

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.2364/90

DATE OF DECISION 12.8.1991.

SHRI AMAR NATH

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM;

THE HON'BLE JUSTICE MR. RAM PAL SINGH, VICE CHAIRMAN

THE HON'BLE MR. I.P. GUPTA, MEMBER (A)

FOR THE APPLICANT SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS SHRI SHYAM MOORJANI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.P. GUPTA, MEMBER (A) )

This is an application filed U/s 19 of the  
Administrative Tribunals Act, 1925.

2. The applicant was appointed as Lampman (Class IV) from 28.11.74. Prior to his appointment as Lampman he was working as Casual Labour since 1969. He was promoted as Booking Clerk (Class III) on ad-hoc basis vide telegram issued by the Station Superintendent, Jind Junction dated 28.12.85. He was posted as Booking Clerk at Pandu Pandara from where he was transferred to Railway Station Siwaha. The applicant has thus been working as Booking Clerk on ad-hoc basis from 1985 and is also drawing salary and increments as Booking Clerk.

8. The authorities have posted one Sh.H.K.Sharma as Booking Clerk at Siwaha where there is only one post of Booking Clerk. On resumption of charge by Sh.H.K.Sharma, the applicant has been spared to approach the D.R.M.office, New Delhi for further orders. The applicant attended the office of the D.R.M. office, New Delhi and met the concerned officer who told the applicant that he would be reverted to class IV post of Lamp man.

The relief sought is that the applicant who has been working for five years as Booking Clerk in a satisfactory manner and has not failed in any selection, cannot be reverted unless repeated opportunities are given to him to pass this selection.

The ld. counsel for the applicant cited the following cases in his favour:-

- i) Sh.Jethanand and others Vs.U.O.I.& Others(C.A.T.)  
Principal Bench, New Delhi. T.A.44/86 decided on 5.5.89, wherein it was observed as follows:

'Further we are of the view that all class IV employees who are holding ad-hoc posts in class III are to be given several opportunities to qualify and are to be reverted if they do not qualify even after repeated opportunities.'

- ii) A.N.Phatak and Others Vs. Secretary to the Govt. of India, Ministry of Defence and Others (1987(1) S.L.R. 788), wherein the Supreme Court had observed that

delay in making direct appointment should not visit the promotees with adverse consequences denying the benefit of their services.

- iii) Railway Establishment Rules and Labour Laws (page 299) wherein under the heading 'ad hoc arrangement', the following has been *mentioned*.

'Where transfers on promotions are not carried out for three months, the authority next higher to that which issues the transfer orders should carry out the review. Such reviews should be made without fail and seniors are not to be at disadvantage vis-à-vis their juniors on account of delay in effecting transfer or promotion.

All cases of local ad-hoc arrangements which are likely to continue beyond three months must be reviewed by D.R.M. personally and if any ad-hoc officiating arrangement in higher grades are continued for more than six months the matter must be referred to Head Quarter and will be put up to General Manager.

Even if the selection cannot be finalised for any reason, the ad-hoc promotees must be put through a selection with the first batch and retained in higher post only if they pass the written test and are considered suitable for replacing them by any junior man selected later. Ad-hoc promotees should not be retained in higher posts beyond six months unless they have in the meantime qualified in the test.

*gk*

iv) In Shiv Kumar & Others Vs. Union of India (1987) 1 SCC 100 (Chandigarh Bench, decided on 1.8.89) it was observed that in the case of the applicants who were promoted (or) <sup>stop</sup> ~~staff~~ gap arrangement on ad-hoc basis till such time they were replaced by the selected person, the respondents are directed to grant two opportunities to the applicant to clear their selection test and if they fail then the applicant will not be reverted.

vi) Counsel for the respondents brought out the following points:-

- i) The applicant is not a selected person nor has he undergone any selection process for regular selection as Booking Clerk. No person junior to the applicant is working as Booking Clerk.
- ii) The Hon'ble Tribunal vide its order dated 16.11.90 in O.A. 1730/87 title Sheriff Vs. Union of India have clearly defined the import of judgment in Jethanand's case and held that ad-hoc officiation in the higher post would confer legal right on the employee only if he was empanelled through the process of selection. In the instant case the applicant has not been empanelled through the process of selection. It is however, <sup>the</sup> own case of the applicant that he has not been called for any such selection.
- iii) The application is premature since in the instant case the applicant refers to verbal orders.
- iv) The Tribunal has no jurisdiction as the applicant was posted outside the local limits of Delhi.

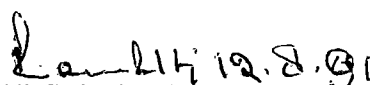
While it is true that the applicant is not a regularly selected person, the fact remains that he has been retained for five years as Booking Clerk and was also given two weeks' training of Booking Clerk before promotion on ad-hoc basis. His posting as Booking Clerk cannot be treated as local since he was also transferred from Pandu Pandara to Siwaha. Further, according to the Railway Establishment Rules and Labour Laws (page 293) all cases of local ad-hoc arrangement which are likely to continue beyond three months must be reviewed by D.R.M. Even if the selection cannot be finalised for any reason, the ad-hoc promotees must be put through a selection. The conclusion in the case of Jethanand and Others Vs. U.O.I. is that Class IV Railway Employees who are holding ad-hoc post in Class III are to be reverted if they do not qualify even after repeated opportunities <sup>are</sup> ~~is~~ given, is clear and unambiguous. Further according to the judgment of the Supreme Court in the case of Sh.A.N.Phatak Vs. Secretary to Ministry of Defence, quoted above protection has been given even to the extent that delay in making direct appointment should not visit the promotees with adverse consequences. (In this case it appears that Sh.H.R.Sharma, who replaced the applicant at Siwaha, was a direct recruit~~s~~). The jurisdiction of the the Tribunal in the case cannot be doubted since on release he reported, as directed to the Railway Office, D.R.M.N.Delhi, where he was told that he was to be reverted to the Class IV post. It may further be mentioned that it is not as if the applicant had been given a chance for appearing at any test for selection and that he had failed. Attention may also be invited to the case of Jacob M Puthutarambil & Ors. Vs Kerela Water Authority & Ors. (1990 (2) SCALE Vol.II No. 10 Sep.24-Oct.7 page 588) wherein the Court held that employees who are serving on the Establishment

for long spells and have the requisite qualifications for the job should not be thrown out but <sup>their</sup> ~~there~~ services should be regularised as far as possible.

In the conspectus of the aforesaid facts, the Tribunal directs and orders that the applicant should not be reverted from the post of Booking Clerk until he has been given repeated opportunities to qualify in selection test; he, should be reverted only if he does not qualify even after repeated opportunities.

There is no order as to costs.

  
(I. P. GUPTA)  
MEMBER (A)

  
(RAM PAL SINGH)  
VICE CHAIRMAN (J)