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(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 42/1989

SHRI RAMESH KUMAR
SHRI B.S. MAINEE

DATE OF DECISION: 30 MARCH, 1990

APPLICANT

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS
SHRI S. MOORJANI

RESPONDENTS

ADVOCATE FOR THE RESPONDENTS

OA NO. 43/1989

SHRI RAGHUBIR SINGH
SHRI B.S. MAINEE

APPLICANT

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS
SHRI S. MOORJANI

RESPONDENTS

ADVOCATE FOR THE RESPONDENTS

OA NO. 119/1989

SHRI NARESH CHAND
SHRI B.B. RAWAL

APPLICANT

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS
SHRI INDERJIT SHARMA

RESPONDENTS

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? *Yes*
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))

OA Nos. 42/89, 43/89 and 119/89 have been filed under
Section 19 of the Administrative Tribunals Act, 1985, by S/Shri
Ramesh Kumar, Raghbir Singh and Naresh Chand, respectively,
against the impugned orders No. 758 E/158/421/P-4 dated 16.12.1988
and E/11/URNU dated 23.12.1988 issued by the respondents



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reverting them from the post of Store Issuer Group 'C' to their substantive posts of Gang-man/Khalasi. Since the issues of law and fact agitated in the above OAs are common, we are dealing with them through this common judgement.

2.1. Applicant No. 1 was appointed as Gang-man and applicant No. 2 as a Khalasi on the Northern Railway on 24.3.1982. Applicant No. 3 Shri Naresh Chand was appointed as a Muster Roll Khalasi in March, 1973 and after screening he was regularised as a Khalasi in 1980. He was transferred to Maintenance Division in 1981 after the completion of the project where he was initially appointed. Both the posts are in Group 'D' class. They were promoted as Store Issuer in Group 'C' on adhoc basis vide Assistant Engineer, Shamli letter No. E/6/SMQL dated 20.4.1985.

The post of Store Issuer is a selection post and is to be filled by employees who qualify in the prescribed written test and viva voce test. By way of relief the applicants have prayed that:

- (i) The Tribunal may quash the impugned order dated 16.12.1988 and direct the respondents not to revert the applicants from the post of Store Issuer where they have been working since 1985.
- (ii) Pending final decision, interim order may be issued restraining the respondents from reverting the applicants.

2.2. The facts of the case, briefly, are that in accordance with the Railway Board's Instructions normally only an empanelled employee should be appointed against a selection post; where however no empanelled employee is available and it becomes

inevitable to make local arrangement exceeding three months can be made only with the specific approval of Chief Personnel Officer/Additional Chief Personnel Officer (Railway Board's letter No. E(NG)1/72-PMI-227 dated 31.10.1982) and The Railway

Board had vide letter No. (E(NG)1-69 PMI-200 dated 4.11.1970 earlier directed that even where selection cannot be finalised for any reason, adhoc promotees must be put through a selection at least once a year and if they pass the written test and retained in higher post only if they pass the written test and are considered suitable for the selection post, so that there will be no occasion for replacing them by junior men selected later. Adhoc promotions are not to be made beyond the period of six months unless the adhoc promotees qualify in the test. It has therefore been contended that the applicants who have worked on adhoc basis for more than three and a half years should be regularised and that they should not be reverted unless their work is unsatisfactory and that too, after following the process of natural justice**. The Ld. counsel further submitted that the applicants were the seniormost suitable candidates available for promotion to the post of Store Issuer Group 'C' and as such, their reversion at this point of time was not justified, after they have already worked for more than three years. He also claimed that seniority of the applicant should be reckoned w.e.f. 1.1.1981 and not from the dates as shown in the seniority list at

**SLR 1977(1) 567 Himachal Pradesh High Court Dina Nath Sharma Vs. Director, Public Relations.

ATLT 1988(1) Laxman Das & Others Vs. Union of India

Annexure R-2 filed by the respondents with their counter affidavit.

3. The respondents in their counter have contested all the contentions of the applicants. The Ld. counsel for the respondents in the preliminary objection contended that the applications are pre-mature, as the same was filed without waiting for the disposal of the representation dated 27.12.1988 by the respondents and before the expiry of six months from the date of the representation as prescribed in the Central Administrative Tribunals Act, 1985. In support of his argument the Ld. counsel cited details of the case* where this Tribunal has held that application moved without exhausting the remedies provided under the Service Rules is liable to be rejected as premature. The Ld. Counsel stressed that the promotion of the applicants was purely provisional and on adhoc basis. Their engagement was on Temporary Labour Application (T.L.A.) which was renewed from month to month. The applicants No. 1 & 2 were neither the seniormost persons nor was their suitability adjudged as they are not qualified in the written test followed by viva voce prescribed for promotion from Group D to Group C. Applicant No. 3, however had passed the qualifying examination but he was at No. 17 in the seniority list. The respondents had inadvertently promoted the applicants by passing the seniors as would be seen from the seniority list at Annexure-R-2 (page 22 of the paper book). The applicants who are at S.Nos. 12, 16 and 18 are being reverted as the senior persons empanelled after passing the

*ATLT 1989(1) CAT 285

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written test etc. are being appointed in place of the adhoc appointees. The Ld. Counsel stated that the applicants have not challenged the seniority, but even if their claim to reckon their seniority from 1.1.1981 as contended, is conceded, there were a number of persons who are senior to them in the seniority list. In fact, the applicants in their representation dated 27.12.1988 have themselves conceded the same (page 12 of the paper book).

"Hope that justice will not be denied only on this ground that certain senior staff is waiting for such promotions".

4. **INTERVIEW WITH THE RESPONDENTS** - We have heard the Ld. Counsel of both the parties and carefully gone through the record as well as the judicial pronouncements, cited by them. We find that the applicants were promoted purely on adhoc basis. The appointment was on T.L.A., which was renewed, reviewed from time to time. Applicants No.1 (OA 42/89) and No.2 (OA 43/89) had not been called for the selection to date. The applicant No.3 (OA 119/89) however had qualified in the test, held on 16.12.1984, for promotion to the post of Store Issuer, vide Divisional Personnel Officer circular No. 19754-E/44/IV/P-4 dated 12.3.1985. The applicants are not the seniormost employees as per the seniority list filed by the respondents. In fact, they figure in the seniority list at Srl. No.12, 16 & 18. The issue regarding promotion of 'Group D' employees to 'Group C' on adhoc basis and their reversion in the context of extant rules, has been dealt with in detail in the judgement dated 5.5.1989, pronounced by Full Bench of Central Administrative Tribunal in the case of Shri Jethanand and Others.

VS. Union of India and others. Since applicant No. 1 & 2 were promoted only on an adhoc basis and have yet to qualify in the test prescribed for promotion from Group D to Group C post, the order of reversion in their cases cannot be faulted. Applicant No.3 (OA 119/89), however, is at a higher pedestal, as he has, admittedly qualified in the requisite test for the selection post, held by him on adhoc basis.

5. In the facts and circumstances of the case, we do not find any merit in O.A. No.42/89 and OA-43/89 which accordingly are dismissed. The applicant in application No. OA-119/89, who besides officiating for a long time, has qualified in the requisite test has acquired prescriptive right for the post. We therefore order and direct that he shall be continued as Store Issuer on adhoc basis, till he is regularised, in his turn, against a regular vacancy. The impugned orders shall stand modified in accordance with our directions as above. There will be no orders as to the costs.

"CERTIFIED TRUE COPY"

Dt.....

(I.K. Rasgotra)
Member (A) 3790
Central Administrative Tribunal
Principal Branch, New Delhi

(T.S. Oberoi)
Member (J)

Section Officer
Central Administrative Tribunal
Principal Branch, New Delhi