

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

O.A.No.916/89

Dt. of order: 11.1.1994

Bajrang Singh Meena : Applicant

Vs.

Union of India & Ors. : Respondents

None : For the applicant

Mr. Manish Bhadani : Counsel for the respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Bajrang Singh Meena, has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, wherein he has made the following prayers:

- i) The reversion of the applicant on or around on 9.9.89 be quashed and the respondents be directed to retain the applicant on the post of Ticket Collector continuously with all benefits;
- ii) The applicant may be declared regular and permanent on the post of Ticket Collector, having continued to work thereon for more than 18 months;
- iii) Alternatively, the written test held by the respondents may be declared null and void and the respondents may be ordered not to conduct the interview scheduled to be held on 27.11.89 on the basis of the eligibility list Annx.A-1;
- iv) If the eligibility list Annx.A-1 is regarded as valid the name of the applicant be included in the said list at Sl.No.75 in the Scheduled Tribe quota and the respondents may be asked to allow the applicant to appear in the interview on 27.11.89 or any other date as may be directed.

3. The facts of the case as stated by the applicant are that he joined the Railway as Coalman in 1976 and was appointed as Khelasi in 1982. In 1982, the applicant

appeared in the test for the post of Ticket Collector. He was declared successful in the written test but no oral test was held. Another written test was held for the post of Ticket Collectors etc. in 1989 for filling up $33\frac{1}{3}\%$ posts in Group 'C' category ^{which were to be} ~~for filling~~ filled-up from amongst Group-D employees. As a result of the written test a list of candidates eligible for appearing in the interview was published but the applicant's name was not included therein. Earlier the applicant had been appointed as Ticket Collector on ad hoc basis vide the order dated 23.1.88. He joined as a Ticket Collector on 25.1.88 in pursuance of the said order. The applicant continued on the said post upto 9.9.89 when he was reverted to his original post of Senior Khalasi.

3. The applicant's further case is that once he had continued on the post of Ticket Collector for more than 3 months, his appointment could not be treated as ad hoc but should be considered at least temporary. Further, if he continued on the said post for more than 18 months, he could not be reverted unless a departmental enquiry was held against him and a major penalty ^{was} imposed on him. Applicant has referred to the instructions of the Railway Board dated 9.6.65, 15.1.66, 1.2.60 and 9.2.72 in this regard. He has also referred to the judgment of the Cuttack High Court delivered on 20.12.79 in the case of S.K. Mohanti Vs. Union of India, wherein these circulars of the Railway Board have been referred to and it was held by the Hon'ble High Court that a person who has been allowed to work even on stop-gap-arrangement basis for a long period of 18 months or more ~~than~~ should not be reverted otherwise than through disciplinary proceedings. The Department's SLP against the said judgment was rejected by the Hon'ble Supreme Court.

4. The applicant has also challenged the procedure adopted in holding the written examination and has also questioned the correctness of the eligibility list published by the respondents for holding interviews because, inter alia this eligibility list does not contain names which are 3 times the number of vacancies. He has also questioned the eligibility list on the ground that the names of ST candidates have not been correctly shown therein. He has also stated that the question papers set in the written examination were not properly framed. Further according to him the written test for SC & ST candidates should have been held separately from general candidates. Further, according to him, as per the Railway Board's instruction dated 31.8.74, if the total number of vacancies could not be filled-up from amongst the reserved candidates, the best amongst them i.e. those who secured the highest mark should be earmarked for being placed on the panel and should be appointed provisionally. They should be given an opportunity to improve their knowledge and coming up to the requisite standard and at the end of the 6 months period a special report about their performance should be obtained and sent to the General Manager for review. Their continuance should depend upon this review. This procedure was also not followed by the respondents in the present case.

5. The respondents in their reply have stated that since the applicant had failed in the written test held in 1989, he could not be called for interview; therefore, his name could not figure in the eligibility list for the candidates to be interviewed. They have added that the applicant was appointed as Ticket Collector on ad hoc basis on account of exigencies of service and was subsequently reverted to his

parent post on 9.9.89. There are no rules to the effect that ad hoc appointments should not continue for more than 3 months. Ad hoc appointment ^{remains as such} till the appointee gets selected for appointment on regular basis. A departmental enquiry is conducted only for imposition of punishment on account of certain misconduct. Reversion of an ad hoc employee to the substantive lower post held by him is not a punishment. They have added that there was no irregularity in the conduct of the written examination or in setting the question papers. They have denied that there is any requirement of holding separate examinations for SC & ST candidates. Other averments of the applicant have also been denied by the respondents.

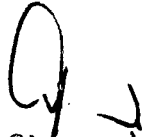
6. None is present on behalf of the applicant. We have heard the learned counsel for the respondents and had gone through the records. The applicant appeared in the written examination for the post of Ticket Collector and other similar Group-C posts for which appointments were to be made from amongst Group-D employees on the basis of certain reservations. In the examination held in 1982, he passed in the written examination but failed in the interview. ^{In the} selection held in 1989, he failed in the written examination. He, therefore, could not be called for the interview. He had earlier been appointed to the post of Ticket Collector on ad hoc basis during 1986. After the applicant had failed in the ^{in 1989} written examination/ he was reverted to the post of Khalasi, which he was holding before his appointment as Ticket Collector on ad hoc basis. The applicant has referred to various circulars of the Railway Board on the basis of which if he had worked for more than 3 months on ad hoc basis he should be treated as temporary employee, if he had worked on a post for more than 18 months, he should not be reverted without holding a disciplinary proceedings against him and even


if he had not qualified in the selection process, he had to be given an opportunity to work on the higher post for a period of 6 months during which his suitability to continue on the higher post would be assessed on a review by the General Manager. None of these circulars have however been annexed to the application, nor have the contents thereof been reproduced in the application. Details of the judgment of the Cuttack High Court referred to in the application including citation thereof have not been given. In these circumstances, we are unable to subscribe ^{to} the view ~~xx~~ put forward by the applicant. The averments regarding irregularities in the procedure for conducting the written examination or the setting up of the question papers are too vague to be taken note of. In any case the applicant has challenged the procedure adopted in holding the examination after he had appeared therein and been declared unsuccessful. It is well settled now that a candidate or a government servant who ~~avails~~ himself of opportunity to appear in the examination but is declared unsuccessful has no right to challenge the validity or the correctness of the examination or the procedure adopted therein after he has appeared therein without raising any objection to the procedure adopted.

7. The learned counsel for the respondents has specifically drawn our attention to the Full Bench Judgment of the Tribunal in the case of Jethanand & Ors Vs. Union of India & Ors. 1989 (2) SLJ (CAT) 657, in which the Tribunal had considered the Railway Board's circular dated 9.6.65 to the effect that an employee who had officiated in a promotional post for more than 18 months is not liable to be reverted without following the Discipline & Appeal Rules. The Tribunal held that this circular applies only in the case of those Railway servants who have selected and empanelled for the said

promotional post. In the instant case, the applicant had not passed the selection process and therefore not been selected or empanelled for the higher post of Ticket Collector. In these circumstances according to the learned counsel for the respondents, the circular dated 9.6.65 referred to by the applicant at page 8 of the application is not applicable in his case.

8. On a careful consideration of the facts and circumstances of the case, we are of the view that there is no merit in this application. It is dismissed accordingly with no order as to costs.


(O.P.Sharma)
Member(A)


(Gopal Krishna)
Member(J).