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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

O.A. No. 1179, 1992

Date of order: 10.1.97

Ishwar Chand Mali

: Applicant

Vs.

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Dy. Chief Mechanical Engineer (Carriage), Western Railway, Ajmer.
3. Shri Musrat Hussain Sidhki, Motor Lorry Driver Skilled (Gr. III) in the Carriage and Wagon Workshop, Ajmer, Western Railway.

: Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. Mahish Bhandari, counsel for respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RAPAN PRakash, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RAPAN PRakash, MEMBER (JUDICIAL))

The applicant Shri Ishwar Chand Mali has approached this Tribunal under Section 19 of the Administrative Tribunal's Act, 1985 for a declaration that the impugned order dated 7.12.1992 (Annex.A-6) issued by respondent No.2 Dy. Chief Mechanical Engineer (Carriage), Western Railway, Ajmer for absorbing respondent No.3 in Department No.31 be declared illegal and it be quashed. It has further been prayed that the respondents be restrained from reverting the applicant from the post of Motor Lorry Driver to adjust respondent No.3 and any reversion order if passed may also be declared illegal and

quashed with all consequential benefits.

2. Facts relevant for the disposal of this application in brief are that the applicant was initially appointed as a Khallasi in Carriage and Wagon Department, Ajmer. Vide letter dated 25.1.1990 (Annexure A-2) he was promoted to officiate on the post of skilled Motor Lorry Driver Gr.III in Carriage and Wagon Workshop, Millwright Department, 31 Ajmer for an initial period of six months. He being in possession of requisite qualifications, driving licence etc., and having passed the trade test for the post of SK Motor Lorry Driver was promoted against a clear vacancy on the said post vide letter dated 20.2.1990 (Annexure A-3). It is the case of the applicant that he is continuously discharging his duties efficiently and effectively without any cause of complaint. His name also finds place in the seniority list dated 1.12.1990 (Annexure A-4) in the Mechanical Millwright (CSW) Department. It is also the case of the applicant that after a Notification dated 8.4.87 (Annexure A-5) was issued by respondent No.2 inviting applications for filling up of two posts of Motor Lorry Driver Gr.III ~~Scale~~ Rs. 950-1500 (RP) and one post in Department No.31, respondent No.3 also applied for promotion in the Modernisation Department who belongs Loco Shop. It is the case of the applicant that the post in Modernisation Department appeared to be created for a period of one year and as such respondent No.3 was required to be repatriated to his Parent Department i.e.

Loco Shop after completion of the said period. The grievance of the applicant is that respondent No.3 started manipulating with departmental authorities for his absorption in Department No.31 instead of his repatriation to his Loco Shop where he had his lien. Consequent thereupon respondent No.2 vide letter dated 7.12.1992 (Annex. A/1) has issued orders for absorbing respondent No.3 in the Department No.31. The apprehension of the applicant is that this respondent No.3 is being absorbed against the vacancy of skilled Motor Lorry Driver Gr.III and that he may be reverted being the junior most. He also apprehends to be declared surplus on absorption of respondent No.3 who may be placed above the applicant in the total strength of seven posts of Skilled Motor Lorry Driver Gr.III. It is also claimed by the applicant that he is holding the post of Motor Lorry Driver Gr.III on regular basis and as such cannot be reverted without following the due procedure. Apprehending reversion and his placement below respondent No.3 he has approached this Tribunal to claim the aforesaid reliefs.

3. In this application respondents were duly served with the notices issued to them and have been putting in appearance but they have failed to file any reply to the OA inspite of a number of opportunities. By order dated 11.1.1993 it was ordered that the applicant may not be reverted till the next date and this interim direction is continuing till today.

4. We heard the learned counsel for the applicant and for the respondents at great length and have examined the record in great detail.

5. It is claimed by the applicant in para 7(D) of the application that he is holding the post of Motor Lorry Driver Gr.III on regular basis. This fact has not been denied by the respondents by filing any counter. However, from a perusal of the documents filed by the applicant in support of his claim, it is not made out as to when the applicant has been made Motor Lorry Driver on a regular basis. None-the-less it is evident from a perusal of order dated 20.2.1990 (Annex.A/13) that the applicant has been promoted on a vacant post of Motor Lorry Driver Gr.III as a temporary measure on a monthly pay of Rs. 950/- in Scales Rs. 950-1500(R.P). It has also been specifically mentioned in this order that he has already cleared the trade test for the post of Motor Lorry Driver and has also cleared the Medical Category 'A' test and this order has the approval of the Chief Mechanical Engineer, Ajmer. However, in the absence of any reply on behalf of respondents, it has not been possible to ascertain whether the averment of the applicant that he is holding the post of Motor Lorry Driver Gr.III on regular basis is true or not. Yet, as the pleadings stand it has to be presumed that the applicant is holding the post of Motor Lorry Driver Gr.III on a regular basis unless the respondents have issued any other order contrary to it earlier.

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6. It is also to be noted that respondent No.3 has not contested this application in spite of service of notice of the application. However, a perusal of the impugned order dated 7.12.1992 (Annex.A-1) indicates that orders for absorbing respondent No.3 Shri Musrat Hussain Siddiki in the Department No.31 have been issued who in fact does not belong to this department but to the Department of Loco Workshop and whose lien as alleged by the applicant has been in the Loco Workshop. In view of these facts, we are constrained to observe that the apprehension of the applicant of his reversion is not without any foundation.

7. Another argument of the learned counsel for the applicant is to the effect that there has been an error in issuing the absorption order Annexure A-1 in respect of respondent No.3 since he belongs to another Organisation; does not carry any weight. No provision contrary to the action taken by the respondents in respect of respondent No.3 has been cited by the applicant. Besides, this Tribunal would not go into the efficacy/in- efficacy on part of Respondents Railways in issuing the absorption order in respect of respondent No.3 in their Department No.31.

8. Consequently, in the facts brought-forth before us in this O.A., we hereby order that no order of reversion in respect of the applicant would be passed in view of absorption of respondent No.3 in

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deporting
No.31 of the respondents. Further, we deem it appropriate that the ends of justice would ^{be} ~~not~~ ^{be} met if any order affecting the interest of the applicant are issued in favour of respondent No.3 about his position/status in the Department No.31, the applicant would be given a prior opportunity of being heard.

9. The O.A. stands disposed of accordingly with no order as to costs.


(RATAN PATEL)

MEMBER (J)


(O.P.SHARMA)
MEMBER (A)