

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 238/2016

Reserved on : 09.01.2020
Pronounced on: 17.01.2020

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Smt. Jayada Begum wife of Shri Abdul Sattar, aged about 53 years, resident of House No.210-A, Railway Work Shop Colony, Kota and presently working as Head Typist, Office of Chief Works Manager (Wagon Repair Shop), West Central Railway, Kota Division, Kota.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Chief Works Manager (Wagon Repair Shop), West Central Railway, Kota Division, Kota.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhaya, Member (A):

This Original Application, (OA), arises from the reversion of the applicant from the post of Head Typist to the post of Senior Typist vide impugned order dated 30.03.2016; (Annexure A/1). The applicant avers that during the course of her service with the respondents, she was earlier promoted to the post of Head Typist first on 18.06.2003, (Annexure A/2), on adhoc basis, subject to the

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condition as recorded in the order. Thereafter, she was promoted to this post on regular basis vide their order of 22.05.2013; (Annexure A/5). She avers that although the order regularising her services in the year 2013, (Annexure A/5), also carried a condition that if one Smt. Lorita Trawaso returned to the unit in which the applicant was serving then she could be reverted to the post of Senior Typist without any prior information or notice, such a condition is contrary to law and rules as a **“regular employee cannot be reverted and further reversion cannot take place from retrospective date (from 08.03.2016)”**. The applicant contends that after more than 13 years of her adhoc promotion as well as around three years after her regular promotion, she was reverted from the post of Head Typist to that of Senior Typist **“without any specific reasons”** [para 5(C) of OA refers), as there is nothing adverse against her which could possibly justify the same.

2. Aggrieved by the aforesaid action of the respondents, the applicant has sought the following relief from this Tribunal:-

(i) That the entire record relating to the case be called for and after perusing the same order dated 30.03.2016 (Annexure A/1) be quashed and set aside with the further direction to respondents to hold good the regular promotion of the applicant vide

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order dated 22.05.2013 (Annexure A/5) on the post of Head Typist with all consequential benefits.

(ii) That respondents be further directed not to reduce pay & allowances of the applicant as drawn by her in the month of Feb.2016 and allowed to continue to draw the same with all consequential benefits.

(iii) Any other order, direction or relief which is deemed fit, just and proper under the facts and circumstances of the case be passed in favour of the applicant.

(iv) That the costs of this application be awarded.

Interim relief:

"The respondents be directed not to give effect order dated 30/03/2016 (Annexure A/1) by staying operation of the same in the interest of justice.

OR

Applicant be allowed to draw pay and allowances in grade pay Rs.4200 in respective pay band by protecting the same in the interest of justice."

3. In its order dated 12.04.2016 on interim relief, this Tribunal directed as under:

"...it is deemed appropriate to direct the respondents to maintain the status quo, only with regard to the pay and allowances of the applicant as exists today...."

4. In reply to the OA, the respondents have pointed out that initially at the time of the adhoc promotion of the applicant to the post of Head Typist a specific condition was

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inserted in the order to the effect that the applicant would not be **"entitled for any benefit of the order such as seniority etc."** and that **"she would be reverted to her substantive post immediately after return of Smt. Lorita Trawaso on duty."** They further aver that since this condition of reversion to her substantive post of Senior Typist on the return of Smt. Lorita Trawaso without further information or notice was also incorporated in her subsequent order of promotion dated 22.05.2013, (Annexure A/5), such reversion on the return of Smt. Lorita Trawaso vide the impugned order Annexure A/1 is **"just and legal"**. The respondents contends that while the applicant had been continuing as Head Typist on adhoc basis since 2003, yet, in the absence of regular promotion, she was not drawing the regular pay and allowances of the post. As such **"on being selected she was promoted as Head Typist vide order Annexure A/5"**; (para 4(v) of reply refers). In the same para, the respondents aver that it would however be **"erroneous to say that her services were regularised on the post of Head Typist by order Annexure A/5"**, as all that happened was that **"she started drawing regular pay and allowances of the post with effect from the date"**. The respondents contend that the conditionality relating to reversion as given in the order dated 22.05.2013, (Annexure A/5), remained and

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therefore, merely because the order reverting the applicant was dated 30.03.2016, (Annexure A/1), this did not make the order retrospective. Smt. Lorita Trawaso, after being away on deputation and child care leave, returned to resume her regular duties with effect from 08.03.2016, i.e. the date of reversion mentioned in the impugned order. Also, the applicant did not challenge her adhoc as well as subsequent promotion orders passed in 2003 and 2013 earlier, but drew pay and allowances accordingly in full knowledge and tacit acceptance of the conditionalities imposed in these orders, [para 4 (vi) of reply refers), and cannot therefore now agitate against the same. Accordingly, they pray for dismissal of the OA.

5. In her rejoinder to the reply to the OA, the applicant avers that the wording of Annexure A/5 clearly indicates that this was a regular promotion. However, the respondents, in their reply to this rejoinder, assert that the order of Annexure A/5 was issued **"on the basis of the satisfaction of the Chief Workshop Manager with regard to her eligibility based on confidential report and service record."** Since the order was made with some conditions **"it cannot be said to be promotion as per rules"** and further that **"mere continuance for 13 years or she was allowed the benefits of regular promotion**

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did not make her substantively promoted.” The respondents also aver that after the retirement of Smt. Lorita Trawaso, the vacancy that arose is meant for ST category and since the applicant is not from that category, she does not have any right to occupy the vacant post in a substantive capacity.

6. Learned counsels for the applicant as well as the respondents were heard and the material available on record was perused.

7. In addition to the facts and grounds pleaded in the OA, learned counsel for the applicant reiterated that the order dated 22.05.2013, (Annexure A/5), passed by the respondents, clearly referred to the applicant's status changing to one on regular appointment and therefore, irrespective of whether any conditionalities were imposed by the respondents thereafter, such conditionalities would be *null and void ab initio* as they ran contrary to law and rules. He pointed out that the reversion in question was admittedly carried out by the respondents without giving the applicant an opportunity of a hearing to represent against the same and therefore ran contrary to basic tenets of natural justice. Learned counsel for the applicant also pointed out that the regularisation order in question, (Annexure A/5), was issued

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after due approval of the Chief Workshop Manager, (CWM), and therefore, having benefited from her services as Head Typist for over 13 years since her first adhoc and for three years after her substantive/regular promotion vide Annexure A/5, the respondents are estopped from reneging on their admitted issuance of such an order. He further pointed out that the substantive/regular promotion in question was made after due consideration of her confidential reports and service record and on the basis of the satisfaction of the CWM regarding the same. Thus, he argued that this regular promotion had been given after going through a screening and selection process. If there remained any shortcomings in the procedure followed by the respondents, such as imposing conditionalities with regard to reversion without notice, the applicant could not be made to suffer for the same. He reiterated that any assertion to the effect that the order passed by the respondents at Annexure A/5 was any other than one which gave the applicant regular promotion to the post of Head Typist would render the issue of such an order meaningless as the applicant had been serving on the post of Head Typist on adhoc basis for more than 10 years, (i.e. since 2003), when the order of regular promotion was passed. He thus argued that the issue of the adhoc promotion order dated 18.06.2003, (Annexure A/2), followed 10 years later by an order of regular substantive

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promotion, (Annexure A/5), is therefore indicative of the clear and deliberate intention of the respondents to promote/appoint the applicant to the post of Head Typist on a substantive and regular basis.

8. Citing the judgment of the Apex Court in the case of **Sukh Bilash Thakur vs. Bihar Electricity Board and Others** (2019) 1 SCC (L&S) 615, learned counsel for the applicant argued that as in that case, here also the applicant had not engaged in any suppression or fraud and had been promoted suo motu by the respondents. He pointed out that similar to that case, the order of reversion in this case being more than three years after regular promotion and 13 years after the initial adhoc promotion was highly unjust, inequitable, arbitrary and suffered from the same vice of unreasonableness.

9. While not controverting the events or documents on record, learned counsel for the respondents, in his arguments, reiterated the position taken by the respondents in their reply that while the order passed by them on 22.05.2013, (Annexure A/5), was indeed passed by the competent authority after due approval, nevertheless, it was not happily worded in referring to the promotion in question as being “**regular**” because such regular promotion could

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not carry the conditionalities imposed vide that order itself. He also reiterated that since the applicant had accepted these conditionalities both at the time of adhoc promotion in 2003, (Annexure A/2), as well as at the time of subsequent promotion order issued in 2013, (Annexure A/5), she was now estopped from arguing that the conditionalities were illegal.

10. A perusal of the record and consideration of the documents presented by opposing counsel makes it abundantly clear that the respondents promoted the applicant to the post of Head Typist on adhoc basis vide order dated 18.06.2003, (Annexure A/2), and thereafter on regular basis vide their order dated 22.05.2013; (Annexure A/5). The reply to the OA, [para 4(5) of reply refers], also acknowledges that while in the absence of regular promotion the applicant was not able to draw the regular pay and allowances of the post of Head Typist, **"on being selected she was promoted as Head Typist vide order Annexure A/5"** and that as a result **"she started drawing regular pay and allowances of the post with effect from the date"**. Such an averment is tantamount to an admission to the effect that the order dated 22.05.2013, (Annexure A/5), was deliberately and intentionally issued in order to promote the applicant to the post of Head Typist on a regular basis as

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opposed to the adhoc basis on which she had been occupying the post since the order of 2003, (Annexure A/2). Thus, the regular promotion of the applicant to the post of Head Typist becomes an established fact as does the intention of the respondents to do this. Given this position, the applicant, being a regular promotee to the post of Head Typist vide respondents' order dated 22.05.2013, (Annexure A/5), could not be reverted to her previously held post of Senior Typist vide the impugned order of 30.03.2016, (Annexure A/1), without adherence to the law and rules governing such reversion and in utter violation of the principles of natural justice, irrespective of whatever conditionalities the respondents chose to place in her order of regular promotion. As such therefore, the impugned order of reversion dated 30.03.2016, (Annexure A/1), is bad in law.

11. We also note that in a catena of judgments relating to the appointment of persons pursuant to some kind of selection process, various High Courts and the Apex Court have upheld the general principle that persons so appointed should not be ousted owing to any error made in any step of the selection process for which they could not be held responsible, especially where they have subsequently served for some substantive period in their appointment without

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giving cause for complaint. In the present case also, even if it is held that the regular promotion order passed by the respondents vide order dated 22.05.2013, (Annexure A/5), was erroneous owing to non-adherence to some aspect of the relevant/prescribed procedures, these shortcomings or lapses clearly cannot be attributed to the applicant and therefore it would be highly unjust to penalise her for the same by way of reversion.

12. Accordingly, the OA succeeds. The impugned order dated 30.03.2016, (Annexure A/1), is quashed and set aside with a direction to the respondents to hold good the regular promotion of the applicant made by them vide order dated 22.05.2013, (Annexure A/5), on the post of Head Typist along with all consequential benefits.

13. There shall be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/