

14

22.10.92

Judgment pronounced today
in open Court.

B.O.
Mr. ~~and~~
C.O/CII

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No. 1873/87.

Date of decision 29.10.92

Shri Aditya Prasad ... Applicant

V/s

Union of India & ... Respondents
Ors.

CORAM:

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

Hon'ble Member Mr. I.P. Gupta (Member A)

For the Applicant ... Shri B.S. Mainee, Counsel.

For the Respondents ... Shri B.K. Aggarwal, Counsel.

- (1) Whether Reporters of local papers may be allowed to see the Judgement ?
- (2) To be referred to the Reporter or not ?

JUDGEMENT

Delivered by Hon'ble Mr. I.P. Gupta, Member (A) 7

In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant has prayed for quashing of the Order dated 14.11.1987 reverting him from the post of Parcel Clerk to a Class IV post and for directing the respondents not to revert him.

2. The short point involved in this case is whether the applicant, who had been working on

(K)

ad hoc basis as a Parcel Clerk since January 1985,

could be reverted when regularly selected persons were available.

3. The applicant was first promoted as a Parcel Clerk in May 1983 for Summer Rush. This promotion was for a short period upto 15.7.1983 (Annexure A-2). Subsequently, the applicant was promoted as Parcel Clerk on ad hoc basis from 20th January, 1985. This promotion was made after the applicant had qualified himself in a local selection test and had also undergone training of about three weeks. He was reverted on 20th January 1988 on the basis of the impugned orders dated 14.11.1987 (Annexure A-I).

4. The Learned Counsel for the applicant contended that the applicant could not be reverted without giving repeated chances to qualify himself in the divisional test, more so when he was appointed after a selection test and training. In support of his arguments he cited the case of Jethanand & Others versus Union of India & Ors. (CAT) Principal Bench, New Delhi (T.A. No. 44/86 decided on 5.5.1989). He also cited the case of Shri Amar Nath versus Union of India & Others J 1991 (2 ATJ) 3467. He added that

even the Apex Court has been taking the view that if for any reason adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory as also his appointment does not run counter to the reservation policy of the State concerned.

5. The Learned Counsel for the respondents contended that regular selection for the post of Parcel Clerk is made on the basis of a selection test conducted on divisional basis. The applicant was promoted to fill up a local vacancy till a candidate from the Divisional Office on regular basis is available and in the test held by the Divisional Office the applicant also took chance to appear but failed. The applicant had to be reverted to give room to a selected candidate on the basis of divisional divisional test for filling the vacancy on the regular basis and in which test the applicant had appeared but failed.

6. The law is well settled on the point that ad hoc employees can be reverted if he has been appointed in a stop-gap or local arrangement. This is consistent with the view taken in the case of Jethanand & Others v/s Union of India & Others Full Bench Judgement (Volume II) 2637. The question of giving repeated chances to qualify would arise only if the vacancies are available and regularly selected candidates are not available. The principle is that an ad hoc employee could not be replaced by another ad hoc employee and, therefore, repeated opportunities should be given to an ad hoc if he has served for long. employee to qualify. This was not the case in respect of the present applicant. He was not replaced by an ad hoc employee but a regularly selected candidate, as contended by the counsel for the respondents. It cannot be said that the authorities had not considered his case for regularisation since in the divisional test he also was allowed to appear but he failed. In the case of Amar Nath v/s Union of India & Others (Supra) cited by the Learned Counsel for the applicant, the applicant was reverted without being given a chance for appearing in any test for selection to Class III

and the reversion order was set aside. Further, in that case the applicant had been transferred from one place to another. It was not consistent with the plea that his promotion was against the local arrangement.

7. The Learned Counsel for the applicant has also stated the case of Bhikari Singh and Others versus Union of India decided on 27th September, 1991 (In Civil Appeal arising out of SLP(C) No. 3292 of 1987). In that case the Appellants were told that they were promoted subject to their performance and they would not be reverted unless found unfit. Further, when the applicants were promoted it was never assumed that they would have to pass any written test. The facts of that case being different, the decision there would not come to the rescue of the applicant in the present case. In this case the applicant knew fully well that he had qualified only ⁱⁿ local test and the regular promotion was made on the basis of a divisional test.

8. In the above view of the matter in this particular case, the application is bereft of any merit and is dismissed with no order as to costs.

I.P. Gupta
I.P. Gupta
Member (A)

24.10.92

Ram Pal Singh
Ram Pal Singh
Vice-Chairman (J)

24.10.92