

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 422/2000
T.A. No.

200

DATE OF DECISION .06.2003.

DHARAM PAL SINGH

Petitioner

MR. SHIV KUMAR

Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

Respondent

MR. S.S. HASSAN

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. G.C. Srivastava, Administrative Member

(G.C.Srivastava)

Adm. Member

(G.L.Gupta)

Vice Chairman

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
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 ?

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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Date of Order : 06.06.03

O.A. NO. 422/2000

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Shri Dharam Pal Singh S/o Shri Sunder Lal Aged about 44 years,
resident of T 119, G Dhely Line, Bandikui, at present employed on
the post of Head TTE in Western Railway, Jaipur Division, Jaipur.

.....Applicant.

versus

1. Union of India through General Manager,
Western Railway,
Churchgate,
Mumbai.
2. Senior Divisional Personnel Manager (Estt.),
Western Railway,
Jaipur Division,
Jaipur.

.....Respondents.

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CORAM:

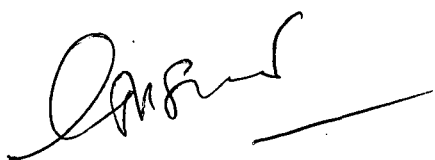
Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
Hon'ble Mr. G.C. Srivastava, Administrative Member

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Mr. Shiv Kumar, counsel for the applicant.

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

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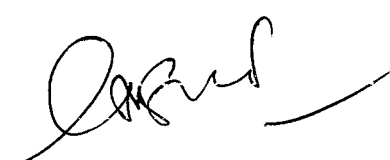
ORDER

[Per Hon'ble Mr. Justice G.L.Gupta]

The order Annexure A/1 dated 21.8.2000, whereunder, the applicant was shown as ad hoc Head TTE in the pay scale of Rs. 5000-8000, was under challenge in the instant O.A. Subsequently by way of amendment, orders Annexure A/4 and Annexure A/5 have also been challenged.

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2. The O.A. was filed on 11.9.2000 challenging the order dated 21.8.2000. It was averred that the applicant while working as TTE in the pay scale of Rs. 1200-2040 became eligible for promotion to the post of Head TTE in the pay scale of Rs. 1400-2300 (RPS 5000-8000). On the introduction of up-gradation scheme promotions were to be given as per the modified procedure i.e. the scrutiny of service record. The applicant was also considered for promotion and was promoted to the post of Head TTE in the scale of Rs. 1400-2300 on regular basis vide order Annexure A/2. In the said order, some persons were given promotion on ad hoc basis but, the promotion of the applicant was on regular basis. It is averred that the respondents have issued the order Annexure A/1 whereunder, the applicant has been shown to be on ad hoc basis. It is stated that the respondents are going to conduct selection test on 16.9.2000 and the applicant apprehends that he might be reverted from the post of Head TTE.

3. In the reply, the respondents' stand was that, though, the applicant was given promotion on regular basis vide order dated 25.4.1994 but, the same was recalled and the applicant was given promotion on ad hoc basis vide order dated 6.6.1994 and order dated 8.6.1994 (Annexures R/1 and R/2). It is further stated that the applicant is working on ad hoc basis and his name has been rightly



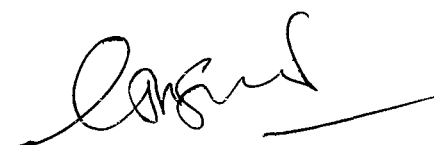
included in the eligibility list for the test to be conducted on 21.8.2000. It is further stated that on 16.10.1995 also selection test for the post of Head TTE was notified and the written test was conducted on 23.12.1995 but, the applicant failed to appear in the said test.

4. After the respondents filed the two documents Annexures R/1 and R/2, the applicant filed M.A. No. 261/2001 seeking amendment in the O.A. to assail the orders dated 6.6.1994 and 8.6.1994. The M.A. was allowed. The applicant, thereafter, filed the amended O.A. on 3.12.2002. In the amended O.A., the orders Annexures R/1 and R/2 (Annexures A/4 and A/5 marked by the applicant) have been called in question. It is averred that the applicant did not see these orders any time before the filing of the reply by the respondents. The case for the applicant is that these orders are illegal, arbitrary and against the rules as they have been issued without even issuing a show cause notice to the applicant.

5. In the amended reply, the respondents' case is that the applicant having not availed of the opportunity of participating in the test conducted on 23.12.1995 cannot get the relief in this case.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. In the amended O.A. at Para No. 4.7, it is averred that the respondents had never supplied the copy of the order dated 6.6.1994 to the applicant. It is further averred that no show cause notice was issued to the applicant before issuing the order dated 6.6.1994. In reply to Para No. 4.7, it has not been stated that a show cause notice had been given to the applicant before issuing the order dated 6.6.1994. Even, it is not stated that the copy of the order



dated 6.6.1994 was ever supplied to the applicant. It is also not stated that a copy of the order dated 8.6.1994 was ever supplied to the applicant.

8. The fact remains that the applicant was not aware of the orders dated 6.6.1994 and 8.6.1994 (Annexures A/4 and A/5). Undisputably these orders had been issued without following the principles of natural justice. No show cause notice had been given to the applicant before issuing the orders Annexures A/4 and A/5 whereby, the promotion of the applicant on regular basis was withdrawn.

9. It is significant to point out that in the order dated 5.4.1994, it was nowhere stated that the promotion of the applicant was on ad hoc basis. Some persons were given promotion on ad hoc basis. It was specifically stated against their names that the promotion was on ad hoc basis. However, it was not stated against the name of the applicant at Sl. No. 44 that his promotion was also on ad hoc basis. In the order Annexure A/3 dated 28.4.1994 also, the applicant's promotion was not shown to be on ad hoc basis. It is relevant to point out that in the order dated 5.4.1994, it was stated that the panel was provisional, however, it was with reference to a pending case before the Supreme Court in the matter of J.C. Malik. The fact remains that the applicant's promotion was not on ad hoc basis but was on regular basis.

10. If, the respondents at any time thereafter, thought that the applicant could not be given promotion on regular basis for certain reasons, it was necessary for them to have informed him about the action proposed to be taken, but, this procedure was not followed. Therefore, the orders Annexures A/4 and A/5, whereby, the applicant's promotion was treated to be ad hoc, cannot be sustained.



11. The learned counsel for the respondents relying on a decision of this Bench in the case of Radhey Shyam Sharma versus Union of India and Others, O.A. No. 362/1997 decided on 13.12.2000, contended that the application should be dismissed. The matter of Radhey Shyam Sharma is clearly distinguishable. In that case, it was not the stand of the applicant that he did not have the knowledge of the orders of reversion dated 6.6.1994 and 8.6.1994.

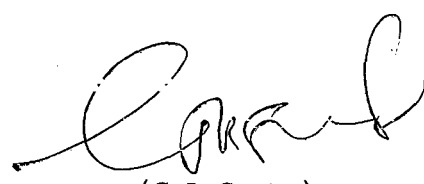
12. As already stated, this fact is not disputed by the respondents that the applicant was never supplied the copies of the orders Annexures A/4 and A/5. The applicant has come to know about these orders when the respondents filed their reply and submitted the documents Annexures R/4 and R/5. Therefore, the claim of the applicant cannot be dismissed on the ground of limitation. The limitation would start from the date of the knowledge.

13. Since the applicant was given promotion on regular basis and his regular promotion was not re-called by following the principles of natural justice, the order Annexure A/1 showing the applicant on ad hoc basis, cannot be maintained. As a matter of fact, the applicant could not be called to appear in the selection test either in the year 1995 or in 2000 on the basis of the orders Annexure A/4 and A/5.

14. Consequently, the orders Annexures A/4 and A/5, qua the applicant, are quashed. The applicant shall be deemed to be Head TTE on regular basis right from the year 1994. This order, however, will not prevent the respondents from passing appropriate order after following the principles of natural justice.

15. No order as to costs.


(G.C. Srivastava)
Adm. Member


(G.L. Gupta)
Vice Chairman

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