

Central Administrative Tribunal
Jabalpur Bench

OA No.925/04

Indore, this the 17th day of August 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Babul Raikwar
S/o Shri Hiralal
Pointsman "A"
West Central Railway
Bina (MP)

Applicant

(By advocate Ms.J.L.Aiyer on behalf of
Smt.J.Choudhary)

Versus

1. Union of India through
General manager
West Central Railway
Jabalpur.
2. Divisional Railway Manager
West Central Railway
Bhopal.
3. Asstt. Administrative Officer (T)
West Central Railway
Bhopal.

Respondents.

(By advocate Shri S.P.Sinha)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following reliefs:

- (i) Direct the respondents to promote the applicant in the post of Assistant Guard after fixing his seniority with effect from 1995 in the said post.
- (ii) Direct the respondents not to send the applicant for second selection test which he has already passed in 1987 and completed the training in 1995.



2. The brief facts of the case are that the applicant was initially appointed in a regular post of Gangman on 2.8.1975. After passing the selection test, he was posted as Assistant Points man under Bina Station. In 1987, the applicant appeared for selection test for the post of Assistant Guard and after successfully clearing the selection test he was waiting to be sent for training. The name of the applicant figures at S.No.28 in the list of 45 successful candidates. Out of 45 persons who have cleared the test for Assistant Guard, only 24 persons were sent for training and the applicant being at S.No.28 was left behind. In 1992, another 18 Junior Point men were selected to the post of Assistant Guard and they were sent for training Those sent for training were promoted as Assistant Guard. Aggrieved by the action of the respondents, the applicant along with others filed OA No.453/89. During the pendency of the OA, the applicant was sent for training along with 4 others but the applicant was declared unsuccessful and again the applicant was sent in the subsequent training and test and was declared successful. Vide order-dated 28.12.95, the applicant was posted at Itarsi as Assistant Guard. In view of the order of posting as Assistant Guard in 1995, the OA 453/89 was withdrawn. To the shock of the applicant he received an order of reversion-dated 2.5.2000 from the post of Assistant Guard to the post of Point man on the ground that the promotion was subject to the final decision of the OA 453/89. It is alleged in the application that the applicant was posted as Assistant Guard after the withdrawal of OA 453/89. Aggrieved by the action of the respondents, the applicant along with 4 others filed another OA No.446/2000, which was dismissed by the Tribunal. In view of the order passed in OA 46/2000, the respondents passed the order of reversion-dated 7.10.03. Respondents have not considered the various representations submitted by the applicant. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the action of the respondents in reverting the applicant to the post of Points man after serving 8 years in a higher



post of Assistant Guard/Goods Guard is per-se illegal, arbitrary and unjust. A hostile discrimination has been meted out to the applicant. The applicant having passed the selection test and after completing the training of Assistant Guard was working as Assistant Guard from 1995 to 2003 on a vacant post.

4. In reply, learned counsel for the respondents argued that the relief claimed by the applicant had been considered in the earlier OA filed by him and the present application is barred by the principles of res judicata. The Jhansi Division conducted a selection for the post of Assistant Guard and selection was to be made by written test and viva-voce. The result of the written test was declared but later along with the dates for viva voce were fixed but were not held. Thus the selection remained incomplete and later it was cancelled. This fact had been decided in OA 446/2000. The post of Assistant Guard is not in the cadre of Pointsman. Since the original selection was cancelled, further training had no effect and did not give any right. After reversion order dated 2.5.2000, the applicant continued on the basis of the interim order of the Tribunal and after the dismissal of the OA, the said reversion was effected. The impugned order was passed according to rules. The case of one Rajaram mentioned by the applicant is entirely different from the facts of the case of applicant. Annexure A3 order is perfectly speaking and reasoned. The OA is liable to be dismissed.

5. After hearing the learned counsel for both parties and carefully perusing the records, we find that the applicant was promoted as Assistant Guard purely on adhoc and provisional basis. He started working as Assistant Guard since 28th December 1995. The fact that he was promoted purely on adhoc ad provisional basis is nowhere denied by the applicant. The respondents were directed to permit the applicant to appear in the written tests held in 1996 & 1998 but the applicant did not appear in both the tests. Hence he was reverted vide order dated 2.5.2000 (Annexure A3). We have perused this order in which it is clearly mentioned that in compliance with the order of the



Tribunal passed in OA No. 453/89, 5 persons are being posted as Assistant Guard on adhoc and provision basis on the basis of letter dated 28.12.95. We have perused the order dated 2.5.03 passed in OA 446/2000 – Rajaram Kushwaha and 4 others including the applicant Vs. UOI and others. Vide order dated 2.5.03 in the above OA, the Tribunal directed that “in any case, the adhoc arrangement does not bestow any invincible right in favour of the applicants. The person who is given adhoc promotion even though he is otherwise eligible to hold the post cannot claim any right for holding that post. In this view of the matter, the impugned order of reversion cannot be assailed. Even otherwise, any assurance by the counsel of the respondents without pre-selection qualification of the applicants does not bestow any right in favour of the applicants. In the circumstances, we find no justifiable reason to grant the relief of quashing the impugned order.” The applicants have not sought any legal remedy against the aforesaid order passed by the Tribunal. Hence this order has attained finality. Learned counsel of the applicant could not show any date of reversion of the so-called employee Rajaram while this fact is denied by the respondents that the said employee Rajaram was never reverted. He sought voluntary retirement. The applicant could not justify this fact by supporting documents. Hence the aforesaid argument about Rajaram advanced on behalf of the applicant cannot be accepted. We have perused the impugned order dated 26.2.2004 in which it is clearly mentioned that the applicant was appointed as Assistant Guard on purely adhoc and provisional basis vide letter dated 28.12.95. In this order, the respondents have considered the orders passed by the Tribunal in earlier OA No.453/89 and 446/2000 and they have come to the conclusion that the aforesaid employees are not selected as Assistant Guard through any legal panel. Hence they cannot be regularized.



6. Considering all facts and circumstances of the case, we are of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

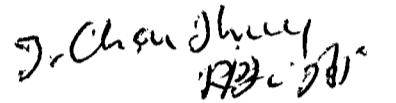
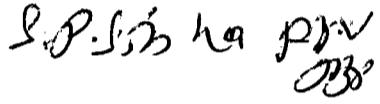
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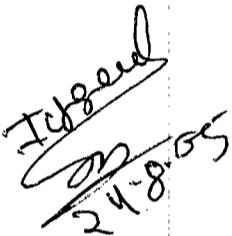
पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
परिलिपि दाये हितः—

- (1) सदिव, उच्च न्यायालय दाय एसोसिएशन, जबलपुर
- (2) आदेक्ष श्री/श्रीमती/कु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/कु.....के काउंसल
- (4) बंगल, केप्टन, जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु


उप रजिस्ट्रार


J. Chauhan
U.P. Registrar

S.P. Singh
U.P. Registrar


I.C. Singh
24.8.05