in Scale Rs.1400-2300 (EP) to the lower post of Electrical Fitter Gr.I Scale Rs. 1300-2040 (EP), in Diesel Shed Phulera may be quashed and the respondents may be directed not to revert the applicant from the post of Electrical Chargeman. The applicant has sought further direction from the Tribunal to the effect that the services of the applicant on the post of Electrical Chargeman shall be regularized on promotion w.e.f. 23.6.1983. He has sought yet another direction to the respondents to the effect that the applicant is entitled to the benefit of scheme of upgradation of the year 1984 and in accordance with the aforesaid scheme the applicant is entitled to hold the post of Electrical Chargeman on the basis of upgradation.

2. The facts of the case as stated by the applicant are that he was appointed in the Western Railway on 27.5.1968 and got

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promotions from time to time. He was promoted to the post of Electrical Chargeman vide order dated 23.6.1983, on adhoc basis, against a clear vacancy and was fully qualified to be appointed to the said post (copy of order Annexure A-2). The applicant has been holding the said post continuously since his appointment on that post. The Railway Board issued a scheme of upgradation whereby it was decided that certain percentage of posts in Group 'C' & 'D' categories were to be upgraded and persons holding those posts would be automatically promoted to the higher post. In accordance with the scheme of restructuring the applicant could have been promoted to the higher post of Electrical Chargeman, but this benefit was not granted to the applicant. The applicant was directed to appear in a selection test on the post of Electrical Chargeman in the year 1988, he appeared in the test but was declared unsuccessful. However, the applicant continued to work on the post of Electrical Chargeman. The applicant was declared unsuccessful because the Assistant Mechanical Engineer Shri Laxmi Narain was biased against the applicant for certain personal reasons. The sanctioned strength of Chargeman for the Diesel-shed at Ajmer is 18 and out of these 9 posts are still lying vacant, the applicant belongs to ST Community and being senior most ST employee is entitled to hold the post of Electrical Chargeman in accordance with the prescribed roster.

3. The applicant's further case is that the order dated 28.8.1992 (Annex.A-2) is illegal because the applicant has been ordered to be reverted from the post of Electrical Chargeman after he has held the aforesaid post for about 10 years. Although his promotion to the aforesaid post was described as adhoc, yet no employee can be kept on a higher post on adhoc basis for such a long period of 10 years. The applicant could be considered to have been promoted to the post of Electrical Chargeman vide order dated

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3.6.1983 on a regular basis or on officiating basis against a clear vacancy. He, therefore, cannot be demoted without following the prescribed procedure. The applicant has also referred to a Railway Board's circular which prescribes that a person who has officiated on a higher post if he has been holding the higher post for more than 18 months, he cannot be demoted. Two other employees were brought in in order to ease out the applicant from the post held by him. The applicant has also referred to four other persons whose promotions on the posts of Chargeman have been regularised without selection. The applicant seeks the same treatment to be accorded to him. He has also referred to the names of four persons who have promoted from the post of Electrical Chargeman to that of Junior Foreman without holding a selection. The applicant also seeks same treatment to be accorded to him. Further according to him, if an employee belonging to a SC or ST community does not qualify the required selection test, another chance should be given to him to qualify the test, within a period of six months.

4. The respondents in the reply have stated that the applicant was promoted on the post of Electrical Chargeman purely on adhoc basis as per 40 point reservation roster, in the year 1983, without holding any selection. Two ST employees senior to the applicant were not considered for promotion on adhoc basis at that time due to adverse entries in their confidential records. The post of Electrical Chargeman is to be filled up by a positive act of selection but he was appointed to the said post only on adhoc basis. The applicant continued to hold the post on adhoc basis since 23.3.1983 for various reasons including the fact that regular selection for the said post could not be held due to a stay granted by the Hon'ble Gujrat High Court. The said stay was vacated by the Tribunal Ahmedabad bench after the matter was

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transferred to it and the process of selection was started in the year 1987/1988 in which the applicant failed and, therefore, his name was not placed in the select panel. The applicant was not entitled to the benefit of upgradation for the reason that the post of Electrical Chargeman is a safety category post for which no relaxation in the matter of selection and appointment can be granted, in view of the contents of Railway Board's Instructions dated 31.5.1982 filed at pages 40, 41 and 42 annexed to the reply. Therefore, the applicant could not have been promoted on the basis of upgradation without his having undergone the process of selection. They have denied that Shri Laxmi Narain, Assistant Mechanical Engineer was in the picture when the regular selection of the applicant was being held. The applicant has been reverted to make way for the duly selected candidates. He had not acquired any prescriptive right to hold the post when he had been appointed to it only on adhoc basis. The persons alleged to have been brought in to ease out the applicant are those who are regularly selected candidates. With regard to the persons who were stated by the applicant to have been granted promotion to the post of Electrical Chargeman without holding selection, the respondents have stated that they do not belong to the cadre of Electrical Chargeman (Diesel) and further details are not available from the OA regarding the date of the orders etc. The persons who were stated to have been appointed to the post of Electrical Foreman without selection were those who were granted benefit of upgradation w.e.f. 1.1.1984 against posts which were vacant prior to that date. They have denied that the applicant has been subjected to any discrimination.

5. During the arguments, the learned counsel for the applicant relied upon a judgment of the Hon'ble Supreme Court in the case of R.C. Srivastava Vs. Union of India and others in Civil Appeal arising out of SLP (C) No. 9865/93 delivered on 3.11.1995. In this



judgment, according to the learned counsel for the applicant, the Hon'ble Supreme Court has upheld the instructions issued by the Railway Board to the effect that employees who have worked in the posts on adhoc basis quite satisfactorily should not be declared un-suitable in the interview. According to the learned counsel for the applicant the pith and substance of the judgment of the Hon'ble Supreme Court is that such candidates should not be declared as failed in the interview while holding the higher post if their work has been found to be satisfactory otherwise. He, therefore, stated that since the applicant had been working on the post of Electrical Chargeman for a long period of about 10 years, he should not have been declared unsuccessful in the process of selection. He added that even though the applicant did not challenge the non-grant of promotion to him in 1984 due to the upgradation, he is entitled to raise the point now when he is being reverted to the lower post after functioning on the higher post for a long stretch of 10 years.

6. The learned counsel for the respondents stated during the oral arguments that the applicant is not entitled to raise the grievance regarding non - grant ^{of} promotion on the basis of upgradation because such promotion was to be given to him w.e.f. 1.1.1984 and the claim is clearly time barred at this stage. He reiterated that since the post of Electrical Chargeman belonged to the safety category, the applicant could not claim the benefit of upgradation or even the benefit of the judgment of the Hon'ble Supreme Court cited by the learned counsel for the applicant in which it has been held that under certain circumstances candidates who have failed in the interview should not be declared unsuccessful in the process of selection.

7. We have heard the learned counsel for the parties and have

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perused the material on record.

8. The grievance regarding being denied upgradation unjustly cannot be raised at this stage because the claim is clearly time barred. Regarding the applicant's failure in the process of regular selection the applicant has nowhere stated in the OA that he had passed the written test but was declared to have failed only in the interview. Therefore, for this reason also the judgment of the Hon'ble Supreme Court relied upon by the applicant would not be applicable to the applicant's case. Apart from that, as stated by the respondents the Electrical Chargeman is a safety category post and the Railway Board have decided that no relaxation in the matter of prescribed qualifications, period of service and other criteria can be allowed while filling up these posts. This was not the issue before the Hon'ble Supreme Court when they delivered their judgment dated 3.11.1995. There is no dispute that the applicant held the post of Electrical Chargeman on adhoc basis and it was not that he had cleared the process of selection and was thereafter appointed on adhoc basis. May be he had functioned on the higher post on adhoc basis for a long period but that by itself does not confer a right on him to be continued on that post, after regularly selected candidates by the process of selection are available to man the post in question. We have carefully considered the question whether any discrimination has been caused against the applicant in as much as certain others have been granted promotion to the post of Electrical Chargeman without the process of selection. The applicant has not made out a clear case in this behalf. The allegation that he was unjustly failed during the process of selection is untenable in view of averment of the respondents that Shri Laxmi Narain, Assistant Mechanical Engineer against whom this allegation has been made was not in the picture at the time of selection of the applicant.

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10. For all the above reasons, we are of the view that there is no merit in this O.A. It is, therefore, dismissed. No order as to costs. The interim direction issued on 9.9.1992 stands vacated.



(RATAN PRAKASH)

MEMBER (JUDICIAL)



(O.P. SHARMA)

MEMBER (ADMINISTRATIVE)