

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1172/88 with
CCP- 161/88 and
MP-2802/89

Date: 18.5.1990.

Shri Om Prakash

.... Applicant

Versus

General Manager,
Northern Railway

.... Respondents

For the Applicant

.... Shri P.P. Singh, Advocate

For the Respondents

.... Shri O.N. Moolri, Advocate

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local paper's may be allowed to see the judgement? *Yes*
2. To be referred to the Reporter or not? *No*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, while working as Senior Clerk at the
Printing Press, Stationery Department, Northern Railway,
Shakur Basti, filed this application under section 19 of
the Administrative Tribunals Act, 1985, praying for
quashing his proposed reversion to the post of L.D.C.

2. On 4.7.1988, the application was admitted and an
interim order was passed to the effect that so long as
there was a vacancy and the regularly selected person was
not available, the applicant should be continued as Senior
Clerk until further orders. CCP-161/88 has been filed by
the applicant for the alleged non-compliance of the order
dated 4.7.1988 by the respondents. MP-2802/89 has been
filed by him praying that the respondents be directed to
allow him to join duty and assign him the work of Lower
Division Clerk till his case for reversion is decided by

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the Tribunal, to treat him as on duty as he had never been absent although whenever he went to the Office, he was threatened and not allowed to join duty, and to direct the respondents to pay his dues for the months of October and November, 1989.

3. As the issues in the main application, in the CCP and the M.P. mentioned above are interconnected, it is proposed to deal with them in a common judgement.

4. The facts of the case are not in dispute. The applicant has worked as a Senior Clerk on ad hoc basis from 7.12.1985 to 27.7.1988. He was reverted as Lower Division Clerk on 28.7.1988. The reason for reversion is that he failed in the written suitability test held on 14.12.1987 for the post of Senior Clerk.

5. It is this reversion that has been called in question in the present application.

6. The applicant has contended that having worked for about $2\frac{1}{2}$ years as Senior Clerk, he should not have been reverted. According to him, some of his juniors who have also failed in the test, have been allowed to continue as Senior Clerks. The post of Senior Clerk being a non-selection post, he contends that promotion to the posts should be on the basis of seniority and service records and that the prescription of a suitability test for the same is not justified.

7. The applicant has not formally been served with a copy of the order of reversion. He has alleged that he is not being allowed to join duty without receiving a copy of the reversion order. According to him, he reports for duty everyday but is not allowed to join.

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8. The respondents have contended in their counter-affidavit that in order to regularise the appointment of a person as Senior Clerk, he is required to pass a suitability test, as prescribed by the Rules.

9. We have heard the learned counsel for both the parties and have gone through the records of the case carefully.

10. The applicant has no right to continue in the post of Senior Clerk on ad hoc basis unless the respondents have continued his juniors in that post on ad hoc basis after reverting him. Though allegation has been made by him that the respondents have retained his juniors while reverting him, this has not been substantiated. The respondents have also denied this allegation in their counter-affidavit.

11. The Full Bench of this Tribunal in Jetha Nand & Others Vs. Union of India & Others, 1989 (2) SLJ 657, CAT, has held that if an employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post, but he will be entitled to be given further opportunity to appear in the selection test. Such an employee who is holding a promotional post in ad hoc capacity, can be reverted to his original post if he has not qualified in the selection test. The right to hold the promotional post accrues only to those employees who have undergone a selection test and have been empanelled for promotion/selection post.

12. In view of the decision of the Full Bench of this Tribunal in Jetha Nand's case, the applicant cannot succeed in the present application. The learned counsel for the respondents stated at the Bar that the applicant

will be at liberty to appear for the selection in future and avail of any number of opportunities for the same.

13. We may now consider the question of non-compliance by the respondents of the Tribunal's interim order dated 4.7.1988 mentioned above which is the subject matter of CCP-161/88. The grievance of the applicant is that despite the existence of vacancies in the post of Senior Clerk, the respondents did not accommodate him against one of them in compliance with the Tribunal's order dated 4.7.1988. The Tribunal had directed the respondents to clarify whether there was any vacancy outstanding even after regularly selected persons had been accommodated. In that case, the Tribunal directed by its order dated 11.10.1988 that the respondents were obliged to accommodate the applicant in accordance with our order dated 4.7.1988.

14. On 16.3.1989, the Tribunal again directed the respondents to give the details about the sanctioned strength and number of posts filled relating to Shakur Basti, where the applicant had worked.

15. On 23.11.1989, the learned counsel for the respondents stated that some posts of Senior Clerk had been downgraded and filled in by Clerks. The respondents were directed to apprise the Tribunal as to whether such downgrading of posts was done after the stay order was passed by the Tribunal on 4.7.1988.

16. The case of the applicant is that according to the P.C.D.O. issued by the Stationery Department, Shakur Basti, for the month of November, 1988, the sanctioned strength of Senior Clerks was 27 and the charged strength was 8, leaving 19 vacancies. He has also relied upon the P.C.D.O

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for the month of August, 1989 which also gives the aforesaid particulars. Based on this, he has contended that there were vacancies in the post of Senior Clerks in one of which he should have been accommodated as a Senior Clerk.

17. The case of the respondents is that there were only 35 vacancies and 35 persons who had been duly empanelled, had been appointed. They have contended that the PCDO is an internal report submitted to the C.O.S. Office for the purpose of departmental information and that the figures given therein have no relationship with the matters in question in the C.C.P. as they relate to and cover the overall position and the situation in the whole complex of the Printing & Stationery Department at Shakur Basti. It gives an overall picture of the incumbents engaged in the sanctioned and charged strength to give information to the higher authorities to fill up the vacancies in different positions at different stations/depots. Another contention of theirs is that there is no vacancy against promotion quota and that no person junior to him has been engaged on ad hoc basis.

18. Shri Gian Singh, Deputy C.O.S., Shakur Basti Depot, has filed an affidavit wherein he has admitted that the sanctioned strength of staff at the Stationery Depot for the post of Senior Clerk is 27 and the charged strength is 9, leaving a deficit of 18 posts. These 18 posts have been filled by downgrading the posts of Senior Clerk and have been filled in by Clerks whose sanctioned strength is 3, and charged strength 22, thus leaving a surplus of

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19 posts out of which 18 downgraded posts cover the posts of Senior Clerk and there is an excess of one person in the said post.

19. The respondents have not indicated as to when the posts were downgraded. No purpose will be served in pursuing the matter further as we have already observed in the main application that the applicant has no legal right to continue on ad hoc promotion in the post of Senior Clerk without qualifying in the suitability test. The reversion of the applicant in such circumstances cannot be called in question.

20. Finally, we may deal with the reliefs sought in MP-2802/89. The respondents have contended that the applicant is not joining duty deliberately and intentionally since 12.10.1989. They have vehemently denied the allegation that they have prevented the applicant from joining duty as Lower Division Clerk. The learned counsel for the respondents stated that in case he reports for duty, he will be allowed to join as L.D.C. and that he will also be given the opportunity to appear in the suitability tests that may be held in future.

21. In the conspectus of the facts and circumstances of the case, we order and direct as follows:-

I. OA-1172/88 and MP-2802/89

(i) We see no merit in the application and uphold the validity of the impugned order of reversion which was passed on 28-7-88.

(ii) We, however, direct that the respondents shall allow the applicant to join duty as Lower Division Clerk, and that he should be given opportunities to appear in the

suitability test along with others to be held in future. In case he qualifies in the said test, he shall be considered for promotion as Senior Clerk from the date of qualifying in the test. The period of ad hoc service already put in as Senior Clerk will also count for purpose of seniority.

(iii) The period of his absence from duty should be regulated by granting any kind of leave in accordance with the relevant rules and instructions.

II. CCP-161/88

We see no merit in the C.C.P. and the same is dismissed. The notice of contempt is discharged. The parties will bear their own costs.
Let a copy of this order be placed in OA-1172/88 and CCP-161/88.

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(D.K. Chakravorty)
Administrative Member

18/5/90

Carried
18/5/90
(P.K. Kartha)
Vice-Chairman (Judl.)