
(2003) 02 AHC CK 0103
In the Allahabad High Court
Case No : C.M.W.P. No. 37545 of 2001

General Manager, Eastern Railway and Others	APPELLANT
Vs	
Central Administrative Tribunal and Another	RESPONDENT

Date of Decision : 10-02-2003

Acts Referred:

Citation : (2003) 2 AWC 1110

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Saral Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order of the Central Administrative Tribunal, Allahabad dated 10.7.2001, Annexure 10 to the writ petition.

2. We have heard learned counsel for the parties.

3. The respondent No. 2 was initially appointed as a Signaler in Eastern Railway in the year 1957. One J. P. Kushwaha who was working as Senior Inspector, Telegraph Traffic (hereinafter referred to as Senior I.T.T.) in the pay scale of 1600-2660 retired on 31.7.1992 and hence the post fell vacant. To fill up the above post, a selection committee was formed by the Railway Board and the selection was under process. It is alleged in paragraph 4 of the writ petition that in the meantime, the Station Superintendent Engineer, Moghal Sarai who had no authority in the matter directed the respondent No. 2. Sharda Prasad Gupta, to take over the charge of Senior I.T.T. vide order dated 7.8.1992 Annexure-1 to the writ petition.

4. In paragraph 5 of the writ petition, it is stated that when the selection process was going on, there was restructuring in the Department and after the said restructuring, there is only one post of Senior I.T.T. left. Photocopy of the order

of restructuring is Annexure-2 to the writ petition. In view of the restructuring of the post and in view of the order dated 27.1.1993, all the selections which had not been finalised by 1.3.1993 were cancelled. Although the respondent No. 2 had appeared in the selection for the post of Senior I.T.T. but after restructuring, the selection was cancelled. The respondent No. 2 filed a representation before the Chief Personnel Officer, Eastern Railway requesting for posting as Senior I.T.T. In paragraph 9 of the writ petition, it is stated that the respondent No. 2 was not senior-most as is evident from the seniority list vide Annexure-3 to the writ petition. The representation of the respondent No. 2 was rejected by the petitioner on the ground that after the restructuring of the cadre, the post of Senior I.T.T. has been reduced from two to one w.e.f. 1.3.1993. The respondent No. 2 was only officiating as Senior I.T.T. on ad hoc basis for three months. True copy of the order dated 28.11.1994 is Annexure-4 to the writ petition.

5. Aggrieved by the order dated 28.11.1994 the respondent No. 2 filed an O.A. before the Central Administrative Tribunal vide Annexure-5 to the writ petition. The petitioner filed a counter-affidavit stating that after restructuring, there is only post of Senior I.T.T. and on the said post, one Sri Musafir Ram has already been working and as such, the respondent No. 2 cannot be given promotion on the said post. True copy of the counter-affidavit is Annexure-6 to the writ petition. The respondent No. 2 filed a supplementary-rejoinder-affidavit vide Annexure-8 to the writ petition. The respondent No. 2 filed a copy of the letter dated 30.1.1995 by which the Station Manager, Moghal Sarai directed one B. N. MishYa to take over charge of Senior I.T.T. In paragraph 17 of the writ petition, it is stated that the Station Manager, Moghal Sarai is not the appointing authority of Senior I.T.T. and he has no power to issue any such order. True copy of the order dated 30.1.1995 is Annexure-9 to the writ petition. However, the Tribunal allowed the O.A. of the respondent No. 2 vide Annexure-10 to the writ petition. Aggrieved this writ petition has been filed in this Court.

6. Learned counsel for the petitioner submitted that the Tribunal has erred in law by holding that a second post of Senior I.T.T. still exists although the said post has been abolished after restructuring. The Tribunal has passed this order only on the basis of the letter of the Station Manager, Moghal Sarai dated 30.1.1995 Annexure-9 to the writ petition. It is contended by the learned counsel for the petitioner that the Tribunal has ignored the letter of the Railway Board dated 27.1.1993 which clearly states that all selections which were not finalised till 1.3.1993 were cancelled.

7. Counter and rejoinder-affidavits have been filed and we have perused the same. There is no dispute in the counter-affidavit to the allegation in the writ petition that all the selections which had not been finalised by 1.3.1993 were cancelled. The respondent No. 2 and B. N. Misra were called for interview on 2.3.1993. This itself indicates that the selection has not been finalised by 1.3.1993. The respondent No. 2 has only alleged that he has been discharging the duties of Senior I.T.T. and was paid salary of that post, but in our opinion,

this does not entitle him to a regular appointment as Senior I.T.T. particularly when there was no post.

8. The order of the Station Manager, Moghal Sarai dated 30.1.1995 Annexure-9 to the writ petition does not, in our opinion, give the respondent No. 2 any right to the post of Senior I.T.T. The order of the Divisional Railway Manager, Moghal Sarai dated 28.11.1994 Annexure-4 to the writ petition clearly states that the number of posts of Senior I.T.T. has been reduced from two to one w.e.f. 1.3.1993 and Musafir Ram was working on that post subsequently. The respondent No. 2 was only on ad hoc capacity on that post.

9. The Tribunal has held in its impugned order that there was no justification for making the applicant work on the post without giving him appointment on regular basis. In our opinion, the view taken by the Tribunal is untenable in law. Even if a person is working on ad hoc capacity on the post, he has no right to the post and hence, no right to regularisation.

10. For the reasons given above, the petition is allowed. The impugned order of the Tribunal dated 10.7.2001 is quashed. No order as to costs. However, any amount paid to respondent No. 2 shall not be recovered from him.