

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 95/ 1986.
T.A. No.

DATE OF DECISION 5th August, 1986.

Shri Narinder Kumar Mantri

Petitioner

Shri S.N. Shukla

Advocate for the Petitioner(s)

Versus

1. General Manager, N.R., New Delhi Respondent
2. Chief Superintendent of P&S, N.R., Delhi.

Shri K.N.R. Pillay

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

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. Whether to be circulated to other Benches? *Yes*

K. Madhava Reddy
(K. Madhava Reddy)
CHAIRMAN. 5.8.86.

Kaushal Kumar
(Kaushal Kumar)
MEMBER. 5.8.86.

CENTRAL ADMINISTRATIVE TRIBUNAL
DELHI

Regn. No. O.A. 95/1986.

5th August, 1986.

Shri Narinder Kumar Mantri Petitioner.

V/s.

1. General Manager, Northern Railway, New Delhi.

2. Chief Superintendent of Printing & Stationery, Northern Railway, Delhi.

Respondents.

CORAM:

Shri Justice K. Madhava Reddy, Chairman.
Shri Kaushal Kumar, Member.

For petitioner

Shri S. N. Shukla,
Advocate.

For respondents

Shri K. N. R. Pillay,
Advocate.

(Judgment of the Bench delivered
by Shri Kaushal Kumar, Member.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, wherein the petitioner has challenged his reversion from the post of Junior Reader in the Printing and Stationery Department of the Northern Railway, to the post of Compositor on 17.1.1986 as also supersession by two other Junior Readers in the matter of promotion to the post of Proof Reader.

2. The facts of the case may be briefly noticed as follows:

The applicant was appointed as a Khalasi on 23.3.1975 and regularised in the said post on 22.8.1980. He was promoted to the post of Junior Compositor on 6.3.1981 and promoted to the post of Junior Reader on 18.8.1981 purely on an ad-hoc basis against a vacancy reserved for S.T. candidate subject to approval of the competent authority for exemption

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from the qualifying period of one year's service in the post of Junior Compositor and passing of the prescribed test for promotion. He was reverted to the post of Compositor on 17.1.1986 for having not passed the requisite test prescribed for the post of Junior Reader. The impugned order reads as follows: -

"As Shri Narinder Kumar S/o Sh. Sohan Lal has refused to appear in the requisite test held on 8.1.86 for the post of Junior Reader grade Rs.260 - 400 (Rs.) he is transferred back to his parent section and posted as Skilled Compositor grade Rs.260 - 400 (Rs.) w.e.f. 17.1.1986 F.N. on the same rate of pay."

3. The learned counsel for the petitioner relied on the ruling of the Supreme Court in the case of Narender Chadha and others v. Union of India and others (A.I.R. 1986 S.C. 638) for claiming that continuous officiation by the petitioner in the post of Junior Reader for a period of more than four years from 18th August, 1981 to 17th January, 1986 would entitle him not only to regularisation in the said post, but also give him the benefit of seniority among those holding the post of Junior Reader from the date of his continuous officiation. The learned counsel for the petitioner also referred to the circular of the Railway Board No. E(NG)II.80 RCI/67 dated 28.8.80 regarding reservation of vacancies for the physically handicapped persons in Group C & D posts of the Railways and the Railway Board D.O. No. E(NG)II-80-RCI/67, dated 14.8.1980 regarding employment of handicapped persons in Railways for claiming that the petitioner, who was a physically handicapped person suffering from 75 per cent disability, was entitled to promotion in the light of the circulars of the Railway Board.

4. The case of the respondents is that the petitioner was promoted as a Junior Reader on an ad-hoc basis against a post reserved for Scheduled Tribe due to non-availability of S.T. candidates even though as a Junior Compositor, he had put in less than the prescribed period of qualifying service of one year. It was only in December, 1985 that a regular unreserved vacancy of Junior Reader became available when the petitioner was required to take the prescribed trade test. He refused to take this test and accordingly the ad-hoc arrangement had to be terminated and he was posted as a Skilled Compositor, which post carried the same scale of pay as the post of Junior Reader and as such there was no reversion involved in the posting of the petitioner as a Skilled Compositor. It was further pointed out by the learned counsel for the respondents that by a subsequent order No.110, dated 27.7.1983, the petitioner had also been regularised as a Skilled Compositor with effect from 6.3.1981 which carried the same scale as the post of the Junior Reader.

5. We have carefully considered the contentions made on behalf of the parties and reach the conclusion that the principle enunciated in the case of Narender Chadha and others v. Union of India and others, is not applicable to the facts of the instant case, because the petitioner in the case under consideration was specifically informed at the time of his promotion to the post of Junior Reader that his appointment was 'subject to approval from the Headquarters office for exemption of one year's service as Junior Compositor and also passing the test in the duties of Junior Reader. ...'. It was also made clear that his promotion was purely on an ad-hoc basis subject to replacement by a candidate

of S.T. The contention of the learned counsel for the petitioner that by efflux of time, the petitioner could claim relaxation or exemption from the prescribed test cannot be sustained when there was a specific stipulation made to the said effect at the time of the promotion itself. There was no such stipulation or condition prescribed in the case of persons who were inducted in the Indian Economic Service / Indian Statistical Service from various sources on a temporary basis. Further the promotees in the case of Indian Economic Service / Indian Statistical Service were allowed to function in higher posts for 15 to 20 years. Lastly the facts of the instant case are distinguished from those giving rise to the ruling in the case of Narender Chadha and others v. Union of India and others inasmuch as in the latter case, there was the question of seniority between direct recruits vis-a-vis promotees. In this connection, the following observations of the Supreme Court in the case of Narender Chadha and others v. Union of India and others are relevant:

".....But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. (emphasis supplied) But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case

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the Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated before us relates to the seniority as between the petitioners and the direct recruits and such a question can arise only where there is no dispute regarding the entry of the officers concerned into the same Grade. In the instant case there is no impediment even under the Rules to treat these petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in R.16 thereof."

Rule 205 of the Rules for Recruitment Training & Promotion does provide for filling up the posts of Junior Reader by promotion of suitable persons from the category of Junior Compositors, but it prescribes certain qualifications, experience etc., which the petitioner obviously did not fulfil. The petitioner had neither put in one year's service as Junior Compositor, nor did he take the qualifying test in which he was asked to appear. He having been clearly informed at the time of his promotion that his appointment was on an ad-hoc basis against a vacancy reserved for S.T. candidate, subject to approval for exemption from the qualifying period of service in the lower grade and passing of the prescribed test, his mere continuous officiation for a period of four and a half years would neither warrant nor attract relaxation of the conditions prescribed for promotion.

6. The circular and D.O. letter relied upon by the learned counsel for the petitioner regarding reservation in the matter of employment of physically handicapped persons would appear to be applicable only

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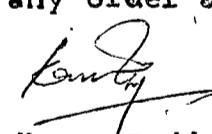
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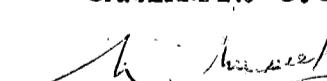
in the matter of direct recruitment and not promotion as such from one post to another. These are of no avail in the present case.

7. From a plain reading of the impugned order dated 26.1.1986 filed by the petitioner as Annexure A-2 and referred to above, it cannot be concluded that the petitioner was reverted to a lower post.

8. As regards the plea of supersession by persons junior to the petitioner as Junior Reader, it may be pointed out that Sarvashri Madan Lal and Mangleshwar Dutt, although they were appointed to the post of Junior Reader later than the date when the petitioner was so appointed, they had qualified in the trade test which the petitioner had refused to take and their appointment was made on a regular basis. As such he cannot complain of any discrimination or violation of Articles 14 and 16 of the Constitution. Neither the petitioner's posting in January, 1986 as a Skilled Compositor can be termed as reversion, nor can his non-regularisation in the post of Junior Reader to which he had been appointed on an ad-hoc basis, be considered as arbitrary or discriminatory.

9. In the circumstances of the case, the petition fails and is hereby dismissed without any order as to costs.


(K. Madhava Reddy)
CHAIRMAN. 5.8.86.


(Kaushal Kumar)
MEMBER. 5.8.86.