

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.  
\* \* \*

(9)

Date of Decision: 8.5.92

OA 2639/91

UDAY VIR SINGH

... APPLICANT.

Vs.

UNION OF INDIA & ANR.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).  
HON'BLE SHRI B.N. DHOUNDIYAL, MEMBER (A).

For the Applicant ... Shri O.N. Moolri,  
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 Reporters or not ?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant is a Typist with the Chief Inspector of Works (Estate), DRM Office, New Delhi, and assailed the order dated 22.10.1991 passed by the DPO whereby the salary of the applicant has been reduced to his substantive post without in effect reverting him and allowing him to continue to work as ad-hoc Typist.

The applicant has prayed for relief for quashing the impugned order dated 22.10.1991 with the direction to

the respondents to regularise the applicant to the post of Typist w.e.f. 17.7.1989.

2. The case of the applicant is that he was engaged as a Casual Labour on 15.5.1978. He became a temporary Khallasi w.e.f. 16.4.1981 and was deputed to work as Typist from the same date. The applicant was made regular Khallasi on 17.7.1989. The applicant has also earned two increments in the grade of 950-1500 on the post of Typist. The salary of the applicant for the month of October, 1991 was not released as by the impugned order the applicant was ordered to be paid in the grade of Khallasi Rs.750-940.

3. It is said that the impugned order is against the law and arbitrary. It is further stated that the applicant has already worked for over 10 years as Typist and not appointing him to the substantive post will amount to violation of the fundamental rights of promotion as well as violation of the Railway Board's circular dated 10.4.1986 which prescribed educational qualification for the post of Typist in the grade of Rs.260-400 (RS). The case of the applicant is that he is entitled to regularis<sup>ation</sup> as Typist w.e.f. 17.7.1989.

4. The respondents contested the application and stated that the applicant had not filed any representation

11

under Section 20 of the Administrative Tribunals Act, 1985 and so the application is premature. The applicant was promoted purely on ad-hoc basis and the payment was held which was subsequently to be released. The applicant had no right to continue/regularise as Typist because he was promoted from Class-IV staff to Class-III staff, which is a selection post. Without passing the selection test the applicant has no right to be confirmed and he is liable to be reverted. The applicant cannot be regularised without selection.

We

5. I have heard the learned counsel for both the parties at length and have gone through the records of the case. It is not disputed that the applicant was regularised as permanent Khallasi in 1989. Of course since the applicant was educated & knew typing he was made to work as a Typist and has also been paid as a Typist. By merely working on the post of Typist, the applicant cannot acquire any status of a regular employee as a Typist in Class-III post, which is a selection post. The matter has been considered by the Full Bench in the case of Jethanand & Ors. Vs. UOI, TA 844/86 decided on 5.5.89 where it has been held that an ad-hoc employee can be reverted if he has been appointed as a stop gap arrangement and if he has not qualified the selection test he can still be reverted. The applicant has never

127

stated in the application that he has passed the selection test. Thus, the applicant cannot be regularised in Class-III post without having successfully passed the selection test.

6. The learned counsel for the applicant has referred to the fact that the applicant possessed the qualification for the post of Typist but that is not the question to be considered because the applicant is eligible and shall have to take the selection to be regularised or appointed to the Class-III post. Merely possessing the eligible qualification will not by itself make the applicant a regular employee on promotional post which is filled up on the basis of selection considering the claims of other eligible persons.

7. The learned counsel for the applicant also referred to the fact that the applicant was working as a Typist but his salary was ordered to be reduced to that of the scale of a Khallasi. A person is to be paid for which he has made to work. The respondents have already released the withheld salary of the applicant. The applicant, therefore, has no grievance on that regard. However, if the applicant has not been paid for the post of Typist, the same scale which is being paid to the Typist similarly working then he has to be paid the same scale.

J

(V3)

8. The application is, therefore, disposed of with the following direction that the respondents to pay to the applicant the pay of a Typist till the time he has worked or continues to work on the post of Typist. The prayer of the applicant for regularisation on the post of Typist is disallowed and that can only be claimed by the applicant when he successfully passed the selection and is empanelled. The respondents to comply with the above directions within a period of three months from the date of receipt of a copy of this order. In the circumstances, parties to bear their own costs.

*B.N. Dhundiyal*  
(B.N. DHUNDIYAL) 8/5/72  
MEMBER (A)

*J.P. Sharma*  
(J.P. SHARMA) 8/5/75  
MEMBER (J)