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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No.83 of 1986

(Misc.Civil Appeal No.275 of 1980)

CONNECTED WITH

REGISTRATION T.A.No.1353 of 1986
(Original suit no.369 of 1980)

Behari Lal Yadav Applicant
Vs.

1.Union of India

2. Divisional Railway Manager
N.E.Railway, Varanasi Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

Suit no.369 of 1980 filed by the applicant in the Court of Munsif City, Varanasi and Civil Misc. Appeal No. 275 of 1980 filed by him in the Court of District Judge Varanasi against the order refusing the temporary injunction in original suit have been received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant was appointed as Hospital Attendant in the N.E.Railway on 1.9.1960. After his confirmation on this post on 1.9.1961, he was promoted as Laboratory Assistant on 1.7.1972. On apprehending his reversion from the said post, the applicant served

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the respondents with a notice dated 3.8.1974 under Section 80 of the Code of Civil Procedure. The applicant alleged that the litigation was avoided on his giving the said notice but the respondents did not stop their illegal acts and threats and in order to illegally revert the applicant, they are intending to abolish the post of Laboratory Assistant converting it into the post of Chemist in the higher grade, which is illegal as the applicant has acquired a lien on this post and he could not be reverted to the lower post now in violation of Articles 14,16 and 311 of the Consitution. He accordingly filed the suit for permanent injunction to restrain the defendants-respondents from reverting him from the post of Laboratory Assistant. The applicant also applied for temporary injunction to restrain the respondents from reverting him from the post of Laboratory Assistant, but his application was rejected by the learned trial Court on 1.10.1980. He thereafter, preferred the misc. civil appeal challenging the said order and got his plaint amended to restrain the respondents from reverting him from the upgraded post of Assistant Chemist.

3. The suit has been contested on behalf of the respondents and in the written statement filed on their behalf it was stated that the plaintiff (applicant) was confirmed as Hospital Attendant w.e.f. 1.3.62. He was never promoted to the post of Laboratory Assistant but due to the transfer of Sri G.K.Srivastava, in the local vacancy, the applicant was asked to look

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after the work of Laboratory Assistant vide order dated 11.10.1972 for which he was paid the officiating allowance. The post of Laboratory Assistant has been upgraded to the post of Chemist in the scale of Rs. 425-700 and later on this post ^{of} ~~of~~ Varanasi was temporarily transferred to Izatnagar Division for 6 months and at present there is no post of Chemist in Varanasi Division. The post of Assistant Chemist is classed as selection post. 50 per cent ^{vacancies} of this cadre are filled by direct recruitment through Railway Service Commission and the remaining 50 per cent are filled by promotion on having educational qualification and experience as prescribed under the rules. The applicant is not eligible for the post of Lab.Assistant/Assistant Chemist. The applicant was merely allowed to manage the work of Lab.Assistant and he was never appointed on this post and as such, has no right to continue on this post. The applicant has already been reverted to his substantive post of Lab.Assistant vide order dated 17.11.1980 but he is still working on this post under the order of District Judge, Varanasi. There is now no post of Lab.Assistant at Varanasi. The reversion of the applicant is not in violation of the provisions of the Constitution. The applicant's alleged promotion was purely on ad-hoc basis and he has no right to hold the post. Some other legal pleas were also taken.

4. The original suit and the misc.appeal were taken up together on the request of the learned counsel for the parties. The undisputed factual position now

is that the applicant, who was initially appointed as Hospital Attendant, was entrusted with the work of Lab. Assistant on 1.7.1972 but this post was later on upgraded and converted into the post of Assistant Chemist in the grade of Rs.330-560 vide order dated 10.11.1984 of the Railway Board. The contention of the applicant is that he is entitled to continue on this post and on account of his continuous officiation on the post of Lab. Assistant since 1972, he cannot be reverted without taking recourse to the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 (For short DA Rules). On the other hand, the contention of the respondents is that the applicant was never promoted to the post of Lab. Assistant and only in a stop gap arrangement he was asked to look after the work of Lab. Assistant on the transfer of former incumbent of this post and as he was neither empanelled nor selected for the post of Lab. Assistant nor does he possess the requisite qualification for this post, he has no right to continue as Lab. Assistant and in no case as Asstt. Chemist.

5. The main question arising for determination in this case, therefore, is whether the plaintiff-applicant has acquired a lien or right to hold the post of Lab. Assistant or the upgraded post of Asstt. Chemist. Paper no.26-C is the copy of order dated 11.10.1972 of the Divisional Superintendent, N.E. Railway Varanasi whereby the applicant was asked to work on

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the post of Lab.Assistant. For the sake of convenience it is reproduced below :-

" Sri Behari Lal Yadav, HA/Lab in scale of Rs.75-95 is allowed officiating pay as Lab. Asstt. (110-200) with effect from GD and spared on 14.7.72.

This has the approval of DMO/(I)-BSB and will not confer upon Sri Yadava any claim in future promotion etc."

6. This order does not show that the applicant was promoted as Lab.Assistant in place of Sri G.K.Srivastava. He was simply allowed to draw the officiating pay as Lab.Assistant with a clear stipulation that this order will not confer upon him any claim in future promotion etc. The contention of the respondents is that it is not an order of promotion but is merely a working arrangement for the discharge of the duties connected with the office of Lab.Assistant on the transfer of its former incumbent. This order also does not show that before allowing the officiating pay of the post of Lab.Assistant the applicant was ever asked to appear in any selection test or examination.

We are, therefore, of the view that it was merely a stop gap arrangement and the applicant was never regularly promoted as Lab.Assistant.

7. Paper no.39-C is the copy of notification issued by the Divisional Superintendent Varanasi dated 4.7.1986 which states that one post of Lab.Assistant in Railway Hospital Varanasi in the grade of Rs.260-

420 has been upgraded and converted into the post of Assistant Chemist in the grade of Rs.330-560. The applicant does not dispute the issuance of this notification and that is why he now claims a right to hold this upgraded post of Asstt.Chemist. It has not been shown to us that the applicant fulfils the requisite qualifications to hold this post. The applicant placed his reliance on D.O.letter dated 21.5.1956 issued by the Railway Board to the General Manager, N.E.Railway, copy paper no.36-C on record, which provides that if railway employee is allowed to hold the promotion post on ad-hoc basis for 18 months, he cannot be reverted for unsatisfactory work without following the procedure prescribed in DA Rules. This stand was reiterated by the Railway Board by issuing confidential letter dated 9.6.1965, copy paper no.37-C on the record. He has also placed his reliance on a decision of the Hon.Supreme Court in A.N.PATHAK Vs. Secretary to the Government of India (A.I.R. 1987 SC-716) in which the principle of giving length of service due importance in dealing with promotion and seniority was upheld and the practice of ignoring the officiating service was ^{depreciated} ~~depreciated~~. The applicant has also filed certain copies of the judgments of the Allahabad High Court as annexures to his affidavit in support of his claim for temporary injunction in which stress was laid on recognising the officiating service of a promotee

Government servant at the time of considering his reversion.

8. We have carefully considered the contentions raised on behalf of the parties before us in this case and find that in this case, the applicant was never regularly promoted as Lab.Assistant. It is not his case that the respondents ever intended to revert him to his substantive post on the ground of unsuitability or unsatisfactory work. It is also not his case that he was threatened to be reverted by way of punishment without following the DA Rules. The undisputed case before us is that the post of Lab.Assistant was upgraded and converted into the post of Asstt.Chemist. The respondents intended to revert the applicant to his substantive post simply because no post of Lab.Assistant in which he was working was then available. In this way, there has neither been any breach of any circular letter of the Railway Board nor of any right guaranteed by the Constitution under Articles 14,16, and 311. It is true that a person holding the officiating chance in a higher post for a considerable period like the applicant before us, cannot easily relish the idea of his reversion to his substantive post but in the absence of infringement of any right accruing to him under the law or rules, we are unable to extend our help to him. We will certainly like to advise the respondents to make special provision in such cases to save the railway employees from frustration and monetary loss.

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In view of the above discussion, we find that the applicant has failed to establish his right to hold the post of Lab.Assistant or further converted post of Assistant Chemist and as such his suit and ap-peal both are liable to be dismissed. We accordingly dismiss the suit and the misc. appeal filed by the applicant and direct the parties to bear their own costs.

[Signature]
23.6.87

MEMBER(A)

[Signature]
23/6/87

MEMBER (J)

DATED; 23-6-1987

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