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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1344 of 1997

New Delhi this the 4th day of November, 1997

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member (Admnv)

Smt. Parvati Devi W/o late Sh.
Lakhan Singh, working as Helper
Khallasi in the office of C&W,
N.Rly. Station, Tuglakabad, Delhi.

-APPLICANT

(By Advocate Shri Yogesh Sharma)

Versus

1. Union of India through the
General Manager, Northern Railway
Baroda House, New Delhi.

2. The Divisional Railway Manager,
Northern Railway, Near New Delhi
Railway Station, New Delhi:

3. The Assistant Personnel Officer,
Northern Railway, DRM Office, Near
New Delhi Railway Station, New Delhi. -

4. The Carriage & Wagon Supdt., Northern
Railway Station, Tuglakabad, Delhi. -RESPONDENTS

(By Advocate Shri B.S. Jain)

O R D E R (O r a l)

By Dr. Jose P. Verghese, VC(J) -

The applicant in this case was initially appointed as a Peon/Office Messenger in the scale of Rs.750-940. The applicant thereafter submitted herself for the trade test etc. prescribed for the post of Helper Khalasi in accordance with the rules and after finding that she was qualified she was appointed as Helper Khalasi in the scale of Rs.800-950 on 3.1.1995 along with 145 other candidates. It is stated that thereafter the applicant has been discharging duties of the said

post of Helper Khalasi for the last 2 1/2 years and the applicant submits that she has been discharging the duties of the said post to the satisfaction of the respondents.

2. The respondents sometimes in the month of March, 1997 issued a show cause notice(Annexure-A-3) stating that the applicant has been wrongly promoted as Helper Khalasi. The show cause notice was replied to by the applicant and thereafter the respondents passed the impugned order of reversion dated 16.5.1997 and the applicant has approached this Court for the purpose of saving herself from reversion.

3. The applicant in her petition has shown that the promotion of the applicant was in accordance with the rules. She has relied on Para 184 of the Indian Railway Establishment Manual, Volume-I which is reproduced below -

"184.Mechanical Engineering Deptt. (i) Every unskilled staff in running sheds and carriage and wagon depots should be made eligible for promotion to higher grade like semi-skilled/Basic Tradesmen in their respective branches, i.e. running sheds or carriage and wagon depots, as the case may be, subject to his acquiring the necessary qualification. **No category shall be excluded** from such consideration and there need to be no subgrouping within the respective branches. Unskilled staff in running sheds should also be eligible for consideration for transfer to posts of cleaners upto the age of 30 years, relaxable upto 35 years in the case of persons belonging to scheduled castes and scheduled tribes subject to their being otherwise eligible for such consideration but on two occasions only

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and their having the necessary aptitude and satisfying the medical and educational qualifications."

(Emphasis added)

A perusal of this rule indicates that every unskilled staff in the department can be considered for the post of Helper Khalasi and the rule itself specifically indicates that no category shall be excluded. Show cause notice issued to the applicant refers to the fact that the same mistake has been committed in accordance with the rules.

4. In reply to the notice from this Court the respondents only have submitted that the rule that has been contravened by giving promotion to the applicant is only the chart by which promotion channel has been prescribed and no other rule has been shown to have been violated.

5. The contention of the learned counsel for the respondents subsequently was that the applicant who has been working as Office Messenger cannot be treated as an unskilled staff referred to in Para 184 ibid. We are of the opinion that any person who is not skilled or semi-skilled will have to be treated as un-skilled staff unless there is a rule contrary. No rule has been produced before us to show that Office Messenger is not an unskilled staff.

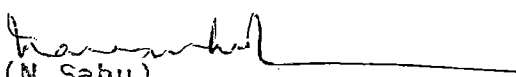
6. The learned counsel for the applicant has produced before us two decisions of the Jodhpur Bench of this Tribunal given in the matter of Prem Dass Adiwali Vs. Union of India & others, O.A.No.172 of

1992 decided on 2.11.1993; and Lalaram Vs. Union of India and others, O.A.No.740 of 1992 decided on 8.10.1993 wherein similar circumstances arose, as in this case, that after several years of promotion given to an employee who has already passed the required test and worked for sometime in the promotional post to the satisfaction of the respondents, and respondents proceeded to cancel the same. The Jodhpur Bench held that the same cannot be faulted on the ground of subsequent detection of some mistake. In the case of Prem Dass Adiwala (supra) it was also mentioned that that was a fit case to apply the principle of promissory estoppel and the said decision has been given in the light of the decision of the Hon'ble Supreme Court in the case of Bhagwathi Prasad Vs. Delhi State Mineral Department Corporation, AIR 1990 SC 371. The relevant portion of the said case of the Supreme Court is extracted herebelow -

"Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of initial entry into the service. Once the appointments of the petitioners were made as daily-rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. It can be said that three years' experience, ignoring artificial break in service for the short period/periods created by the management, in the circumstances would be sufficient for confirmation."

Further, the counsel for the applicant also brought to our notice a decision of the Hon'ble Supreme Court in the case of **A.N. Shastri Vs. State of Punjab and others**, Civil Appeals Nos. 8623-24 of 1983 decided on 11.12.1987 wherein it was held that after the respondents have given promotions to the party completing all formalities in accordance with the rules, the reversion on the ground of lack of any requisite qualification cannot be held as ~~il~~legal.

7. In view of the decisions cited above and in view of the fact that the applicant is to be considered as an unskilled staff in accordance with Para 184 *ibid* we are of the opinion that the reversion order now being passed against the applicant cannot stand at all. In the circumstances, the said order dated 16.5.1997 is set aside and the applicant will be entitled to all consequential benefits. No order as to costs.


(N. Sahu)
Member (Admin)


(Dr. Jose P. Verghese)
Vice Chairman (J)

rkv.