

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

O.A. 1446/87, M.P. 1200/89 Date of decision 21.3.1

Sh.J.S.Jolly Applicant.

Versus
Union of India & Another Respondents.

For the applicant None.

For the respondents None.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J)
The Hon'ble Sh.I.P.Gupta, 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?

J U D G E M E N T

(Delivered by Hon'ble Sh.I.P.Gupta, Member(A)).

In this application, filed under Section 19 of the Administrative Tribunals Act, the applicant joined the Railway Services on 20th September '57 in Class III post. He got promotions and was a substantive holder of the post of Permanent Way Inspector (P.W.I.) in 1969.

2. The applicant duly qualified for the departmental promotion/selection for class II service in the Civil Engineering Department. The Minutes of the Meeting of the Selection Board are at Annexure A. The proceedings show that in the final panel 14 persons were included. Subsequently, it was mentioned that in terms of Railway Board's letter dated 2nd September '71, as clarified vide letter dated 15th October '71, ad-hoc promotion to Class II can be made on the basis of seniority subject to fitness. But wherever successful candidates,

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who could not find place in the panel, are available they are to be promoted first to Class II, purely as ad-hoc arrangement. In addition to the names of fourteen persons included in the final panel, wherein the name of the applicant did not appear, the names of ten candidates, who also qualified but could not find place on the panel, ~~was~~ ⁱⁿ also given ~~as~~ ⁱⁿ a 'shadow panel', in the Minutes of the said Selection Board. The applicant's name appeared at S.No. 10 of this 'shadow panel'.

3. The applicant was promoted on 1.7.72 as Assistant ~~Executive~~ Engineer (Class II). This promotion of the applicant to Class II post was purely on temporary, local arrangement and the appointment letter mentioned that this will not confer upon him any prescriptive right for such promotion in future over his seniors and ~~he~~ is also subject to his passing medical examination, if necessary, as required under the official instructions.

4. The applicant was reverted to his earlier post of P.W.I. by order dated 18.9.75. The order of reversion is at annexure 'C'.

5. Aggrieved by the order dated 18.9.75, the applicant filed a Civil Writ Petition No.2038/75 in the Hon'ble High Court of Allahabad, Lucknow Bench. The Hon'ble High Court, by its order dated 25.9.75 stayed the reversion of the applicant from the post of Assistant Engineer in Class II. The order read as follows:-

"The petitioner shall not be reverted from the post of Assistant Engineer in

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Class II post in the Civil Engineering Department".

5. The aforesaid order of the Hon'ble High Court was modified as follows, by order dated 20.2.76 (Annexure E):-

"Learned counsel has also contended before me that since the petitioner has worked for 18 months, if he was to be reverted on the ground of unsatisfactory work, the procedure prescribed in Annexure 5 should have been followed by the General Manager. Annexure 5 does not apply to those cases where the arrangement is purely local arrangement. In the circumstances, the stay order dated 25th September, 1975 is modified to the extent that the impugned order shall come into force immediately, but the opposite parties shall continue to deposit in this Court the difference in the salary which the petitioner is getting on the post of Assistant Engineer in Class II and which he will get consequent to his reversion to Class III post. The deposit is to be made at the end of each quarter. In case the Administration fails to do so, the matter shall again be listed for orders".

6. During the pendency of the matter before the Hon'ble High Court, the applicant who was reverted was re-promoted by order dated 28.6.77 and was posted as A.T.S.O., Baroda House, New Delhi (equivalent to Assistant Engineer, Class II) on ad-hoc basis. The applicant contends that this post/promotion has been made without the applicant being subjected to a fresh/further selection. Therefore, he concludes that the selection was made on the basis of the 'shadow panel' of 1972.

7. Subsequently, the respondents filed a Civil Miscellaneous Application before the Hon'ble High Court after the applicant had taken charge as Assistant Engineer on 18.7.77. In the said application the concerned respondents informed the Hon'ble Court that the petitioner had been

promoted to Class II post as Assistant Engineer and as such the order of reversion dated 18th September, 1975 had become infructuous. The concerned respondents prayed therein for refund of difference in salary being deposited by them in the Hon'ble High Court in compliance with the earlier order.

8. Consequently, on 8th September '78 the Hon'ble High court passed the following order:-

It appears that the petitioner has already been promoted on 18th July '77. Accordingly, the amount of difference in pay between the salary of Engineer Grade II and that of Engineers Grade III, which is being deposited by opposite party in court shall be refunded to them in so far as this relates to the period from 18th July '77. The opposite party need not deposit the difference any longer. Let the writ petition be listed for hearing on 17th October '78".

9. The learned counsel for the applicant contends that since the order dated 8th September, 1978 specifically mentioned the date of 18.7.77 as the date from which the deposits were to be refunded to the Railways the difference in salary for the period from 20.2.76 to 17.7.77 ^{ought} ~~are~~ to have been paid to the applicant, but this has not been done.

10. The applicant has claimed the relief that the amount of difference in the salary ordered to be deposited in the Hon'ble High Court from 20.2.76 to 17.7.77 be paid to the applicant in keeping with the spirit of the order of Hon'ble High Court of Allahabad (Lucknow Bench).

11. The learned counsel for the respondents has brought out that:-

(3)

- i) The application is barred by time.
- ii) The Tribunal has no jurisdiction to grant the relief which falls within the purview of the High Court which decided the Writ Petition of the applicant
- iv) The proceeding of the Selection Committee was for administrative use only and the applicant has procured copies of official communication unauthorisedly.
- iv) The promotion order of the applicant was issued with a clear specification that this was purely ^{as} temporary, local arrangement and would not confer upon the applicant ^{any} ~~for~~ prescriptive right for such promotion in future.
- v) The applicant failed to come up on the regular final panel on the basis of selection held for 1970. Another opportunity was given to him to appear in the selection which was held in 1972. In the said selection also the applicant failed to come up on the regular panel and this time also his name was kept in the 'shadow panel' only. As a result of the said selection a regular panel of 28 employees was formed. Another list called the shadow list consisting of 31 persons was also formed in which the applicant was placed at S.No.29. Hence, the petitioner had been promoted purely on ad-hoc basis on a ^{local} ~~legal~~ arrangement because his name was included in the shadow list and he continued to officiate

temporarily till the formation of another regular panel. Consequently, upon a regular panel being formed, the applicant was reverted to Class III post vide office order dated 16.7.74. However, the said order was not implemented as the case was taken up at a higher level. On receipt of the Railway Board's letter dated 26.8.75 the reversion order of the petitioner was enforced.

vi) The applicants filed Writ Petitions, the results of which have already been mentioned earlier.

12. The contention of the learned counsel for the respondents is that the difference in salary for the period 20.2.76 to 17.7.77 ^{inference that the} ~~ought~~ ^{are} to have been paid to the applicant is, erroneous and does not flow from the orders of the Hon'ble High Court.

13. Analysing the facts stated above it may be mentioned that in the case of **Sampath Kumar Vs. Union of India (A.T.R. 1987 (1) S.C. (34)** the Hon'ble Supreme Court had clearly observed that under Sections 14 and 15 of the Act all the powers of the Court except those of this Court in regard to matters specified therein vest in the Tribunal either Central or the State. Thus the Tribunal is the substitute of High court and is entitled to excercise the powers thereof. It was further observed by the Hon'ble Supreme Court in the case of **J.B.Chopra & others Vs. Union of India (A.I.R. 1987 (1) Supreme Court- 46**

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that the Administrative Tribunal being a substitute of High Court, has the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise ^{if} all such laws as may be offending Articles 14 and 16(1) of the Constitution.

14. Therefore, the contention of the learned counsel for the respondents that the Tribunal has no jurisdiction, is not supported by the legal pronouncements referred to above.

15. It may be observed that the orders of the Hon'ble High Court dated 8th September, 1988 are clear. The Hon'ble High Court ordered that the amount of difference in the pay between the salary of ^{Grade II} Engineer and of Engineer, Grade III, which is being deposited by the opposite party in the Court shall be refunded to them in so far as this relates to the period from ^{18th July 77} 1987. The Court did not say that the difference for earlier periods should be refunded to the applicant and therefore, the inference of the applicant that the money for the earlier period should be refunded to him, is not based on the correct interpretation of the judgement of the Hon'ble High Court.

16. The application is also hit by the limitation ^{cause} clause. The order of the Hon'ble High Court of Allahabad was passed on 8th September '78. The application was filed for refund of money on 12th October, 1987. The argument that the applicant came to know of the order dated 8th September, 1978 only in 1985 through correspondence with friends after getting no response from his advocate,

(V)

Since his advocate had expired, would not help legally yet we do take a compassionate view in this regard because the advocate of the applicant had expired.

17. However, the application is dismissed on grounds mentioned in para ¹⁵ ~~16~~. There will be no order as to costs.

I.P.Gupta
(I.P.GUPTA)

MEMBER(A) *8/11/91*

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN(J)