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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No. 416(T) of 1986

Union of India ... Vs.... Prem Shanker and another

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sherma-JM

( Delivered by Hon'ble D.S.Misra)

This is a Civil Appeal No.117 of 1985 pending in the court of District Judge, Bareilly against the judgment and decree dated 9.9.1985 passed by the Addl. Munsif V Bareilly, which has come on transfer under Section 29 of the A.T.Act XIII of 1985.

2. In the original suit filed by the plaintiff-respondent, it was stated that the plaintiffs were working as TXR under Chief TXR Northern Railway Bareilly Junction, (defendant no.2) in the scale of Rs.425-15-700 that the plaintiffs had put in more than 5 years' continuous service as officiating TXR and that the plaintiffs were being threatened by the defendants to be reverted back to the post of Fitter in the Grade of Rs.380-560 although their juniors were allowed to work. The plaintiffs had, therefore, sought a permanent injunction restraining the defendants from reverting the plaintiffs from the post of TXR to the post of Fitter.

3. In the written statement filed on behalf of the defendant-appellant, it is stated that the plaintiffs were temporarily promoted under ad hoc arrangement by letter dated 10.10.1977 and the arrangement was only upto the date of availability of qualified and empanelled candidates; that the plaintiffs were never selected for the post of TXR, neither they appeared in any selection for TXR; that they only appeared in a test held for

officiating TXR; that the selection for TXR's training was held on 28.5.83 and 5.6.83 and inspite of being informed to appear in the test, the plaintiff no.1 refused to appear in the test; that plaintiff no.2 avoided to appear in the said test; that plaintiff nos. 3 and 4 appeared in the test but failed to qualify; that a batch of qualified TXR had become available and the plaintiffs were to make place for them; that the order of reversion of the plaintiffs was passed by the competent authority and has already been implemented; that the 18 months' rule did not apply in the case of the plaintiffs and the plaintiffs had no right to continue on the post of TXR.

4. On the pleadings of the parties, the trial court framed 9 issues. However, for the purpose of deciding the appeal it would be sufficient to discuss the following issues:

3) Whether the plaintiffs were promoted temporarily on ad hoc arrangement?

4) Whether the test, both oral and written prepared to be sent for training was necessary?

5) Whether the plaintiffs Prem Shanker and K.C. Saxena illegally refused and avoided to attend the written test prior to be sent for training, if so, its effect?

6) Whether the plaintiff Sri Tirath Lal and Pyare Lal did not qualify the written test for training?

7) Whether the plaintiffs have any right to continue to work as TXR even on arrival of trained hand?

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5. After discussing the evidence on record, the trial court decided issue no.3 in favour of the defendants and issue no.7 in favour of the plaintiffs. The trial court held that by virtue of the plaintiffs having been working continuously for a period of more than 18 months they had acquired a right to continue to work as TXR and that they could not be reverted without following the disciplinary proceedings. On issue no.4 ,the trial court has relied-upon a decision of Orissa High Court in K.C.Mohanti Vs. U.O.I. reported in AIR 1985 Orissa,149 . The trial court further decided issue nos.5 and 6 in favour of the plaintiffs in view of its finding on issue nos.3,4, and 7.

6. We have heard the arguments of the learned counsel for the parties and have gone through the document-s on record. Learned counsel for the appellant has contended that the finding of the trial court on issue no.7 is based on Railway Board's Circular nos.E-55-EC-26 dt. 21-5-55 1972, and E(NG)-I-695 31 dated 5.2.1972 which are not applicable to the case of the plaintiffs as they were not appointed to the post of TXR by a properly constituted Selection Board On going through the record, we find that the plaintiffs had filed copy of Railway Board's Letter No. EG(1-63-GN 5/31 dated 5.2.1972(Ga-10) which reads as follows:-

"The Board desired that the cases of staff who have been promoted on regular basis should be reviewed after completion of one year's continuous officiating service even if a permanent vacancy does not exist with a view to determining suitability for retention in the grade. The review should be completed early and a decision to continue the employee in the officiating post, or revert him taken and implemented within a

period of 18 months of officiating service...."

A careful reading of the wording of the Circular would show that this Circular is applicable only in respect of persons promoted on regular basis. The plaintiffs had admitted that their promotion by the order dated 10.10.1987 was on purely ad hoc basis. Therefore, the meaning interpreted by the trial court to this Circular is erroneous. The trial court appears to have been swayed by the fact that the plaintiffs had been working on the post of TKR for more than 8 years and it held that their reversion to lower post was against the principles of natural justice. Learned counsel for the appellant invited our attention to a division bench judgment of the Allahabad High Court in connected Civil Misc. Writ Petitions nos. 660,908 and 6322 of 1978 ( Mohd. Sabir and others Vs. U.O.I.) decided on 3.9.1980 in which the matters under consideration were similar, wherein it was held that the benefit of officiating on higher post for more than 18 months applies only to those employees who have acquired prescriptive right to the officiating post *by* *be* virtue of their empanelment or having been declared suitable by the competent authority and it does not apply to those officiating at higher post only as stop gap arrangement. In our opinion the above mentioned judgment of Allahabad High Court is fully applicable to the present case. We also find that the facts in the case reported in A.I.R. 1985-Orissa-page 149 were quite different inasmuch as the petitioners had passed the written test but failed in the Viva Voce and the Single Judge directed the defendants to treat *him* <sup>The petitioner</sup> *as* having passed in the Viva Voce test. The Hon'ble Supreme

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in Narendra Chaddha and others Vs. Union of India and others, (ATR 1986-Page 57) has observed as follows:

" But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post.... "

We have considered the matter and we are of the opinion that the defendant-appellants could revert the plaintiff-respondents in public interest.

7. It is not disputed by the plaintiffs that one of the conditions for regular promotion as TXR is that the persons should have undergone training for a period of 1 year. The plaintiffs nos. 1 and 2 had failed to appear in the test held for selecting candidates for being sent on training and plaintiffs nos. 3 and 4 had failed in the test. Their only argument is that by virtue of their having been working on the post of TXR for more than 7 years, they should have been deemed to have acquired the necessary qualification and their promotion should be deemed to be regular. We are of the opinion that the learned trial court failed to appreciate these material facts on record and gave its findings without considering full facts and the rules applicable in the case. The discussion based on such findings, therefore, can not be sustained. It will therefore, not be necessary to discuss other points raised in the memo of appeal.

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In the result, the appeal is allowed and the judgment and decree dated 9.9.1985 passed by the trial court are set aside and the suit is hereby dismissed. Parties to bear their own costs.

*JS/ 3.8.87* }  
A.M.                    J.M. *3/8/87*

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