

(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.04.2000

OA No.245/93

1. Gheesu Lal S/o Shri Sohan Lal, now a days working as Record Sorter (C&A), Western Railway, Ajmer.
2. Shyam Lal S/o Shri Manya, now a days working as Record Sorter, Loco Head Office, Ajmer.

.. Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Works Manager (Establishment), Loco Workshop, Western Railway, Ajmer.

.. Respondents

Mr. S. K.Jain, counsel for the applicants

Mr. S.S.Hasan, counsel for the respondents

CORAM:

Hon'ble Mr.Justice B.S.Raikote, Vice Chairman

Hon'ble Mr. H.F.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. H.F.Nawani, Administrative Member

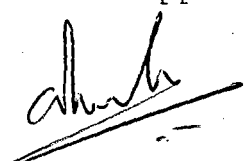
The applicants in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, seek quashing of the impugned order dated 19.4.1993 (Ann.A1) by which they have been reverted and they be declared regularised in the post of Record Sorter in view of their long service of six years uninterruptedly. In the alternative, they be allowed the benefit of Jethanand's case by giving them three opportunities before their reversion is decided.

2. The case of the applicants is that the applicants were Class-IV employees of the Railways and were appointed on ad-hoc basis as Record Sorter vide orders dated 6.10.1987 (Ann.A2) and 16.4.1988 (Ann.A3) respectively. They were asked to be ready for written test and interview vide letter dated 12.12.1989 (Ann.A4) and a fresh notice was again issued on 16.1.1989. The applicants appeared and did very well even though no syllabus was prescribed for the written test and very

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short time was given for appearing in the test. The result was declared on 7.4.1989 and applicants were not declared successful but were allowed to continue on the post of Record Sorter. Another test was held on 20.2.1991 vide notice dated 1.2.1991 by clubbing vacancies of two years. The applicants were again declared unsuccessful but they were not reverted till issuance of impugned order dated 19.4.1993 (Ann.A1). It is contended that no syllabus was prescribed and on both the occasions only a few days time was given to the applicants to prepare for the test and, therefore, their reversion was wholly illegal and contrary to principles of equity and justice. It is also contended that as per the Full Bench decision of this Tribunal in Jethanand's case, they should have been allowed atleast three opportunities before reverting them. It is also stated that respondent No.1 has full powers for relaxation of service conditions which has been exercised on various occasions. Vide letter No. E(MD)890/10 Vol.II dated 3.8.1989, ad-hoc employees have been ordered to be regularised and Signal Inspectors were regularised after completion of 3 years service by relaxing the condition of selection. By not doing the same in the case of applicants, the respondents have violated Articles 14 and 16 of the Constitution of India.

3. In their reply, the respondents have controverted the contentions made by the applicants and stated that the applicants were promoted to the post of Record Sorter purely on ad-hoc basis. They have denied that very short time was given to them for appearing in the written test; in the notice issued on 12.12.1987, it was clearly mentioned that the candidates can be called for written test in future at short notice. The applicants were allowed to continue on ad-hoc basis, inspite of their failing in the test, on account of availability of vacancies. Another written test was scheduled to be held in 1990 but was cancelled due to administrative reasons. Next written test was held on 22.2.1991 for which notice was issued on 1.2.1991 after ascertaining the available vacancies as per rules. The applicants were declared unsuccessful in the written test but since interview etc. were yet to be held, they were allowed to continue as Record Sorters on ad-hoc basis. It has been contended that the decision given in Jethanand's case is not applicable, having different facts. The applicants are not



entitled to any relief as the order of reversion was passed long back due to their failure in the test.

4. We have heard the learned counsel for the parties and have perused the records.

5. It is well settled law that ad-hoc promotion given de-hors the rules cannot lead to regular appointment. In this case the applicants willingly, and without any protest, participated in the selection process i.e. the written test and were unsuccessful on two separate occasions. It appears that they had adequate notice about the written test and having appeared they are now estopped in alleging that syllabus was not given or sufficient time for preparation was not given. The order dated 3.8.1989 (Ann.A7) is of no help to the applicants as it has been issued in respect of employees in another Department and in the absence of its background and Recruitment Rules etc. of the post, this order by itself does not enable us to quash the reversion order in this case, which has already been implemented. The fact remains that the promotion of the applicants were purely on ad-hoc basis and they failed to cross the first hurdle i.e. the written test in the regular selection process and, therefore, did not enjoy any right to continue in the post of Record Sorter. Refer to Director, Institute of Management and Development, UP v. Smt. Pushpa Srivastava, JT 1992 (4) SC 489. The case cited by the applicants, Jethanand and ors. v. Union of India and ors., reported in 1989(2) SLJ 657 (CAT-FB) is of no help to the applicants as in that case also it was held that the cardinal principle to regularise an ad-hoc employee is that he must have qualified in the selection test to become suitable for the post.

6. In the situation, we do not find any justification to interfere with the impugned order dated 19.4.1993 (Ann.A1) and the OA is accordingly dismissed with no order as to costs.


(N.P.NAWANI)

Adm. Member


(B.S.RAIKOTE)

Vice Chairman