

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

O.A.No.82/93

Date of decision: 28.04.93.

Pradeep Kumar

.....Applicant.

Vs.

Union of India & others

.....Respondents.

None present for the parties.

CORAM :

THE HON'BLE MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN

THE HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER

PER HON'BLE MR. JUSTICE D.L. MEHTA :

Mr. A.K. Singhal, Senior S.O. present on behalf of the respondents, however, his presence cannot be recorded as he has not been appointed as presenting officer by the department and no letter has been sent by the respondents to show that they have authorised him to appear, plead and act on behalf of the respondents.

2. The applicant entered into service in the year 1981 and continued as Daily Rated Worker up to 1985. His services were regularised on 30th September, 1985 and he was absorbed on the regular post of Hamal in Group 'D' category. The applicant was having a driving licence and he was selected by the respondents to the post of Driver and his name finds place in the panel prepared by the department dated 20th Nov. 1989 (Annex.A-2) and he was appointed vide order dated 8th May, 90 (Annex.A-3) to the said post. In this appointment letter only

one fact has been mentioned that the appointment order is provisional subject to the decision in the writ petition pending before the Hon'ble Supreme Court. It has not been mentioned any where in Annexure A-3 (Appointment letter) that he was working or he was appointed against a work-charge post. Thus, from the perusal of the Annexure A-3, it is evident that he was appointed on the regular post and his appointment was only subject to the decision of the Hon'ble Supreme Court. However, the respondents on 1.2.93 passed the order of reversion to his original post which he was holding prior to appointment to the post of Driver (Annex.A-1). On the post of Driver, the applicant has worked for more than 2 years and 8 months and he has been reverted without giving any notice. In the reply submitted by the respondents it has been mentioned that the reversion of the applicant was not made as a measure of penalty nor for any extraneous reasons. In para 5 it has been mentioned that the respondents had 3 options with them, firstly to request the workshop to absorb the applicant by way of transfer secondly, to revert the applicant to the post of Hamal or lastly to retrench the services of the applicant.

3. The respondents have also come with a case that the applicant was appointed against the post of a particular project and project came to an end and the necessary record will be kept ready for perusal of the court. As far as Annexure A-3, the appointment letter is concerned, it is very clear that the appointment was not against a particular post of a project but his appointment was as a Driver of the Cash Van and he was attached with the Accounts

Department.

4. It has also been mentioned in the reply submitted by the respondents that the Cash Van was transferred to the Workshop.

5. Cash Van is a necessary part and only the responsible persons are appointed on such important job.

6. Respondents have also submitted that they addressed a letter to the Chief Workshop Manager, Ajmer on 19.01.93 and they got the reply from him that there is no vacancy in their office. This reply is not a sufficient reply. There may not be any vacancy in the office of the Chief Workshop Manager, there may be vacancies in other projects and there is also a possibility of vacancies in other departments of the Western Railways and particularly in the Ajmer Division. Thus, the reply given is not an adequate reply and to say that in ~~the~~ office there is no vacancy cannot be construed that there is no vacancy in the Division where the applicant was working although, he has served for more than 12 years and he was holding the post of Driver for about 2 years and 8 months. In such circumstances it may amount to a case of retrenchment of the employee from the post of Driver and this is not a reversion simplicitor but this is a case of retrenchment resulting in reversion. The retrenchment cannot be effected without following the process of law provided under the Industrial Disputes Act, 1947 and particularly, the provisions of Sec. 25-F can be evoked. It is an admitted position that no notice has been served and no compensation has been made

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and even no option has been taken from the applicant whether he will like to absorb out side the accounts department or in any other department of the railways, or he will like to retrench. In such circumstances the order of reversion on the post of Hamal (Annex.A-1) is bad in law.

7. In the result, we accept the O.A. set aside the order dated 01.02.1993 (Annex.A-1) and direct the respondents to treat the applicant in service on the post of Driver. He should be absorbed where ever there is a vacancy in any department of the Railways in the Ajmer Division. In case he cannot be absorbed and it is necessary to retrench his services from the post of Driver then the respondents will be at liberty to pass a fresh order in accordance with law following the procedure laid down in law. The O.A. stands disposed of. There will be no order as to costs.

(O.P.SHARMA)
Administrative Member


(D.L.MEHTA)
Vice Chairman

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