

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Date of Decision: 16.4.93

O.A.3193/92

Jugal Kishore Anand .. Applicant
vs.
Union of India and others .. Respondents

Shri K.L.Bhandulla .. Counsel for applicant
Shri H.K.Gangwani .. Counsel for respondents

CORAM
Hon'ble Mr.S.P.Mukerji, Vice Chairman
and
Hon'ble Mr.J.P.Sharma, Judicial Member

1. Whether to be referred to the Reporter? No
2. Whether reporters of local papers may be allowed to see the judgment?

ORDER
(Hon'ble Shri S.P.Mukerji)

In this application dated 7.12.92 the applicant who has been working as Law Assistant in the Northern Railway on adhoc basis has prayed that the respondents be directed to give him atleast two opportunities to take the examination for regular promotion as Law Assistant before reverting him to his substantive post and to protect his pay even in the event of reversion. He has also prayed that his answer book be assessed. The brief facts of the case as follows:-

2. The applicant joined the Western Railway as a Clerk on 19.7.74 and was transferred to Northern Railway on his request in 1975. He joined the Northern Railway Headquarters office in 1978. On the basis of a circular he applied for the post of Law Assistant in scale of Rs.550-750 in 1979 and he was permitted to appear in the selection examination held on 10.2.80 and his name appeared at Sl.No.2 of candidates.

allowed to take written test (Ext.P4). He appeared in the test but the results were not declared. Again in response to a notice issued on 23.12.82 he applied for similar examination for the same post but the examination was not held. He applied again in response to the notice dated 28.9.83 but no examination was held. On 8.8.85 a circular was issued inviting applications for officiating promotion for the post of Law Asstt. in adhoc arrangement pending selection. The qualifications prescribed for such officiation was that the candidates should be Law Graduate and should have five years of continuous service and should be working two grades below the grade of Rs.550-750. The applicant applied for the same on 13.3.85 and was appointed as a Law Assistant on an adhoc basis vide the order dated 10.9.85 at Annexure.P8. He has been working as Law Assistant since then. Again in 1987 he applied for regular selection for the post of Law Assistant but he was not allowed to appear as only those who were one grade below the grade of Law Assistant were eligible to appear. The applicant's substantive post was two levels below that of Law Assistant. Again on 16.5.89 when a selection was done the applicant applied but he was not allowed to appear for similar reasons. Nonetheless he continued to work as Law Assistant. In the meantime, he was regularly promoted from the grade of Sr.Clerk (Rs.1200-2040) to that of Head Clerk (Rs.1400-2300) with effect from 23.11.90. When another selection notice was issued on 30.7.91 the applicant applied and appeared in the examination on 9.11.91 but his name did not appear in the list of candidates who qualified to appear in the viva-voce test. He represented on 29.7.92 for assessment of the answer books but without any reply

the respondents passed the impugned order dated 1.12.92 at Annexure.P.1 reverting him from the grade of Law Assistant.

3. The applicant's grievance is that he has been officiating as Law Assistant though on adhoc basis continuously for more than 7 years with unblemished service and thus has acquired a vested right after 18 months of such service. His further grievance is that he was arbitrarily disallowed from appearing in the examination held in 1987, 89 and 90. He has referred to the Full Bench Judgment of this Tribunal dated 5.5.89 in which it was laid down that further opportunity for regularisation should be given to those officiating employees who fall in the selection test and that two opportunities should be given to clear the selection test and till then they should not be reverted.

4. In the reply affidavit the respondents have stated that in 1979 eligibility condition for promotion as Law Assistant was that the candidate should be a graduate in Law with 5 years in service in any branch of the Railway. The applicant was allowed to appear in the written examination held on 24.2.80 for the post of Law Assistant but he did not qualify in the test. He was allowed to officiate on an adhoc basis as Law Assistant on 12.9.85 and continued to officiate. He again did not qualify for selection also in 1991. They have stated that the applicant is substantive in the grade of Sr.Clerk and the selection for the post of Law Assistant being confined to the staff working in the grade immediately below the grade of Law Assistant and that immediately lower grade being Rs.1400-2300, the applicant who was substantive in the Sr.Clerk's grade of Rs.1200-2040 was not eligible. The applicant again

did not qualify in the written test held on 9.11.91.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant cannot at this stage question his not being allowed to appear in the test held in 1987 and 1989. The fact remains that he appeared in the subsequent test held in 1991 and did not qualify. During 1987 and 1989 he was not in the eligible grade of Rs.1400-2300 of Head Clerk to which he was promoted only on 23.11.90.

6. A Full Bench of the Tribunal in their judgment dated 5.5.89 in T.A.844/86 (Jetha Nand and others Vs. Union of India and others reported in Full Bench Judgments of CAT/1969-91 Vol.I-page 353) observed as follows:

"In regard to the last question as to when an adhoc employee can be reverted the answer is that if he has been appointed in a stop gap arrangement, he can be reverted at any time. If he has not qualified in the selection test, he can still be reverted. If he has qualified in the test and had continued in an adhoc capacity for more than 18 months, he cannot be reverted except after following the Discipline and Appeal Rules. Further, we have also held that a person who has so far not qualified in the selection test and is holding an adhoc post in the promotional post, he should be given several chances to qualify in the selection test and if even after repeated chances given to him he fails, there would be no other alternative but to revert him. The cardinal principle is that he must have qualified in the selection test to become suitable for the post."

The same Bench in R.A.No.135/89 in TA 844/86 in their judgment dated 21.5.90 (reported in Full Bench Judgments of CAT, 1969-91 Vol.II) it was observed as follows:-

"As regards the other Applicants although it is contended by the learned counsel for the Applicants that they had passed the selection test in 1972, there is no evidence before us to support this contention. They filed a suit and obtained an Injunction Order from holding

the test for them in 1981 and they have not appeared in any selection test thereafter. Now they are claiming regularisation. They cannot be regularised unless it is established that they had passed the test earlier. In case they choose to appear in fresh selection test, they may be given two opportunities for the same. The 'Record Note' para 2.2 of the meeting dated 27.11.1975 quoted earlier in this Order may be adhered to by the respondents. Meanwhile, the applicants may not be reverted."

(emphasis added)

7. In the light of the Full Bench decisions as quoted above, we allow this application only to the extent of directing that since the applicant has already availed himself of two opportunities in 1980 and 1991 to appear in the examination for regular promotion as Law Assistant, he should be allowed one and last opportunity to appear in the next selection examination, if he has not already appeared. He should be allowed to continue on an adhoc basis till he ~~is~~ has availed off the third opportunity subsequent to 1991. If he is successful in ~~that~~ selection, only then he should be regularised otherwise he should be reverted. Till the results of the selection in which he is allowed to appear after 1991 are declared, he shall not be reverted from the post of Law Assistant. Thereafter he should be reverted, if he is not successful. The application is disposed of on the above lines. There is no order as to costs.

J.P. Sharma
(J.P. Sharma)
J.M.

S.P. Mukerji
S.P. Mukerji
V.C.