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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR

Date of order: 28-10-1996

OA No.422/1996

Nanoo Ram Sharma

.. Applicant

Versus

Union of India and Ors. .. Respondents

Mr. V.P.Mishra, counsel for the applicant

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Nanoo Ram Sharma has prayed that the panel dated 16th July, 96 (Ann.A6) by which persons other than the applicant were placed on the select panel for the post of C.T.I. scale Rs. 3000-32000 (RF) on a provisional basis, may be quashed. He has further prayed that consequent on quashing of the aforesaid panel, the order dated 19.7.96 (Ann.A7) by which the applicant has been reverted from the post of CTI, which was held by him on adhoc basis, may also be declared to be ineffective and the applicant may deemed to have been holding the aforesaid post continuously until replaced by a candidate selected in a valid selection by a fresh selection board.

2. Briefly, the facts of the case as stated by the applicant, are that after he was appointed in the Railways as Ticket Collector on 6.12.1968, he got promotions from time to time and was further promoted substantively to the post of Travelling Ticket Inspector

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(TTI) scale Rs. 1600-2660 in May, 1989. While holding the aforesaid post of TTI he was further promoted on adhoc basis to the post of CTI scale Rs. 2000-3200 on 17.5.1996, in ~~his~~ ^{his} turn as per seniority and suitability. The post of CTI is a selection post to be filled up by a positive act of selection for which selection test and viva voce are prescribed. In the panel prepared vide Ann.A6 dated 16th July, 96, which is described as provisional, 11 candidates were included out of which, according to the applicant, one belongs to SC and one to ST. The applicant's name is not included in the aforesaid panel. The applicant had earlier also filed an OA, No. 89/95 challenging an earlier selection for the post of CTI when the applicant had ^{not} yet been promoted as CTI.

3. The applicant's case is that the filing of the aforesaid OA infuriated respondents Nos. 2 and 3 i.e. the General Manager, Western Railways and the Sr. Divisional Commercial Manager, Western Railways, Kota and as a result thereof, the applicant has been declared as failed in the selection panel based on viva voce, for the second time, although the applicant has unblemished career without any adverse confidential report. The selection panel comprised of 3 members and out of these 3 members, 2 belong to the ST community. Therefore, inclusion of the members of the reserved community betrays the bias of the member of the selection committee. The applicant has been reverted from the post of CTI held by him on adhoc basis on appointment of candidates included in the select panel vide Ann.A6 dated 16th July, 1996.

4. During the arguments the learned counsel for the

applicant stated that the seniority list on which the respondents have relied for the purpose of preparation of eligibility list for promotion to the post of CTI is itself erroneous inasmuch as it does not take into account the Hon'ble Supreme Court's judgment in the case of Ajit Singh Januja and Ors. Vs. State of Punjab and Ors., 1996 (2) SLR 71. According to this judgment and other judgments delivered by the Hon'ble Supreme Court on the subject, the general candidates on promotion to the higher grade from their base grade regain their seniority in the grade to which the reserved community candidates and the general candidates have been promoted. Therefore, reliance upon ~~the~~ ^{this} seniority list for the purpose of preparation of eligibility list for the post of CTI is itself erroneous. Therefore, according to him the selection made ~~is~~ ^{and as} declared vide Ann.A6 dated 16th July, 96, is itself vitiated. Since the so called selected candidates have been wrongly included in the panel at Ann.A6, the applicant cannot be reverted for the purpose of accommodating candidates shown in the select list Ann.A6 and therefore, the reversion is bad ~~in~~ ⁱⁿ law.

5. On the earlier occasion on 19.8.1996 when the matter was partly argued by the learned counsel for the applicant, it was pointed out to him that Rule 18(v)(b) of the Railway Servants (Discipline and Appeal) Rules, 1968 provides for appeal being preferred against an order reverting a railway employee officiating in a higher service, grade or post to a lower service, grade or post, even otherwise than as a penalty. The learned counsel for the applicant had undertaken to study the rules in this regard and to address us on the subject.

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Today he addressed us on this point. He stated that this rule is applicable only where promotion has been granted on substantive basis and not on adhoc basis. Only where the applicant has been appointed on a substantive post and has therefore acquired a prescriptive right to hold the post, is it necessary for him to file an appeal against an order reverting him to a lower post. As far as the applicant is concerned, he was promoted only on adhoc basis. He also cited before us a judgment of the Hon'ble Supreme Court in *Setpal and Others Vs. State of Haryana and others*, (1995) 29 ATC 208, wherein the selection in that case was quashed in view of the illegality in the selection process. He further cited before us a judgment of this Bench of the Tribunal in *Brij Raj Singh Vs. The Indian Council of Agricultural Research, New Delhi and Ors.* 1996 (1) SLJ (CAT) 590, wherein selection of a particular candidate was held to be patently wrong and it was quashed because irregular selection procedure has been adopted by the respondents. Finally, he cited before us a judgment of the Calcutta Bench of the Tribunal in *Santi Nath Bose and Ors. Vs. Union of India and Ors.*, (1996) 33 ATC 591, wherein treating certain SC and ST candidates as senior to the applicants who were general candidates for the purpose of admission to the examination for selection was held not valid and the SC and ST candidates were declared ineligible if they were promoted due to reservations. Reliance in this judgment was placed on the judgment of the Hon'ble Supreme Court in *R.L.Sabharwal Vs. Union of India*, (1995) 29 ATC ~~xx~~ 481. He added that since the entire process of selection was itself vitiated, panel Ann.A6 could not be considered to be a valid panel and

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therefore, the candidates included therein had no right to replace the applicant from the post of CTI held by him on adhoc basis.

6. We have heard the learned counsel for the applicant and have also perused the material on record as also the judgments cited before us.

7. The applicant's main ground is that since the seniority list on which the eligibility list for promotion to the post of CTI is based is itself not in accordance with the judgments of the Hon'ble Supreme Court, any selection based on such seniority list would be vitiated in law. However, it is pertinent to note that in this OA, the applicant has not asked for any revision of the seniority list as such. Anyhow, the provisions of Rule 18(v)(b) are categorical. These provide for filing of an appeal by a railway employee against an order by which he has reverted while officiating in a higher service, grade or post to a lower service, grade or post, even otherwise than as a penalty. It is not in dispute that the reversion of the applicant is not as a measure of penalty but it has been ordered so that persons included in the selection panel Ann.Al can replace the applicant or other similarly appointed adhoc candidates. The argument of the learned counsel for the applicant that this provision applied only where promotion has been made on a substantive basis has no force. The applicant can raise all the grounds relating to his grievance in that appeal required to be preferred against his reversion, including the ground that the seniority list on the basis of which the eligibility list has been prepared is itself erroneous. A statutory remedy has been provided

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under the rules and it is the duty of the applicant to avail himself of the remedy before approaching the Tribunal. We have carefully considered the ratio of the various judgments cited before us. As far as the judgment in the case of Ajit Singh Januja is concerned, no doubt it has to be followed by the respondents but the applicant has himself not prayed for revision of the seniority list in the instant case.

8. As regards the other judgments, they are all on the question of quashing of selection on the ground that there was an illegality in the process of selection. The issue here is different. After the candidates selected for the post of CTI were included in the select panel vide Ann.AG dated 16th July, 96, the applicant has been replaced by one of the selected candidates. This is clear from item 2 of the relief clause of the application. Therefore, in the circumstances, he is required to prefer an appeal against the order of reversion. The OA, at this stage, is premature and is dismissed accordingly at the stage of admission.



(Ratan Prakash)

Judicial Member



(O.P. Sharma)

Administrative Member