

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No:
T.A. No:

7/96

DATE OF DECISION: 30-8-96

Surya Muni Yadav ----- PETITIONER

Sri Sanjay Kumar ----- ADVOCATE FOR THE
PETITIONER

. V E R S U S

Union of India & others ----- RESPONDENTS

Sri V.K. Chugh ----- ADVOCATE FOR THE
RESPONDENTS

C O R A M

The Hon'ble Mr. R.K. Saxena, Member (J)

The Hon'ble Mr. D.C. Banerjee Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?

SIGNATURE

MANISH/

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 30th day of Aug 1996

Original Application No.7/96

Hon 'ble Dr.R.K.Saxena, J.M.
Hon 'ble Mr.D.S.Baweja, A.M.

Surya Mani Yadav S/o late Sri Babu Lal
working as Ganitor, Chief Commercial
Manager office, N.E.Railway,
Gorakhpur.

C/A: Sri Sanjay KumarApplicant

Versus


1. Union of India through General Manager,
N.E.Railway, Gorakhpur.
2. The Chief Personnal Officer, N.E.Rly.
Gorakhpur.
3. The Senior Personnal Officer (T-ransportation)
N.E.Rly., Gorakhpur.
4. The Chief Commercial Manager, N.E.Railway,
Gorakhpur.

C/R: Sri V.K.Goyal.Respondents.

J U D G M E N T

Hon 'ble Dr.R.K.Saxena, J.M.

Surya Mani Yadav has approached the
Tribunal seeking quashment of notification dated
13-12-95 annexure-9 and a direction in nature of
mandamus commanding the respondent not to
terminate the service of the applicant. Further
relief claimed is that the respondents be directed
to grant upgraded salary to the applicant in the
grade of Rs. 2000-3200 w.e.f. 23-1-92.



2. The facts of the case are that the applicant was initially appointed as Peon in class IV on 24-9-74. He was subsequently promoted as a clerk w.e.f. 13-3-81. While he was working as clerk in the grade of Rs. 1200-2040, the applications for Ex-cadre post of Janitor which was created in the pay scale of Rs. 1400-2300 in the Commercial Department, were invited. A number of persons had applied and seven of them vide annexure-2 were directed to appear in the written test for the said post. It is stated that the applicant qualified in the test including viva and therefore he was placed on the panel annexure -3. He was given appointment letter annexure-4 whereby he was posted as adhoc Janitor in the grade of Rs. 1400-2300. The panel was approved by the Chief Commercial Manager on 2-5-88 and the appointment of the applicant was made effective from the said date i.e. 2-5-88. The contention of the applicant is that the post of Janitor in the Commercial Department of North Eastern Railway, Gorakhpur is a permanent post. Thus, the applicant on being appointed as Janitor took over the charge of ^{the} said permanent post on 6-5-88. He was regular incumbent of the post as was disclosed in annexure -6.

3. It is pointed out that two more Janitors were working in the office of the General Manager and Accounts office in the grade of Rs. 2300-3500 and 2000-3500 respectively. The applicant, therefore, approached the respondent and consequently the post of applicant was also upgraded in the grade of Rs. 1600-2660 and he was allowed to ^{have} ~~stay~~ higher grade of Rs. 1600-2660 vide annexure-7. The job of the post of Janitor is ^{claimed to be} very strenuous and in the incumbent of

B2

the said post in the accounts office, was carrying grade of Rs. 2000-3200 and for that reason the post of the applicant was also upgraded in the higher grade of Rs. 2000-3200. The applicant ought to have been allowed the higher grade of Rs. 2000-3200 but it was not done. On representation being made, an adverse stand was taken and the impugned notification about calling for applications for the post of Janitor in the grade of Rs. 2000-3200, was issued, Hence this original application.

4. The respondents have contested the case on several grounds. It is claimed that the post of Janitor is ex-cadre post and the applicant was appointed on the said post purely on adhoc basis. It is pointed out that according to the policy which was adopted, only those persons who were medically ~~de~~^ecategorised, were eligible to the post and since the applicant was not in the category of medically ~~de~~categorised person, he did not have any claim for the post. It is further averred that the applicant is holding his lien for the post of Head-Clerk in the parent cadre in the pay scale of Rs. 1400-2300. Since the applicant can not get higher grade than Rs. 1400-2300 in his own cadre, his claim for the post of Janitor in the grade of Rs. 2000-3200 is denied. It is admitted that the applicant was posted as Janitor in the grade of Rs. 1400-2300 on 11-12-87 on adhoc basis for a period of three months. When notification was issued in the year 1988 and the applicant had applied for the post of Janitor in pursuance of the said notification and he had qualified in the test held for the post, he was posted as Janitor on temporary basis. It is also admitted that the grade of Rs. 1600-2660 was sanctioned for the post of Janitor and accordingly the post of Janitor in the said grade was created vide order dated

B2

27-10-88 after surrendering one post of Block Regulator. It is stated that the applicant was posted on the upgraded post of Janitor in the pay scale of Rs.1600-2660 only on the ground that the applicant had become eligible for promotion in the grade of Rs.1600-2660. It is further pointed out that the post of Janitor in the grade of Rs. 2000-3200 was created on the ground of administrative exigency and by surrendering the post of Janitor in the grade of Rs.1600-2660. It was further contended that the post of Janitor in the grade of Rs. 2000-3200 was created by converting one post of office Superintendent in grade of Rs.2000-3200 into the post of Janitor of the same grade and post of Janitor in the pay scale of Rs. 1600-2660 was transferred back as office Superintendent Gr.II. In view of these facts, it is claimed that the applicant had no right either to seek promotion in the higher grade of Rs. 2000-3200 on the post of Janitor or to seek quashment of the impugned notification annexure-9.


5. The applicant filed rejoinder reiterating the facts which ²was stated in the O.A. Besides, it is averred that the authorities have forced the applicant to accept the charge of Head Clerk and thus he had protested and met the Chief Commercial Superintendent who had assured him that the services of the applicant should not be transferred in the clerical cadre. For these reasons, it is stated that the acceptance of the charge for the post of Head Clerk by the applicant was only a paper work; and as a matter of fact the applicant had not worked even for a single day on the said post. The contention of the applicant is that ^{he}is senior most Janitor in the Commercial department and he is giving

DZ

work more than his counter part in the Accounts department in the office of the General Manager. He therefore, claims that the promotion to the post of Janitor in the higher scale can not be denied to him.

6. We have heard the learned counsel for the applicant and the respondent. The record is also perused.

7. There is no denying a fact that the applicant was working as Clerk before he was appointed as Janitor. It is also an admitted fact to both the parties that a notification for appointment on the post of Janitor was issued. The definite date of the notification has not been ^{given} by any of the parties. It, however, appears from the perusal of annexure-2 of the O.A. and annexure-4 of the counter-affidavit that a written test was held on 8-4-88 in pursuance of the said notification. Seven persons were found eligible to appear in the said written test. The name of the applicant finds place at serial No.2 of the list. It is also clear that the applicant was appointed on adhoc basis for a period of 3 months as Janitor vide order dated 11-12-87 annexure-3 of the counter affidavit. After the applicant had qualified in the written test as well as in the viva-voce, ^e he was placed on panel which was prepared on 4-5-88 (Annexure-3 of O.A.). After approval of the panel, the applicant was appointed as Janitor vide annexure-4 of the O.A. The contention of the respondents is that the lien of the applicant had been on the post of Head Clerk but he was appointed as Janitor on adhoc basis. This contention has been refuted by the learned counsel for the applicant on the ground that he was selected for the post of Janitor after qualifying the written



test and the interview held there-for. The question, however, arises if the applicant was appointed as Janitor substantively or otherwise. When we go through the order dated 4-5-88 annexure-4, it is revealed that on the approval of the panel, the applicant was appointed regularly and his appointment was given effect ~~effect~~ from 2-5-88. He had taken over on the post of Janitor as a regular Janitor vide annexure-6 dated 6-5-88. In these orders, it is nowhere mentioned that the applicant was taken either on deputation or on adhoc basis. In case the applicant had been taken on the post of Janitor either on deputation or on adhoc basis, this fact would have been mentioned in annexures-4, 6 & 7. It is important to note that this fact was clearly mentioned in the earlier order~~s~~ dated 16-12-87 annexure-1 because at that time the applicant was appointed on adhoc basis for a definite period of three months. Since the subsequent appointment on the same post was made after the applicant had qualified the test and was finally selected in interview, it was mentioned in annexure-4 that he was appointed on the said post as a regular Janitor. In view of these facts, the contention of the learned counsel for the respondent~~s~~ that the applicant was appointed as Janitor on temporary basis and his lien continued in the clerical cadre, is not substantiated. It has, however, been pointed out in para 17 of the counter-affidavit that the applicant had already joined as Head Clerk on 22-12-85 and had submitted joining report on the same day. It is, therefore, contended that the applicant has no right to continue as Janitor or to challenge the subsequent notification issued by the respondent~~s~~ for inviting the applications for the post of Janitor in


D
2

in the scale of Rs 2000-3200. The applicant refuted this fact in the rejoinder by saying that the acceptance of the charge for the post of Head Clerk was only a paper work because he had not worked even for a single day on the said post of Head Clerk. It is further averred that he had protested against being compelled to join the post of Head Clerk and in that connection he had personally met the Chief Commercial Superintendent who had assured that the applicant should not be transferred in clerical cadre. It is also averred that the applicant is the senior most Janitor in the Commercial Department and he was entitled to be given the promotion in the pay scale of Rs.2000-3200.

8. The main question for decision in the case is whether the applicant was appointed as Janitor against the substantive vacancy and on regular basis or he was posted as Janitor either as deputationist or on adhoc or temporary basis. We have already discussed the facts as to how the applicant was appointed on the post of Janitor after he had qualified the written test as well as viva. In this connection, the perusal of the order of appointment which was issued becomes of ^{great} ~~necessary~~ importance. The language of this order is important for our conclusion. This order runs in two parts. First part speaks about his being Senior Clerk in the grade of Rs.1200-2040 and being appointed as Janitor - Ex cadre post on ad-hoc basis. The second part deals with the subsequent development which had taken place after written test and viva-voce were conducted and the applicant was selected. This second part referred to in the order annexure-3 has clearly mentioned that the applicant was appointed on the said post (Janitor) on regular basis. In this way, it is clear that the earlier posting of the applicant on the post of Janitor was no doubt on adhoc basis, but the posting after his having qualified the written test and interview, was on regular basis. The words either on adhoc basis or on deputation are conspicuously

absent. The inference therefore is that the appointment of the applicant was neither on adhoc basis nor as deputationist. He was posted on regular basis against the substantive vacancy. The post of Jantior did exist substantively in the department, can be gathered from the list of posts given in annexure-5. The appointment of applicant on the post on regular basis is further cemented from annexure-6.

9. Now we have to see the meaning of substantive post and regular appointment. The learned counsel for the applicant relied on case of 'Purshotam Lal Dhigra Vs. Union of India A.I.R. 1958 Supreme Court 36'. In this case, their Lordships of Supreme Court considered different kinds of posts in para 10. It is mentioned that the permanent post meant a post carrying a definite rate of pay sanctioned without limit of time. It further says that a temporary post means a post carrying a definite rate of pay sanctioned for limited time. These temporary posts, further observed, are very often outside the cadre and they are usually for one year and are renewed from year to year, although some of them may be created for certain specific period. In para 11 of the judgment, their Lordships expressed the view that the appointment of Government Servant to a permanent post may be substantive or on probation or on officiating basis. The substantive appointment to a permanent post in public service confers normally on the servant so appointed a substantive right to the post and he becomes entitled to hold a lien on the post. Their Lordships further held that the lien was defined in Fundamental Rules as the title of a Government servant to hold substantively ^{legally} a permanent post including tenure post to which he has been appointed substantively. The Government, according to their Lordships, cannot terminate his services unless it is entitled to do so (1) by virtue of a special term of the contract of employment i.e. by giving a requisite notice provided by contract, or (2) by the rules governing the conditions of his service i.e. on attainment of age of superannuation prescribed by Rules or fulfilment of the conditions for compulsory retirement or subjectpg.9/-




to certain safeguards, on the abolition of the post or being found guilty after ~~a~~ proper inquiry on notice to him of mis-conduct, inefficiency or any other disqualification. When we examine the appointment letter annexure-4 in the light of the observations made above, we find that the appointment of the applicant was on regular basis against the substantive post. On the post being upgraded in the scale of Rs. 1600-2660, the applicant was allowed the said higher grade vide order annexure-7. The learned counsel for the respondents, on the other hand, contends that the post of Janitor in the grade of Rs. 1600-2660 was abolished and another post in the grade of Rs. 2000-3200 was created and therefore the applicant had no right. We are unable ^{to} agree with this proposition. If the upgradation had a consequence of removal of the applicant from the post, it should have been done at the time when the post of Janitor ^{from} ~~in~~ the grade of Rs. 1400-2300 was upgraded ^{to} ~~in~~ the scale of Rs. 1600-2660. This fact goes to show that since the applicant was appointed as against the substantive post of Janitor, he was allowed the higher pay scale of Rs. 1600-2660. In this way, the further upgradation of the post from the grade of Rs. 1600-2660 to the grade of Rs. 2000-3200 could have no adverse effect on the applicant. It has been contended on behalf of the applicant that since he had been representing for being given the higher grade of Rs. 2000-3200, he was removed from the service. There appears sufficient substance in this argument.

10. The learned counsel for the respondents also relied on two points. One is that applicant had lien in


D
2

in clerical grade and other is that he had taken over the charge of Head-Clerk. It is, therefore, submitted by him that the applicant cannot be deemed to have substantively appointed on the post of Janitor. We are unable to persuade ourselves to this argument. The applicant was appointed as Janitor on regular basis vide order dated 4-5-88. This post was not made available in charity. He had appeared in the written test^{and} when he qualified in said test including interview, he was finally selected. As already pointed out, it was nowhere mentioned that the applicant was appointed on adhoc basis or as deputationist^{or} on temporary basis for limited period. The absence of these terms, therefore, indicate that the applicant was appointed against the substantive vacancy of Janitor and on regular basis. When the applicant joined as Janitor, he can not held the lien in the clerical cadre. So far as the second point of his taken over charge as Head Clerk is concerned, it has been explained by the applicant in his rejoinder that he was forced to take over the charge of Head Clerk on paper but he did not do the work of Head Clerk even for a day. He states in rejoinder that he was assured² of about his continuance on the post of Janitor. Thus, the taking over of the post of Head Clerk by the applicant does not debar him from claiming the right on the post of Janitor. He had^{not} volunteered² for taking over the post of Head Clerk but was forced to do so. The employee under these circumstances can have no other option but to surrender to the dictates of his superiors. Thus, we do not find any force in the argument² advanced by the learned counsel for the respondent.



11. It is also argued that seniors to the applicant in the clerical grade have not reached the grade of Rs. 2000-3200 and for that reason also it is pleaded that the applicant cannot be allowed the said grade of the post of Janitor. We find in this argument that the learned counsel for the respondent is trying to equalise unequals. After the applicant appeared in the written test and viva for the post of Janitor and qualified and subsequent thereto he was posted as Janitor, he no more remained the member of the clerical cadre. Therefore, those who were seniors to the applicant and continued in the clerical cadre, cannot be equated with the applicant. Thus, this argument does not find favour with us.

12. The learned counsel for the applicant also placed reliance on the judgment in the case of K.G.Josy^x versus Union of India A I R 1985 Supreme Court 1046 in which the petitioner of the said case was appointed as Assistant ^SStore Keeper on regular basis until further orders. Their Lordships of Supreme Court interpreted this expression as an appointment for indefinite period. It was observed that it was difficult to construe it as clothing him with the status of temporary employee. It was observed that the expression "until further orders" being thoroughly irrelevant and had to be ignored. It was further observed that it was even inconsistent with the appointment on regular basis as was stated in that ^{the} order. It emerges from ^{the} view taken in the ^{law} case that appointment on regular basis tantamounts to an



appointment for indefinite period. According to Onigam's case (supra), it can be as against the permanent or substantive post. We, therefore, hold the view that the applicant was appointed as Janitor on permanent post substantively by use of the words on regular basis. The upgradation of the post does not mean divesting the incumbent of the said post. As pointed out earlier, this post was upgraded from the grade of Rs.1400-2300 to the grade of Rs.21600-2660 and the applicant was allowed to hold the said post. On subsequent upgradation to the grade of Rs.2000-3200, it was done with a view to have uniform ^{of} grade of Janitor everywhere. Thus the applicant can not be denied the same.

13. There is another aspect of the situation which was probably visualized by the Department while issuing the circular dated January, 14, 1991 annexure R-2, attached to the counter-affidavit. In this circular, it was pointed out that the post of Janitor should be meant for medically decategorised staff only. It was further pointed out that certain posts of Janitor were filled up by the staff who were not medically decategorised and were holding the posts for petty long time; and such of the employee who were holding the post for more than 3 years, may continue against those posts till they vacate the posts. No doubt the learned counsel for the respondents strenuously argued that the post of Janitor was to be meant by medically decategorised employees in accordance with the said circular, but it can-not be lost sight of that the said circular was issued on 14/1/91 ^{whereas} /the applicant

was appointed as Janitor in the year 1988. In this way, the applicability of this circular is very limited. Besides, it has been made clear that the employees who were ^{not} medically decategorised and were holding the posts of Janitor for more than 3 years, they were allowed to continue till the posts were vacated by them. It is pertinent to note that the circular does not emphasise the incumbent to be ^{compelled} to vacate the post. Even if it is assumed for the sake of argument that the applicant was holding the post of Janitor at the pleasure of the respondents, he could not be compelled to vacate the post unless the applicant himself desired. Thus, the view taken by the respondents that the applicant was not holding the ^{laid} post, is illegal and was not correct.

14. In view of these circumstances, there was no ground to treat the post of Janitor in the grade of Rs2000-3200 to have fallen vacant and to have occasioned ^{to} invite applications. Thus the issuance of notification annexure-9 to call for applications for the post is accordingly illegal, and quashed.

15. On the consideration of the facts and circumstances of the case, we allow the original application and quash the order dated 13.12.1995 annexure-9. Accordingly the stay which was granted on 10.1.1996, comes to end. No order as to costs.

Member A

Member (J)