

*Before Hemant Gupta and Mohinder Pal, JJ.*

**OM PARKASH,—Petitioner**

*versus*

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH  
BENCH, CHANDIGARH AND OTHERS,—Respondents**

C.W.P. No. 19531/C of 200.

18th July, 2008

*Constitution of India, 1950—Art.226—Circular, dated 19th March, 1976 issued by Railway Board—Petitioner working on ad hoc basis for 12 years claiming for placing in panel for appointment against post of Ticket Collector—Petitioner qualifying written examination but failing to obtain requisite marks in viva voce test—CI.2.2 of circular dated 19th March, 1976 provides that while forming panel of employees working on ad hoc basis quite satisfactorily on post for which selection is made, should not be declared unsuitable in interview and any employee reaching field of consideration should be saved from harassment—Action of respondents declaring petitioner as unsuitable or not grading him to such an extent which enables him to be empanelled in list of selected candidates is not justified—Tribunal not justified in declining relief only on basis of ranking in selection list. when circular squarely covers claim of petitioner—Petition allowed, order of Tribunal set aside while directing respondents to grant all consequential benefits to petitioner.*

*Held*, that the declaration the petitioner as unsuitable or not grading him to such an extent which enables him to be empanelled in the list of selected candidates, is not justified. It is too harsh for the petitioner, who has worked on the promoted post since 1985 to be reverted on the lower post for the reason that he has not made a grade amongst the list of selected candidate on the basis of viva voce test. The said aspect has been taken note by the Railway Board in the circular dated 19th March, 1976, which has got approval from the Hon'ble Supreme Court as well. Hence, the learned Tribunal was not justified

in declining the relief to the petitioner only on the basis of his ranking in the selection list, when the circular issued by the Railway Board squarely covers the claim of the petitioner.

(Paras 9 and 10)

P. K. Longia, Advocate *for the petitioner.*

Jagdish Marwaha, Advocate *for respondent Nos. 2 to 4.*

**HEMANT GUPTA, J.**

(1) The challenge in the present writ petition is to the order dated 9th November, 2001 passed by the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') in an Original Application filed by the petitioner.

(2) The petitioner has invoked the jurisdiction of the Tribunal, claiming appointment to the post of Ticket Collector. It is alleged that he has been working against Class-III post for the last 12 years since 8th March, 1985 on *ad hoc* basis. He has passed the written as well as the viva-voce test, but has not been placed in the panel, for appointment against the post of Ticket Collector. The petitioner claimed that he should have been selected as Ticket Collector and is entitled to all arrears and consequential benefits.

(3) In reply, it was asserted that the name of the present petitioner is at Serial No. 56 of the seniority list, but the candidates upto the serial No. 37 were empanelled and therefore, the petitioner could not be selected in the subsequent selection, though his other co-applicants have been selected. The Tribunal found that the seniority list of the candidates was not quashed in the earlier Original Application filed by the petitioner, which was decided on 26th April, 1996. Still further, there is no challenge to the subsequent selection held during the year 1997-98. In the selection under challenge, candidates upto serial No. 37 were selected. Since the name of the petitioner appears at serial No. 56, therefore, the petitioner cannot be appointed as no person junior to the petitioner has been appointed against the post of ticket collector.

(4) In the result of the written examination (Annexure P.2), the name of the petitioner appears at serial No. 38. Subsequent to the viva-voce test, the result was declared,—*vide* Annexure P.3 and 37 candidates were empanelled. The name of the petitioner does not appear in the said list. It is not disputed that the final list has been prepared on the basis of the marks obtained in the written examination and viva-voce test and, therefore, on the basis of the written examination and the viva-voce test, the name of the petitioner does not fall within the number of post available.

(5) Learned counsel for the petitioner has argued that the Railway Board has issued circular dated 19th March, 1976 (Annexure P.4), to the effect that care should be taken to see while forming panels that employees who have been working in the post on *ad hoc* basis quit satisfactorily are not declared unsuitable in the interview. Any employee reaching the field of consideration should be saved from harassment. On the basis of such circular, it is contended that the petitioner is working on *ad hoc* basis against Class-III post since 8th March, 1985 and his work and conduct is satisfactory. Therefore, the petitioner having qualified the written test, is required to be promoted against Class-III post. It is also contended that such circular of the Railway Board has been approved by the Hon'ble Supreme Court in **R. C. Srivastava versus Union of India and Another** (Arising out of SLP (O) No. 9866 of 1993) decided on 3rd November, 1995 (Annexure P.5).

(6) It is apparent from the record that the petitioner is working as Ticket Collector on *ad hoc* basis since 8th March, 1985. The petitioner ranks 38 in the list of successful candidates, who have qualified the written test as against 37 candidates, who have been empanelled. It was only in viva-voce test that the petitioner has not obtained the requisite marks so as to place him in the seniority of the successful candidates. In such a situation, the circular relied upon by the petitioner comes to the rescue of the petitioner. The relevant clause reads as under :—

“2.2. Panels should be formed for selection posts in time to avoid *ad hoc* promotions. Care should be taken to see while forming panels that employees who have been working in

the posts on *ad hoc* basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from the harassment.”

(7) Considering the said circular, the Hon’ble Supreme Court in **R.C. Srivastava’s case** (*supra*), has held to the following effect :—

“It is no doubt true that a circular of Railway Board cannot override statutory rule, but a circular which is in the nature of administrative direction can certainly supplement the rules on matters on which the rules are silent. The Circular dated 19th March, 1976 would show that it does not run contrary to any statutory rule. Indeed the said Circular only gives guidance in the matter of exercise of the power by the Selection Committee while considering the suitability at the stage of interview and says that a person who has been working on the post for which selection is being made on *ad hoc* basis and whose work is quite satisfactory should not be declared unsuitable in the interview. The learned counsel for the respondents has not been able to show that this direction is inconsistent with any statutory rule. We are, therefore, unable to hold that the said direction in the circular dated 19th March, 1976 is inconsistent with any statutory rule.”

(8) It is, thus, apparent that the said circular has not been found to be inconsistent with any Statutory Rules. Therefore, a candidate, who has been working on the post for which the selection is being made and whose working is quite satisfactory, should not be declared unsuitable in interview.

(9) In view of the said fact, we are of the opinion that the declaration the petitioner as unsuitable or not grading him to such an extent which enables him to be empaneled in the list of selected candidates, is not justified. It is too harsh for the petitioner, who has worked on the promoted post since 1985 to be reverted on the lower post for the reason that he has not made a grade amongst the list of selected candidate on the basis of *viva-voce* test. The said aspect has

been taken note by the Railway Board in the aforesaid circular, which has got approval from the Hon'ble Supreme Court as well.

(10) In view of the above, we are of the opinion that the learned Tribunal was not justified in declining the relief to the petitioner only on the basis of his ranking in the selection list, when the circular issued by the Railway Board squarely covers the claim of the petitioner.

(11) Consequently, the present writ petition is allowed. The impugned order passed by the Tribunal is set aside. The respondents are directed to grant all consequential benefits to the petitioner in respect of seniority and pay fixation from the date all other candidates in pursuance of the same written test in which the petitioner qualified,—*vide* Annexure P.2, were promoted. The necessary relief be granted within a period of three months from the date of the receipt of the certified copy of the order.

---

*R.N.R.*

*Before Hemant Gupta and Mohinder Pal, JJ.*

**SHASHI KANT,—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS,—Respondents**

C.W.P. No. 11218 of 2005

31st January, 2008

*Constitution of India, 1950—Art. 226—Haryana Affiliated Colleges (Security of Service) Rules, 1993—Rls. 6 and 7—Appointment of respondent No. 5 to post of Lecturer in Business Administration—Respondent lacking mandatory condition of qualifying NET—Petitioner fulfilling qualifications as prescribed by University—Whether writ petition against unaided or unsanctioned post is maintainable—Held, yes—Though post may be unsanctioned, unaided but still institute is affiliated to the University—Respondents bound to maintain standards of education as per rules of affiliation framed by University—Action of Institute*