

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(9)

O.A. No. 535/88
T.A. No.

199

DATE OF DECISION 23.11.1990

<u>Shri Gokal Chand</u>	Petitioner
<u>Shri B.S. Maine</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Smt. Shashi Kiran</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

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? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

Ab
 (AMITAV BANERJI)
 CHAIRMAN

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.535/88

Date of Decision: 23.11.1990

Shri Gokal Chand

....applicant

versus

Union of India & Others

...Respondents

Coram:

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

Advocates:

For the applicant

Shri B.S. Maine

For the respondents

Smt. Shashi Kiran

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

Shri Gokal Chand, Train Examiner (TXR), Northern Railway has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against order No.722/EP/Train Examinder/83(Seniority) dated 7.9.1987/ the seniority of the Train Examiners without giving him placement, although he has been working as TXR continuously since, 1977.

2. The applicant was promoted to officiate on adhoc basis as TXR in the scale of Rs.425-700 w.e.f. 15.10.1977. The post of TXR is a selection post and is filled in accordance with the instructions laid down in Railway Board's letter No.E(NG)I/72-PMI/227 dated 31.10.1972. Further in accordance with the extant instructions where selections cannot be finalised for any reason the adhoc promotees are required to be put through the selection at the earliest opportunity

in accordance with the Railway Board's letter dated 4.11.1970 referred to in paragraph 6.10 of the OA. The applicant has also referred to a few other instructions of the Railway Board, which provide that:

- i) Adhoc promotions should not be made to fill up Class-III posts against direct recruitment quota (letter No.E(NG)I/81/CFP/1 dated 12.3.1981); and
- ii) that adhoc promotions should be avoided as far as possible and that where they have been made they should not be allowed to last for longer periods (letter No.E(NG)I/85-PM--5-3 dated 28.7.1985).

The applicant has also quoted Railway Board's circular of 1966 which lays down that a Railway servant who has officiated in the higher grade for more than 18 months cannot be reverted without holding disciplinary proceedings. The applicant claims that despite the above instructions issued by the Railway Board the respondents ordered his reversion to the post of Skilled Fitter after he had worked for about three years as TXR. Consequently the applicant filed a Suit No.161/80 in the Court of Munsif Roorkee. The Suit was, however, dismissed. An appeal was filed against the dismissal of the Suit which was allowed by the Civil Judge, Roorkee on 16.7.1985 with the order that the applicant should not be reverted without initiating disciplinary proceedings against him. Consequent to the order of the Civil Judge passed on 16.7.1985 the applicant has continued as TXR -although he has not yet been regularised nor his name has been included in the seniority list of TXR.

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The applicant's case is based on continued officiation and non provision of an opportunity to him for appearing in the selection within six months from the date of officiation. He has also placed reliance in the case of Narender Chadha Vs. UOI AIR 1986 SC 638 decided by the Hon'ble Supreme Court. He also believes that he cannot be reverted after he had completed 18 months service as TXR on adhoc basis.

3. The respondents in their written statement have submitted that the applicant was locally promoted as TXR on adhoc basis in the grade of Rs.425-700 w.e.f. 16.10.1977 subject to passing the prescribed selection. The appointment of the applicant was purely temporary and on adhoc basis. The selection for filling up the post of TXRs was arranged in the year 1987, but the applicant did not appear in the said test. The candidates selected in 1987 will have to undergo a training and after they are declared successful on completion of training they will be posted on regular basis. Since the applicant did not appear in the selection test in 1987, he will be reverted in accordance with the rules. The respondents have further admitted that on the availability of a trained TXR, the applicant was reverted to his substantive post as Fitter but in view of the court case he was repromoted on occurrence of vacancy in the TXR cadre vide letter No.847E/224/TXR/80/Part III upgradation dated 24.1.1981. The respondents have pleaded that the post of TXR is a selection post to be filled by positive act of selection. Further TXR is a safety category and the selected candidates have to undergo compulsory training from PSTS/CB Lucknow. The respondents have further pointed out that the applicant was called to attend the selection in the year 1979 but he failed to qualify in the said selection. It is, therefore, averred that the applicant was given a chance to qualify in the selection in 1979.



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at the earliest possible opportunity. Later in 1987 selection, he himself chose not to appear. In the former case he failed to qualify, while in the latter case he failed to appear in the selection. The long continuation of the applicant on the post of TXR is not on account of administrative reasons but on account of stay granted by the court.

4. Shri B.S. Maine, the learned counsel for the applicant cited the case of Shri OM Pal Sing Vs. UOI OA No.1125/89 decided on September 4, 1990 by the Principal Bench of the Tribunal to garner support for his case. The applicant in the said case was a Material Checking Clerk and was aggrieved by the fact that his services had not been regularised although he had been working continuously on adhoc basis w.e.f. 20.5.1977. The case of Material Checking Clerk, however is qualitatively different from the case of TXRs. Former is clerical category while the latter is a safety category. Again the former category, even in ClassIV was handling some clerical duties, while the latter category is a safety category requiring specialised skills. Again in the case of Material Checking Clerks, the administration has in a number of cases exempted them from passing the selection test and allowed them to be regularised merely on the basis of long continuous officiation, keeping in view, among other things, the nature of the job and the fact that some element in their duty could be identified as of clerical nature. In the case of TXRs such circumstances do not obtain. The judgement (supra) therefore is of no help to the applicant.

5. We have heard the learned counsel of both the parties. We are of the view that the applicant had worked only for a period of three years as TXR on

adhoc basis and after trained TXR became available, he was reverted to the post of Fitter. He was repromoted later apparently under the orders issued by the Civil Court at Roorkee. Narender Chadha's case (supra) stated in the application is completely out of place in the facts of the present case.

Thus beyond a period of three to four years the applicant has continued to officiate as TXR Rs.425=700 only on the basis of the stay order granted by the Civil Court. The period of officiation under the interim orders of the Court cannot confer any legal right on him for continuing in that post. The case of Narender Chadha's is neither of any help to the applicant nor are the facts of that case in any way comparable to the case of the applicant before us. The applicant had been provided two opportunities in 1979 and again in 1987 to qualify in the selection test. Had he qualified in either of the test, he would have become eligible for specialised training for the post of TXR. While in the public interest it may be necessary some time to tide over certain exigencies to make adhoc promotion, by allowing to continue unqualified staff on adhoc basis in a higher grade post, which comes under the safety category, is to say the least, most undesirable. Such continuation of unqualified staff on long term basis can jeopardise the public safety.

We, therefore, hold that the applicant has no right to continue to officiate on adhoc basis as TXR and consequently we are not persuaded to provide him any of the reliefs viz.:

- i. To assign proper seniority to the applicant as TXR from the date he was promoted on purely adhoc basis.
- ii. To regularise him as Train Examiner.

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The application, therefore, fails and is dismissed without any orders as to the costs.

Before parting with the case we will however suggest that in accordance with the Full Bench Judgement in the case of Jetha Nand and Others Vs. UOI in T.844/86 dated 5.5.1989, the respondents may give the applicant another opportunity within the next six months to enable him to qualify in the selection test for TXR and in case he qualifies and completes the requisite training successfully, he may be appointed as TXR giving him the benefit of past service rendered by him as TXR on adhoc basis. There will also be no bar on reverting him from the post of TXR in case a selected and trained hand is available for posting vice him.

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(I.K. RASGOTRA)
MEMBER(A)
23/1/90

skk
(AMITAV BANERJI)
CHAIRMAN

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