

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 22.05.2000

OA No.246/93

Tao Mal S/o Shri Tota Ram, aged 33 years, now a days working as Record Sorter, 23 Aara Mill, Western Railway, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Works Manager (E), Western Railway, Ajmer Division, Ajmer.

.. Respondents

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

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

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant has filed this Original Application with a prayer to quash the impugned order dated 19.4.1993 (Ann.A1) and further that the respondents may be ordered not to revert the applicant from the post of Record Sorter and that he be regularised in the said post.

2. Briefly speaking, the case of the applicant essentially is that he had been promoted, albeit on ad-hoc basis, to the post of Record Sorter against a substantive vacancy on 6.10.1987 and continued to work on that post till he was reverted by the impugned order Ann.A1. He was subjected to a written examination for regular promotion on 20.2.1991 and was declared successful with his name appearing at Sl.No.8 in a list of 35 vide order dated 18.12.1992 (Ann.A6). He was thereafter called for interview vide letter dated 6.2.1993 but he was declared unsuccessful and later reverted from the post of Record Sorter. He contends that since he was working satisfactorily in a substantive vacancy without any interruption for six years, even if on ad-hoc basis, he should not have been reverted on the basis of his being declared unsuccessful in the interview. In support of this contention, the applicant has referred in para 9 of the OA the Railway Board Circular No. EP-1025/38 dated 7.2.1976 in which the Record Note dated 27.11.1975 was incorporated.

3. In their reply the respondents have opposed the relief sought. It is stated that ~~as against~~ the contention of the applicant that he has appeared in a written examination held on 20.2.1991 is not correct as the said examination was cancelled vide office order dated 28.10.1991 (Ann.R1) and, therefore, there is no question of the applicant having been declared successful in the said examination. However, a written examination was held on 30.12.1991 and the applicant was not selected. Thus the applicant did not succeed in the prescribed selection test and since he was working purely on ad-hoc basis, he was reverted. It has also been denied that any 40% quota is fixed for the post of Record Sorter. It has also been stated that Selection was done in the year 1991 after assessing vacancies as per rules and any clubbing of vacancies has been denied.

4. The applicant has also filed a rejoinder. It has been stated therein that the applicant never stated that he was declared successful in the result dated 7.4.1989. He reiterates that in the result declared on 18.12.1992 (Ann.A6), his name appears at Sl.No.8 in the list of successful candidates.

5. We have heard the learned counsel for the parties and examined the material on record.

6. It is quite clear that the applicant passed the written examination, the result of which was declared vide order dated 18.12.1992. We fail to understand what was the purpose of respondents stating in their reply that the applicant was not declared successful in the written examination held on 30.12.1991. Since the reversion order is dated 19.4.1993, it cannot be said that immediately after the written examination held on 30.12.1991, those who failed were reverted. The respondents have not controverted the assertion of the applicant that he had passed the written examination, the result of which was declared on 18.12.1992 (Ann.A6) and they have neither stated that the photocopy of their order dated 18.12.1992 annexed by the applicant as Ann.A6 is not genuine. Therefore, it is quite clear that the applicant had cleared the written examination for promotion to the post of Record Sorter.

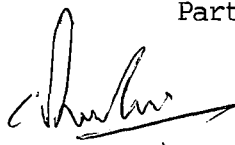
7. The only controversy that is now left to be resolved is whether the applicant could not have been declared unsuccessful in the second leg of selection process i.e. interview, in view of the Railway Board's circular dated 7.2.1976. The relevant part of

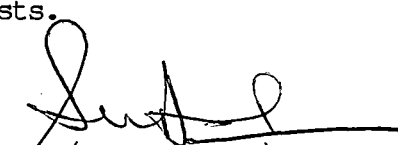
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the said circular has been extracted in para 9 of the OA. It states quite unambiguously that "care should be taken to see while forming panels that employees who have been working in the posts on ad-hoc basis quite satisfactorily are not declared unsuitable in interview. In particular any employee reaching the field of consideration should be saved from harassment". The benefit of this circular has been extended to the applicants in a large number of cases decided by various Benches of this Tribunal. The learned counsel for the applicant has shown us the order dated 21.1.1994 of this Bench of the Tribunal in TA No.558/1986 wherein, relying on the cases of K.C.Mohanty v. Union of India and ors., AIR 1985 (Orissa High Court) 149; Mohini Mohan Dutta v. Union of India and ors., ATR 1987 (2) (CAT-Calcutta) 517, Abdul Wahabkhan Abdul Gafar Khan v. Union of India and ors., ATR 1989 (1) 96 (CAT-Ahmedabad) it has been held that the applicant therein is entitled for the benefits of this circular and his reversion order was quashed. In the case of R.C.Srivastava v. Union of India and ors. in SLP(C) No.9866 of 1955 the Apex Court has also upheld the validity of the circular. The respondents have not contended that the work of the applicant was not satisfactory. In view of the above discussions, we find no reason at all to not follow the settled legal position and hold that the applicant was entitled to the benefit of the said Circular and, therefore, his reversion is not sustainable in law.

8. The Original Application is accordingly allowed and the impugned order dated 19.4.1993 (Ann.A1) is hereby quashed qua the applicant. The respondents are directed to treat the applicant as continuing on the post of Record Sorter on ad-hoc basis and he will be treated as having been regularly promoted to the post of Record Sorter from the date ~~of~~ his junior has been so promoted with ^{all} the consequential benefits.

Parties to bear their own costs.


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member