

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 725/86
T.A. No.

199

DATE OF DECISION 11.10.1991

<u>Shri Mahavir Prashad Sharma</u>	Petitioner
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri K.N.R. Pillay</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman.(J)

The Hon'ble Mr. P.C. Jain, 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 ?

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

This Q.A. has been filed jointly by five applicants - (1), Shri M.P. Sarina, (2) Shri Devkinandan, (3) Shri Shiv Bachan Pandey, (4) Shri Narayan Dass and Shri Hardarshan Singh - praying for common reliefs, to set aside the impugned reversion order dated 26.6.86 (Annex. A) and also direct the respondents to regularise them from the date of their officiation in the Grade of Rs. 425-700 (RS), the date of their ad-hoc working. Annexure A, dated 26.6.86, was passed by the Sr. Personnel Officer (M) of the respondents. It is reproduced for convenience:

"On successful completion of their prescribed training, Shri Anand Pal & Shri D. Kanojia, Apprentices D/Man (Mech.) are posted as Sr. D/Man (Mech.) Grade Rs. 425-700 (RS) in Headquarter Office, Baroda House, New Delhi, against existing vacancies by reverting S/Shri Shiv Bachan Pandey and Deoki Nandan, junior most D/Man (Mech.) in Headquarters Office as Sr. D/Man (Mech.) in Grade Rs. 425-700 (RS) on ad-hoc basis pending selection.

The changes may be given effect to immediately under advise to this office."

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2. According to the applicants, they were appointed in Northern Railway as Draughtsman Grade Rs. 330-560 (RS) and were promoted to the post of Senior Draughtsman in the Grade of Rs. 425-700 (RS) on various dates in the year 1983-84 on ad hoc basis, pending passing of the selection/suitability Test (summarised position Annexure B). They contend that the post of Sr. Draughtsman Grade Rs. 425-700 (RS) is a selection post and the vacancies are filled from three sources i.e. 50% direct recruits through Railway Service Commission, 25% from departmental service candidates, in order of seniority without training and 25% who apply with condition that they shall have to pass training course also.

3. Applicants also contend that from the date of their ad-hoc promotion they have continuously worked as Sr. Draughtsman Grade Rs. 425-700 without any break, satisfactorily with yearly increments and good confidential reports. They have worked, thus, for periods two to four years and hence, their reversion will amount to abuse of power on the part of the respondents with arbitrariness and malafide intentions. Ad-hocism for long period is a breach of Articles 14 and 16 of the Constitution of India. By Annexure A, dated 26.6.86, the respondents are reverting the applicant Nos. 2 and 3, alleged to be juniormost by posting freshly trained employees recruited directly. The applicants also contend that they, by passing suitability Test/Selection, have acquired prescriptive right on the post of Sr. Draughtsman Grade Rs. 425-700 and hence, ever since the date of officiating promotion, discharging their duties satisfactorily. They also contend that the appointment of direct recruits should be within their quota only. Railway Board's letter dated 9.6.65 provides protection to ad-hoc promotees who are permitted to officiate beyond 18 months against their reversion without following the procedure prescribed in the Discipline and Appeal Rules. They contend in their O.A. that they should be treated as regular employees; they have acquired prescriptive rights on the post Grade Rs. 425-700 by virtue of their suitability and seniority and orders of reversion are illegal and discriminatory etc.

etc.

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4. Respondents, on notice, filed their return and contended that for filling these posts, recruitment rules provide that 25% of the vacancies from amongst Asstt./Draughtsman in the scale of Rs. 150-240 (RS) 25% of vacancies from amongst tracers and Asstt. Draughtsman who possess the requisite qualifications for Apprentice Mechanics, within the age limit for serving employees called intermediate agencies and 50% of the vacancies from Apprentice Mechanics recruited directly. Since direct recruits and intermediate Apprentices had to undergo training, ad-hoc arrangements were made from serving employees in excess of their quota to tide over the situation till the training period was over. They further contend that following modified selection procedure prescribed by the Railway Board, the promotion posts have since been filled up. According to this modified selection procedure, which has been allowed as a one time exception, panels are prepared without conducting written test/interviews but on the basis of service record. According to them, the persons who were duly empanelled against promotee quota have been regularised. The applicants have failed to get empanelled through this modified selection procedure. As the applicants are ad-hoc promotees and they are occupying posts in the quota allotted to the direct recruits and intermediate agencies, they have to vacate when qualified persons from these quotas complete their training and report for duty. Accordingly, impugned order dated 26.6.86 was issued when two direct recruits completed their training and reported for duty. This order was implemented on 27.6.86 and the applicants No. 2 and 3 were reverted. They further contend that Annexure R-1 was clarified by Annexure R-II that the protection was given only for those officiating beyond 18 months who were empanelled and not ad-hoc promotees like the applicants.

5. Ad-hoc appointments by its very nature is a stopgap arrangement made for a variety of reasons particularly when regular incumbents are not available or the process of regular selection involves time and the exigencies of service are such that the post cannot be allowed to remain unmanned meanwhile. An employee acquires

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a right to the post only as per terms of appointment. In that sense, an ad-hoc appointment does not by itself confer any right on the appointee. Promotion is usually based on selection, seniority/suitability or seniority subject to the rejection of the unfit for a selection, a selection test becomes necessary, otherwise the initial selection for promotion would be arbitrary and exclude persons who were also eligible for promotion. Where a selection test is provided, that should be followed. The non-following of the selection test may give rise to a feeling that some favourites have been given promotion while similarly eligible other employees have not been considered. Even if a person is promoted on ad-hoc basis, he ought not to be regularised until he has gone through selection test.

6. When an ad-hoc employee has been appointed in a stopgap arrangement, he can be reverted at any time. If he has not qualified in the selection test, he can still be reverted. If he has qualified in the test and had continued in ad-hoc capacity for more than 18 months, he cannot be reverted except following the Discipline and Appeal Rules. But if he fails after repeated chances of appearing in tests, there would be no other alternative but to revert him. He must have qualified in the selection test to become suitable for the post.

7. Thus, the law has been settled on the subject by the Full Bench Judgment in the case of Jetha Nand (1989 Full Bench Judgments (CAT) 353). Even if we accept the contentions of the applicants that their work was found satisfactory, still they cannot be regularised without test on the sole ground that their work has been found satisfactory. In the case of Narendra Chadha (1986 (1) S.C.R 211), strongly relied upon by the applicants, it was based on facts and circumstances which appeared to be oppressive as there were employees who were holding ad-hoc posts for 15 to 20 years. In the same breath, the apex court observed:

"But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following Rules prescribed for appointment to that post, he should

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be treated as a person regularly appointed to that post. Such a person may be reverted from that post."

Hence, the facts of that case were different and in view of the above quoted observation of the apex court, the decision in the above case does not help the applicants.

8. Applicant Nos. 2 and 3, it is clearly evident, stood reverted by the order dated 26.6.86 which was implemented on 27.6.86 while the interim order which became infructuous was passed on 7.10.86 directing the respondents to maintain the status quo as of that date. Hence, their prayer in this O.A. is rejected. So far as applicant Nos. 1, 4 and 5 are concerned, they are said to be working in the promoted posts as ad hoc employees. According to the respondents, they were appointed on ad-hoc basis pending availability of direct appointees from Apprentice Mechanics and intermediate agencies who were under taking. This ad hoc arrangement was made from serving employees in excess of their quota to tide over the situation till the training period of the direct recruits was over. They also contend that these applicants were never empanelled against the promotee quota through modified selection procedure. They have also contended that the applicants are ad hoc promotees and they are occupying posts of the quota allotted to the direct recruits and intermediate apprentices. They have to be reverted when the qualified persons return from their training and replot for duty. R-II filed by the respondents was a clarification to R-I and by it protection was given only to those officiating beyond 18 months who were empanelled and not ad hoc promotees like the applicants. As the applicants have not been empanelled, they cannot claim the relief as prayed for in this O.A. Hence, keeping in view the principles enunciated in the Full Bench judgment in the case of Jetha Nand (supra), we hold that this O.A. is devoid of any merit. Hence, it is dismissed. The parties shall bear their own costs.

Clear 11/10/91
(P.C. JAIN)
MEMBER (A)

Clear 11.10.91
(RAM PAL SINGH)
VICE-CHAIRMAN (J)