

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 55/97 199
TxxNo.

DATE OF DECISION 12.4.2001

Nanu Ram Petitioner

Mr. P.V. Chellai Advocate for the Petitioner (s)

Versus

Union of India and anr. Respondent

Mr. K.S. Sharma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(N.P.NAWANI)
Adm. Member

Shashi
(S.K.AGARWAL)
Judl. Member

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.4.2001

OA No.55/1997

Nanu Ram s/o Shri Nathu Ram, at present working as Pointsman in the office of Station Superintendent, Western Railway, Phulera, Jaipur Division r/o Village and Post Hirnodæ, Tehsil Phulera, Distt. Jaipur.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Rail Manager, Western Railway, Jaipur

.. Respondents

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

Mr. K.S.Sharma, counsel for respondents

CORAM:

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

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

Order

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

In this Original Application, filed under Section 19 of the Administrative Tribunals Act, the applicant prays that the impugned order dated 13.12.1996 (Ann.A1) be declared illegal and he be given any relief to which the applicant is found entitled in the facts and circumstances of the case.

2. We have heard the learned counsel for the parties and examined all the documents on record.

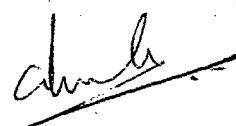
3. Facts, as stated by the applicant, are that he was appointed as a substitute on 16.7.1973, granted Temporary Status and later regularised in a Group 'D' post w.e.f. 1.8.82 and vide order dated



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2/3.4.91 appointed on the post of Leverman. He was promoted in the pay scale of Rs. 950-1500 on ad-hoc basis and posted as Kantewala (कंटेवाला) at Phulera vide order dated 2/3.4.1991 (Ann.A2). A note (No.1) in the said order mentioned that this promotion is subject to passing the selection (necessary) for regular promotion. Subsequently on 10.4.1991, a Notification was issued with eligibility list (applicant is at Sl.No.56) for the purpose of preparing a panel to fill 44 vacancies in the post of Pointsman/Points Jamadar in the scale of Rs. 950-1500. However, the applicant had to proceed on leave on medical grounds between 1.5.91 and 30.5.91 and in the meantime the selection was conducted and regular appointments were made vide order dated 22.6.93 (Ann.A4). Sometime between the selection test and the issue of Ann.A4, the post of Kantewala (Pointsman) was declared non-selection post and no supplementary selection was held for employees like the applicant who might have missed the selection due to being on medical leave, not spared etc. Perhaps in view of declaration of the post of Pointsman as non-selection, the order dated 22.6.93 (Ann.A4) has two parts. Part 'A' containing names of such employees who passed the selection and were promoted on regular basis. The respondents also added Part 'B' in the said order, containing names of such employees whose names were not in the panel and such employees, including the applicant whose name figures at Sl.No.16, were promoted on provisional basis on the post of Kantewala/Bodywala and the applicant was posted at Phulera. Subsequently, vide impugned order dated 13.12.96 (Ann.A1), the applicant was declared surplus and transferred from Phulera to Ladpur, the last station of Jaipur Division.

The applicant is aggrieved by the Ann.A1 primarily on two counts. First, as per the rules, juniormost employee has to be declared surplus, but ignoring this at least four of his juniors [names given in para 4(X) of the OA] have been retained and he had



been picked up for being declared surplus and consequent transferred in an arbitrary manner. Second, against the circumstances under which he could not appear in the selection and subsequently the post having been made non-selection and he being senior enough, his promotion vide order dated 22.6.93 (Ann.A4) should be treated as regular and he cannot be considered junior to his erstwhile juniors whose names figured in Part 'A' of the said promotion order. The applicant has also alleged that no seniority list of Pointsman subsequent to promotions ordered vide Ann.A4, has been issued by the Department.

4. The respondents have denied the case of the applicant by filing a reply. In essence, it is contended that the applicant did not make any representation or seek a supplementary examination immediately after he reported for duty on 30.5.1991. He has not stated that he was not aware of the Notification for selection (Ann.A3) and on joining duty would have known that the selection has already taken place while he was on medical leave. It was, therefore, his duty to make a representation and seek a supplementary test. The applicant did nothing of this sort and on the other hand, accepted his ad-hoc promotion vide order dated 22.6.93 (Ann.A4), which clearly did not give him regular promotion by keeping him in Part 'B' of the order. It is also contended that the applicant was promoted only on ad-hoc basis earlier vide Ann.A2 of 2/3.4.1991 and note No.1 thereon made it clear that these ad-hoc promotions will have to pass selection for getting regular promotion and since he did not pass selection held as a follow up of Notification dated 10.4.1991 (Ann.A3), he was again promoted only on ad-hoc basis and, therefore, if his juniors had passed the selection and stole a march over him, he cannot have any grievance. It has been admitted that since, in the meantime, the posts were made non-selection, no supplementary or regular selection was,

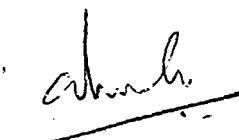


therefore, organised. It has finally been contended that the applicant, after his failure to get regular selection, had become juniormost at Phulera and he was rightly declared surplus and posted to Ladpura.

5. We have carefully considered the rival contentions. We are constrained to mention at the very begining that we might face difficulties in giving a clear verdict in view of legal position having not been brought out in the reply of the respondents, facts being more or less undisputed. The problems for the applicant started with his being on leave on medical grounds when the selection was conducted. We are not satisfied with the reply on behalf of the respondents that the onus was totally (emphasis supplied) on the applicant to inform the authorities about his inability to appear in the selection due to his being on leave on medical grounds and seek a supplementary examination so that he could pass and protect his seniority. We, therefore, asked the learned counsel for the parties to indicate the legal position, as may be available in the Indian Railway Establishment Manual (for short IREM). Our attention was invited to Para 316 of the IREM by the learned counsel for the applicant. It will be useful to extract hereunder the relevant portions of the said para as also preceding para 315:

315, DEPARTMENTAL EXAMINATION/TRADE TEST

Subject to what is stated in paragraphs 316, 317 and 320 below, where the passing of a departmental examination or trade test has been prescribed as a condition precedent to the promotion to a particular non-selection post, the relative seniority of the railway servants passing the examination/test in their due turn and on the same date or different dates which are treated as one continuous



examination, as the case may be, shall be determined with reference to their substantive or basic seniority."

316. A railway servant who, for reasons, beyond his control, is unable to appear in the examination/test in his turn along with others, shall be given the examination/test immediately he is available and if he passes the same, he shall be entitled for promotion to the post as if he had passed the examination/test in his turn.

NOTE 1. The expression 'reasons beyond his control' appearing above should be interpreted to include the following:

(i) Sickness of the members of a railway servant's family supported by the medical certificate of the authorised medical attendant, so serious that the railway servant could not be reasonably expected to take the test;"

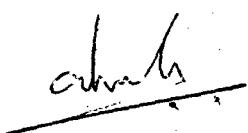
6. From Note 1(j) above, it is clear that 'sickness of a railway servant supported by medical certificate of the authorised medical attendant' is included in the 'reasons beyond his control' and as per Para 315 when a railway servant is unable to appear in the examination/test in his turn alongwith others for reasons beyond his control, he shall (emphasis supplied) be given examination/test immediately he is available and if he passes the same, he shall be entitled to promotion to the post as if he had passed the examination/test in his turn (emphasis supplied). If the case of the applicant had clearly been covered by these provisions, the position in law would have been crystal clear. But we note, and that is why we have extracted Para 315 also, that as per Para 315, these provisions relate to cases where passing of a departmental or trade test is a condition precedent to promotion to a particular non-selection post (emphasis added). However, it is undisputed that the selection that was held, and which was missed by the applicant,

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was for a selection post, albeit declared non-selection after the said selection procedure. In the circumstances, the provisions contained in Paras 315 and 316 are not applicable in the case of the applicant. Although no rule relating to treatment to be meted out to officials who are not able to appear in a selection for reasons beyond their control when promotion to a selection post is involved, we feel that principles enunciated in Para 315 and 316 should also be applicable, as far as the situations when employees have not been able to appear in a selection process for a selection post are concerned; there could be no justification to treat employees, not being able to appear for 'reasons beyond their control, differently when selection or non-selection post is involved. However, in the absence of adequate material before us, we are unable to give a clear finding on this matter.

7. We cannot help mentioning something which we have noticed from promotion order, Ann.A4. The pleadings in the case are limited to a selection held for the post of Pointsman as a follow up of Notification dated 10.4.1991 (Ann.A3) when the said post was selection post and sometime thereafter the post was made non-selection and thereafter promotion order dated 22.6.93 (Ann.A4) was issued. Under Part 'B' wherein certain employees who were not on the panel, including the applicant, were given promotion, it goes on to state something like this in the last para (approximate translation by us). "Since all employees on the panel (except the one at Sl.No.32), have been given promotion as per above para and now the post of Pantewala pay scale Rs. 950-1500 (RP) has become selection.....". It is not for us, while carrying out a judicial review, to investigate why a selection post had to be declared non-selection between the Notification for selection dated 10.4.1991 (Ann.A3) and issue of consequential promotion order dated 22.6.1993 (Ann.A4) and alongwith issue of the said promotion order, again

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state that the post has now become selection post again ! We have also not been informed as to by which order and when the post was declared non-selection, perhaps meaning thereby that promotion will be made only on the basis of service records. In such a situation, the applicant, who belongs to Scheduled Caste community and risen from the lowest rungs, may have become confused and had not pressed for a supplementary selection. Of course, we are aware that we cannot grant any relief to the applicant on this count.

8. Another noteworthy thing is that Part 'B' of the promotion order dated 22.6.1993 does not mention that the promotion given is on ad-hoc basis, as was specifically mentioned under Note No.1 in the earlier promotion order dated 2/3.4.1991 (Ann.A2). Instead, it states that (again approximate transcription by us) "promotion is being given on provisional basis". What made the respondents to this time accord a 'provisional promotion' rather than an 'ad-hoc promotion' is neither clarified in the reply nor explained during the arguments. Could it be that this promotion was given by following the process for a promotion on non-selection process and the question of seniority of these employees was yet to be decided, which prompted the respondents to give an interim 'provisional' promotion in the meantime ? We are afraid, we cannot give any definite opinion on this issue also due to lack of material before us.

9. In the circumstances, we are left with no option but to decide this OA on equity principles, especially when the applicant happens to belong to Scheduled Caste community and perhaps a first generation railway employee at the lowest rungs. It is clear from Para 315 and 316 of the IREM, extracted earlier, that if the post of Pointman in the pay scale of Rs. 950-1500 was to be a non-selection post at the time of issue of notice dated 10.4.1991



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(Ann.A3), these paras could have been applicable in his case and para 316 enjoined that the respondents shall give an opportunity for examination/test, if an employee could not appear in such examination/test at his turn with others due to reasons beyond his control. Note 1(i) under the said para specially covers 'sickness of the railway servant' under the term 'reasons beyond control'. It is not disputed that the applicant was on leave on medical grounds when the selection was held and, therefore, respondents were required to hold a (supplementary) examination/test for the applicant, if the post was non-selection. Unfortunately for the applicant, the post was a 'selection' post at the relevant time, a fact which is substantiated by the fact that promotions on regular basis were granted to those in the panel. However, we are of the considered opinion that the facility given to a 'sick' employee under Paras 315 and 316 should hold good in this case also. The very same Railway administration cannot treat the 'sick employees' in different manner, if they happen to be appearing in a selection for a selection post or for an examination/test for a non-selection post. The origin of Note 1(i) under Para 316 lies in sickness preventing an employee from appearing in a selection process and the objective of Para 316 being to tackle a problem originated due to sickness (or for that matter other reasons beyond the control of the railway servant as enumerated under (ii) to (iv) in Note No.1), there cannot be different provisions when an employee cannot appear in a selection process when for a selection post or for a non-selection post. This will mean hostile discrimination between similarly placed people. The applicant, therefore, deserves to be given an opportunity to appear in a supplementary selection, on the same lines as held for those employees whose names had figured in the eligibility list in the notice dated 10.4.1991 (Ann.A3). We also want to observe that the applicant has also been negligent about the matter and had not pressed his claim for a supplementary

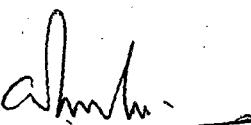


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examination during the long period between 30.5.1991 ~~XXXXXX~~ when he joined his duties after leave on medical grounds and 22.6.1993 (Ann.A4) when a single promotion order was issued, both for those on panel and for those like the applicant, but in view of the provisions of Para 316 of the IREM, quoted earlier as also the background of the applicant as discussed, we reject the contention that the applicant should suffer because he did not press for a supplementary selection.

10. In the result, we partly allow the OA and direct the respondents to organise a similar selection process for the applicant, as was done for those in the eligibility list in the Notification dated 10.4.1991 (Ann.A3) and if he succeeds, give him notional seniority at a rank, just above that of his immediate junior. We make it clear that no arrears, if otherwise become payable because of grant of notional seniority, will be paid to the applicant, but his pay will be fixed as if he had been granted regular promotion from the date of notional seniority and the notional seniority will be considered for any further promotions. This direction shall be implemented within 3 months of the date of receipt of a copy of this order.

In the circumstances, there will be no order as to costs.


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl.Member