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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 1676/90

New Delhi this the 4th day of October, 1994

CCRAM :

THE HON'BLE MR. JUSTICE S. C. MATHUR, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

Suresh Chand Gautam S/O
Deep Chand Gautam,
Working as Section Controller,
Northern Railway, Delhi Division,
R/O BB-45 E, Janakpuri,
New Delhi.

... Applicant

By Advocate Shri S. K. Sawhney

Versus

Union of India through
General Manager,
Northern Railway,
New Delhi.

... Respondents

None for the Respondents

ORDER (ORAL)

Mr. Justice S. C. Mathur, Chairman —

In this application the applicant has challenged his reversion from the post of Section Controller to that of Assistant Station Master in Class-III. The applicant has approached this Tribunal seeking to restrain the respondents from reverting him in pursuance to letter dated 11.6.1990 (Annexure A-I).

2. The applicant was appointed as Assistant Station Master in Class-III and was put to officiate on ad hoc basis as Section Controller, a higher post in the same class. He completed more than three years on the post of Section Controller. A regularly selected candidate became available for appointment to the said post. The applicant was accordingly faced with reversion to

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the post of Assistant Station Master in Class-III. In the original application, the claim of the applicant was that in view of the Railway Board's circulars dated 9.2.1965 and 15.1.1966, he could not be reverted to his original post in view of the period of service rendered by him in the higher post. The applicant's case was that since he had rendered more than 18 months' service he could not be reverted.

3. The application came up for hearing before a Division Bench at the Principal Bench of the Tribunal. In support of his aforesaid plea, the applicant placed reliance upon the decision of the Orissa High Court in S. K. Mohanty vs. Union of India : 1980 (49) CLT 382. The Division Bench had reservations about the correctness of the view taken in this case. The applicant's submission was that against the judgment in S. K. Mohanty's case (supra), SLP No. 7493/80 had been filed before the Hon'ble Supreme Court which was dismissed on merits on 24.8.1981, and, therefore, the view taken in S. K. Mohanty's case had been approved by their lordships of the Supreme Court and it was a declaration of law under Article 141 of the Constitution binding upon this Tribunal. For the proposition that even dismissal of SLP amounted to declaration of law under Art. 141, the applicant placed reliance before the Division Bench on the judgment in Union of India & Ors. vs. A. Joganandam & Ors. : 1990 (1) SLJ III (CAT) 531. The judgment in this case had been delivered by a Division Bench of the Tribunal at Cuttack. The Division Bench which heard the applicant's case expressed doubt about the correctness of the view taken in this case also. Accordingly, the Division Bench directed the papers to be placed before the

Chairman of the Tribunal for constituting a Full Bench to express opinion on the two questions formulated by the Division Bench. A similar reference was sought by another Division Bench in a more or less similar case filed by Shri Nanda Ballabh. Both the cases were heard by a Full Bench comprising the then Chairman, Mr. Justice Amitav Banerji, Shri A. V. Haridasan, Member (J) and Shri I. K. Rasgotra, Member (A). The language of the questions formulated in the two cases was slightly different. The Full Bench has recast the questions referred as follows :-

- "i) Whether the view taken by a Division Bench of the Cuttack Bench of the Central Administrative Tribunal in the case of Union of India and others vs. A. Jaganandam and Ors. (III-1990 (1) CAT 531) that the dismissal of Special Leave Petition No. 7493/1980 on merits against the Division Bench Judgment of the Orissa High Court in the case of S. K. Mchanti V. Union of India 1980 (49) CLT 382 amounts to a declaration of law by the Hon'ble Supreme Court under Article 141 of the Constitution of India is the correct view and required to be followed by all Benches of the CAT; and
- ii) Whether Railway servant, irrespective of the post on which he is allowed to officiate for 18 months or more on adhoc or temporary basis is to be allowed, in all circumstances except in cases where reversion is in pursuance of order passed under Railway Servants (Discipline and Appeal) Rules, 1963, at least three opportunities to appear and qualify in the mandatory selection for regular promotion to the higher post before he can be reverted."

4. The Full Bench has in its opinion dated 9.7.1991 observed that the view taken in Union of India vs. A. Joganandam is not correct. The second question has also been answered by the Full Bench in the negative. In

effect, the Full Bench has expressed the opinion that where promotion to a post has to be made through process of selection, an ad hoc promotee cannot claim to continue merely because he has completed certain number of years in his ad hoc appointment.

5. In the aforesaid opinion, the Full Bench has made the observation that it was not in dispute that for promotion to the post of Section Controller in Class III an Assistant Station Master has to pass the selection test and that the applicant appeared at such a test but failed to pass the same. In view of the opinion expressed by the Full Bench, the applicant has no case and the application is liable to be rejected.

6. The learned counsel for the applicant, however, tried to submit that the applicant has not failed at the selection. According to him, a selection was held on 6.6.1986 at which the applicant had passed in the written examination but he was failed at the interview. The submission of the learned counsel is that by the failure of the applicant in the viva voce test, he could not be denied empanelment for promotion to the higher post. The learned counsel prayed that the respondents be directed to produce the records of the selection so as to enable this Tribunal to go into the validity of the non-inclusion of the applicant's name in the panel prepared in the year 1986. The panel prepared in the year 1986 is not the subject matter of dispute in the present application, and, therefore, we do not consider it necessary to require the respondents to produce the records of the said selection.

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7. The learned counsel for the applicant produced a paper entitled, *Serial No. 6494:- Circular No. 831-E/63/2-x(EIV) dt.19/3/76*. Its subject is, *Record note of the meeting of the Deputy Minister for Railway and the Railway Board with the Headquarters of the Personnel Department of the Railway Administration held in New Delhi on 27/11/75.* On the basis of the contents of this paper, the learned counsel submitted that the applicant's name could not be excluded from the panel merely on account of his failure at the interview. The relevant passage relied upon by the learned counsel reads thus :-

2.2 Panels should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad-hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment.

This is merely a record of the minutes of the meeting. It is not a circular issued by the Railway Administration which would have statutory force. Accordingly, this paper does not advance the applicant's case.

8. For the aforesaid discussion, the application fails and is hereby dismissed, without any orders as to costs.

(P. T. Thiruvengadam)
Member (A)

(S. C. Mathur)
Chairman

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