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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1124/89

DATE OF DECISION: 16/3/1990

Biplob Kumar Ghosh APPLICANT

Shri O.P. Sood

ADVOCATE FOR THE APPLICANTS

UNION OF INDIA & OTHERS

RESPONDENTS

Mrs. R.K. Chopra

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal *No*

J U D G E M E N T

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

The applicant has filed this application under Section 19 of the Central Administrative Tribunal Act, 1985 on 23.5.89 praying that directions be issued to the respondents to regularise his appointment to the post of Mechanic (Lino) w.e.f. 30.5.1983 - the date from which he was first promoted - and to

de-reserve the vacancy for ST category after three years of its occurrence. He has further prayed that the order of reversion dated 9.5.1989 at annexure A 3 (Page 14 of the paperbook) from Mechanic (Lino) to the post of Assistant Mechanic (Lino) be also set aside.

2. After hearing the Ld. Counsel on 14.12.1989 we considered it desirable to dispose of the above OA (1124/89) at the admission stage itself. Arguments were heard on 21.2.1990. Briefly the case of the applicant is that the applicant was initially appointed w.e.f. 14.9.1972 after due process of selection by the Board of Officers against 11 vacancies reported to the Employment Exchange. He was on the top of the select list, and was promoted as Mechanic (Lino), the next promotional post w.e.f. 30.5.1983. He continued on this post till he was reverted vide order dated 9.5.1989 as Assistant Mechanic (Lino). He was, however, re-promoted on 12.5.1989 vide Annexure A-4 (page 15 of the paper book) to the post of Mechanic (Lino) on adhoc basis for a period of three months w.e.f. 12.5.1989.

3. The respondents in their counter have submitted that the post of Assistant Mechanic (Lino) is filled up 50% by promotion failing which by deputation and 50% by direct recruitment failing which by promotion. The applicant was selected for appointment against a vacancy meant for direct recruitment quota. The inter-se-seniority of Shri Roop Ram, a promotee, Assistant Mechanic (Lino) counts from 1.9.1972 whereas the applicant's seniority

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counts from 14.9.1972. Shri Roop Ram (SC) was therefore senior to the applicant as Assistant Mechanic (Lino).

4. Further, the post of Mechanic (Lino) is a non-selection post and was filled 100% by promotion prior to 28.12.1987 when the revised Recruitment Rules were notified prescribing filling up of 50% of the posts of Mechanic (Lino) by promotion failing which by deputation and 50% by direct recruitment failing which by promotion. The promotions to the post of Mechanic (Lino) were made in accordance with the seniority and relevant rules regulating reservations. The respondents have however submitted that all the three posts of Mechanic (Lino) ^{have} not been filled up from the reserved category as is seen from the table given below:-

| Reserved post brought forward | Rectt year | Roster Pt.Nos | General Name or re- served for SC & ST | Date of Whe- of pro- ther motion SC/ ST |
|----------------------------------------|---------------|------------------|----------------------------------------------------|--------------------------------------------------|
| SC ST | | | | |
| - - | 1974 | 1 | *SC Sh.Rajinder Singh | 19.6.74 SC |
| - - | 1977 | 2 | @UR Sh. Govardhan | 17.6.77 UR |
| - - | 1983 | 3 | UR Sh. Roop Ram | 23.5.83 SC |
| | | 4 | \$ST | |

*SC Scheduled Castes; @ UR Unreserved; \$ ST Scheduled Tribes

5. Shri Roop Ram was promoted in accordance with seniority-cum-fitness being, the senior-most candidate in the seniority list of Assistant Mechanic (Lino). The 4th post is reserved for

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Scheduled Tribes and has been filled by promoting the applicant on adhoc basis till a candidate from Scheduled Tribe category becomes available.

6. We have heard the Ld. Counsel of both the parties and have gone through the record carefully. The applicant has worked w.e.f. 30.5.1983 to 9.5.1989 continuously as Mechanic (Lino), when he was reverted to the post of Assistant Mechanic (Lino). His reversion was purposeless as he was repromoted in the exigencies of work on 12.5.1989. The instructions laid down in the Ministry of Personnel, Public Grievances & Pensions OM No.28036/8/87-Estt.D dated 30.3.1988 appear to have been misconstrued for providing a technical break in the continuous officiation of the applicant. In fact paragraph 4 of the said OM² reads as under:-

"The total period for which the appointment/promotion may be made on an ad hoc basis will be limited to one year only. The practice of giving a break periodically and appointing the same person may not be permitted. In case there are compulsions for extending any ad hoc appointment/promotion beyond one year, the approval of the Department of Personnel & Training may be sought at least two months in advance before the expiry of one year period....."

As will be apparent, the instructions are meant not only to discourage the ad hoc promotions but also the penchant to circumvent the rules by providing periodical breaks. The justification for reverting the applicant on the basis of the said OM is misconceived. In fact, for an earnest compliance with

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the instructions, the respondents should have explored ways and means of regularising the ad hoc promotion of the applicant as Mechanic (Lino).

7. In the facts and circumstances of the case we quash the impugned order of reversion of the applicant dated 9.5.1989. The applicant shall be deemed to have continued as Mechanic (Lino) during the period 9.5.1989 to 12.5.1989 with all consequential benefits. *2*

The respondents will also do well to explore the possibility of finding/creating a regular post under the extant rules to avoid the applicant facing reversion keeping in view the fact that the applicant has already worked for over six years against the post of Mechanic (Lino), in the event of a Scheduled Tribe candidate becoming available. There will be no orders as to the cost.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A) *16/3/90*

T.S. Oberoi
(T.S. Oberoi)
Member (J) *16.3.90*