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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1220/93

New Delhi this the 10th day of February, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN

R. C. Mishra S/O Than Chand,
Asstt. Supdt. (Retired),
Divisional Railway Manager's Office,
Northern Railway, Moradabad.
R/O C/O Shri Purshotam Kumar Mishra,
Qr. No. 586, Sector 5,
R. K. Puram, New Delhi. ... Applicant

By Advocate Shri M. L. Sharma

Versus

1. Union of India through the
General Manager, Northern
Railway, Baroda House,
New Delhi.
2. Shri Jaswant Raj,
Senior Divisional Personnel Officer,
Northern Railway,
Moradabad.
3. Shri D. C. Johri,
Officiating Law Assistant
on Ad hoc basis,
Divisional Rly. Manager's Office,
Northern Railway,
Moradabad. ... Respondents

By Advocate Shri B. K. Aggarwal

O R D E R (ORAL)

The petitioner, Shri R. C. Mishra, was holding the regular post of Head Clerk in the pay scale of Rs.1400-2300 w.e.f. 1.1.1984. He was appointed on ad hoc basis as Law Assistant w.e.f. 8.11.1987. He came to be reverted from the said post by order dated 9.7.1991 w.e.f. 19.8.1991. The petitioner retired from service on 29.2.1992. By the time he retired, it is the case of the respondents, that he was promoted as Law Assistant w.e.f. 19.8.1991 and it is in that capacity that he came to be retired.

2. In this application the petitioner has prayed for a direction to the respondents to deem the petitioner to have continued in the scale of Rs.1600-2660 w.e.f. 8.11.1987 till the date of his promotion as Assistant Suptd. ⁱⁿ an analogous grade, till the date of retirement, i.e., 29.2.1992 and inter alia, granting increment due on 1.11.1991 raising his pay to Rs. 1850/-. The petitioner has prayed for proper fixation of pay on that basis and other consequential reliefs.

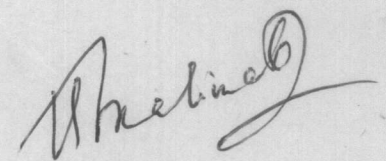
3. From the way the case has been sought to be made out, it is clear that the petitioner's real grievance is that he having been appointed on ad hoc basis on 8.11.1987 as Law Assistant in the pay scale of Rs.1600-2660 should be deemed to have continued in that post till his retirement. He wants us to ignore his reversion on the ground that there has been a discriminatory reversion of his while maintaining his junior, one Shri D. C. Johri, in that position.

4. Firstly it is necessary to point out that the reversion of the petitioner having taken place from the ad hoc post of Law Assistant by the order made in July, 1991, the petitioner cannot without getting the said order set aside expect to be regarded as having continued in that post. There is no prayer for quashing Annexure A-2. The explanation of the petitioner is that he went on making representations and that he did not get any reply. If the petitioner did not get any reply, he cannot ignore the positive order of reversion and claim relief as if the order does not exist. As an order

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or reversion was passed and the petitioner was actually reverted by that order (Annexure A-2), he cannot get any relief without challenging the said order. Be that as it may, I find that on merits also the petitioner cannot assail that order as being illegal or invalid. In the reply filed by the respondents it is pleaded that the post of Law Assistant was a selection post and that the petitioner was appointed on ad hoc basis pending filling up of the said post on regular basis. The order of the petitioner's appointment on ad hoc basis makes this position quite clear. He was appointed on ad hoc basis pending filling up of that post on a regular basis. It is the case of the respondents that the post was advertised and applications were called for. Whereas Shri Johri applied for the said post the petitioner did not. Shri Johri was duly selected and appointed as a Law Assistant. The question of appointing the petitioner as Law Assistant does not arise on regular basis for the reason that he did not even make an application for that post. The averments in the reply, there is no good reason to disbelieve them, merely because the relevant orders supporting those averments have not been produced by the respondents. I have, therefore, to proceed on the basis that Shri Johri was selected and promoted in pursuance of the selection held for that purpose and the question of considering the case of the petitioner did not arise as he did not apply for the same. Hence it is not possible to sustain the claim of the petitioner that he should be deemed to have continued as Law Assistant till the date of retirement.

5. There is, therefore, no merit in this case.
This application accordingly fails and is dismissed.
No costs.



(V. S. Malimath)
Chairman

/as/