

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

R.A.No.200 of 1991 in
OA 2364/90.

Date of decision: 16.XI.91

Shri Amarnath

...Applicant

v/s

Union of India

...Respondent

Shri Shyam Meenjani

...Counsel for the respondent

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN
THE HON'BLE MR.I.P. GUPTA, ADMINISTRATIVE MEMBER.

O R D E R

(Passed by Hon'ble Mr. I.P.Gupta, Administrative Member)

In this Review Application filed on behalf of respondents for review of the Order dated 12.8.91, passed by this Bench, on the ground that the order suffers from errors apparent, the following major contentions have been raised:

- (i) The applicant was holding substantive post of Lampman. He was locally utilised as Booking Clerk purely on local and temporary basis, by the local incharge in order to cope with the work of Booking Clerk in emergency till the joining of the selected/regular Booking Clerk. The applicant was spared from the post of Booking Clerk, Siwaha, pursuant to the regular incumbent joining the post.
- (ii) The applicant was not a selected person nor had he undergone any selection process and it has been held in Jethanand's case that the applicant therein has not been called for selection and was not borne on the seniority of the post and as such, the application was devoid of merits and the O.A. was dismissed.
- (iii) As observed in Jethanand's case, passing of selection test is mandatory before a Class IV employee can be promoted to Class III post. If an employee officiating in Class III post for more than 18 months failed to qualify in the

selection test, he is liable to be reverted even after 18 months.

(iv) In Jethanand's case, the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, those who have failed to qualify in the selection test, should be allowed to officiate.

(v) The judgement of A.N.Phathak Versus Secretary, Ministry of Defence, relied upon by the Bench related to inter-service seniority between promotees and direct recruits is not relevant.

(vi) The Tribunal has not answered the contentions raised by the respondents.

2. On scrutiny, it is found that there is neither any mistake nor any error apparent on the face of the record nor sufficient reason warranting review.

3. In the order, it has been directed that the applicant should be regularised or continued indefinitely. The cardinal principle in Jethanand's case is/that the candidate must have qualified in the selection test to become suitable for the post. In this case under review, the applicant, who had worked for over 5 years, had not been given any chance for selection and it is not a case where he had failed in the selection test and reverted.

4. The case of A.N.Pathak Vs. Secretary, Ministry of Defence was quoted in the judgement only to emphasise that in cases of long delays a promotee, even if holding a post against direct quota, should not be visited with adverse consequences. This case was quoted to stress the need for due consideration of cases where ad hoc arrangements have been continued for long, before termination of services. (Further, the applicant was a promotee and the person who replaced him was a direct recruit as pointed out in the judgement).

5. It may be reiterated that the applicant had served as a Booking Clerk for over 5 years. He was, no doubt, appointed on ad hoc ^{basis} but this arrangement was not purely local in that he was transferred from Pandu Pandara to Siwaha. The orders in the OA were consistent with the ratio in Dathanam's case. Since the applicant had not been given any opportunity to qualify in a selection test and what was ordered was to give him repeated opportunities and revert him if he still did not qualify. The important contentions raised by Order respondents are mentioned in the/and also discussed.

6. The R.A. is bereft of any merit. The provisions relating to power of review constitutes an exception to the general rule that once a judgement has been signed and pronounced, it cannot afterwards be altered or added to, and hence, a right of review is exercisable only where the circumstances distinctly cover the statutory exceptions.

7. In the conspectus of the aforesaid matter, the review application is dismissed.

Dileep
(I.P. GUPTA)
MEMBER (A)

/PKK/

For consideration.

Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman.

I agree.

Ram Pal Singh
19.XI.81