

A2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 640 of 1986 (T)

Union of India & Others. .... Appellant  
(G.M.C.Rly.)

Versus

Ram Kishore & Others.... Respondents.

Hon. S. Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(Hon. Ajay Johri, A.M.)

This is a Civil Appeal No. 148 of 1982 against the judgement and decree dated 15.4.82 passed by Munsif Court VII Jhansi in Suit No. 114/81 received on transfer from the Court of District Judge, Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff respondents joined the railway service in the year 1961 and 1964. Their case is that they were promoted as Fuel Issuers on 22.3.78 and had been officiating for more than 18 months and therefore they claimed that their reversion back to class IV category from where they were promoted could not be done except under Discipline and Appeal Rules of the railways. According to them certain officials had taken the law in their own hands and were going to revert and reduce them in the rank to the previous post of Yard Khalasis. They had approached the learned Munsif for issue of a decree of permanent injunction in their favour restraining the defendant appellants from implementing their decision of 18.2.81 to revert them without due application of the Discipline and Appeal Rules till such time as their junior counter part are retained in service in the grade of Rs. 260 - 400. On 30.5.81 the learned Munsif Jhansi gave a decision

excepting the petition of the plaintiff respondents and issued an injunction restraining the defendant appellants from implementing their order of 18.2.81 which would be subject ~~after~~ <sup>to the</sup> a decision in the suit. This injunction was made permanent in the above suit on 15.4.82 by the Munsif Magistrate Court No.VII Jhansi. The defendant appellants have filed a Civil Appeal No. 148 of 1982 against the above judgement on the grounds that the plaintiff respondents were allowed to officiate on adhoc basis in stop gap measure on the post of Fuel Issuers and they could be reverted at any time to their substantive post of Yard Khalasis. The safeguard provided <sup>in (page 33A)</sup> in Railway Board's letter dated 15.1.66 applied to only those employees who had acquired a prescriptive right to the officiating post and declared suitable by the competent authorities. Besides other pleas on the subject of want of notice under Section 80 Code of Civil Procedure and non-joinder of two others who had been posted in place of the plaintiff respondents after their orders of reversion had been passed the defendant appellants had prayed that the appeal be allowed and the judgement and decree in suit No.114/81 be set aside.

3. According to the defendant appellants the plaintiff respondents were only allowed to officiate u.c.f. 22.3.78 in the post of Fuel Issuers as stop gap measure and they did not get a right to hold the post permanently and they could be reverted at any time. The defendant appellants have held that it would be wrong to say that by officiating <sup>in</sup> any normal and substantive vacancy in a non fortuitous capacity, created any right in favour

P/2  
3/3

of plaintiff respondents. They could acquire no right unless they were regularly selected and posted to work on the promoted post. The Railway Board's letter dated 15.1.66 provided safeguard of 18 months officiating only to those employees who had acquired a prescriptive right to the officiating post by virtue of their empanelment or having been declared suitable by the competent authorities. <sup>3/1</sup> The plaintiff respondents having not been promoted after selection could not retain the officiating post and were therefore liable to be reverted. The defendant appellants have also denied that any officials had taken the law in their own hands and were going to revert and reduce the plaintiff respondents to the previous post of Yard Khalasis. According to the defendant appellants the plaintiff respondents were allowed to officiate on the post of Fuel Issuers as a stop gap measure and they had rightly been reverted vide order of 18.2.81. However on account of the ex parte stay order of 19.3.81 the overpayments made to the plaintiff respondents from 18.2.81 to 28.2.81 could not be recovered.

4. The plaintiff respondents had in their application for amendment in the pleadings brought out that the two persons who were posted vice them had been posted elsewhere and they were no more waiting for formal appointments as Fuel Issuers and that in the reversion order of 18.2.81 the mention of these two persons has not been made. They had also brought out that they were being reverted and reduced in rank while their junior counter part are already retained in service and therefore they had pleaded for 'first come last go' principle to be applied in their case. They gave the names of seven persons who

A2  
A6

were junior to them and who were working in the "grade of Rs. 260 - 400.

5. We have heard the learned counsel for both parties. In the matter of officiating for 18 months, ~~and~~ Railway Board's letter No.E-55/RG020 of 21.5.56 is in reference to persons who are officiating in higher grades for several years without being confirmed and lays down the procedure for assessing the performance of each Railway servant officiating in higher grades for periods of over 12 months, In order that the Administration would be able to revert such persons if performance has not been satisfactory. The office order dated 29.4.78 which is placed at page 901 says that the plaintiff respondents are put to officiate as Store Issuers with immediate effect. It has been issued by the Loco Forman Jhansi. This document has not been admitted. There is another letter issued by the Railway Board No.E(L&A)65RG6-24 dated 15.1.66 referring to the Board's letter of 1965 regarding persons permitted to officiate beyond 18 months clarifying that the safeguard applied to only those employees who have acquired a prescriptive right to the post by virtue of their empanelment or having been declared suitable by the ~~competetive~~ <sup>31</sup> authorities. It did not apply to those officiating on promotion as a stop gap measure.

6. The Division Bench of the High Court of ~~se Special Appeal No.~~ Judicature at Allahabad in <sup>32</sup> 164/76 connected with Special Appeal No.294 of 1976 consisting of Hon'ble Justice G.C.Mathur and Hon'ble Justice K.C.Agarwal held that the benefit of the Board's circular of 1956 was available only to those employees who have been promoted to the

higher post as a result of proper selection or empanelment or after declaration of their suitability by the competent authorities. The relevant observations made by the Hon'ble Judges are as follows :-

" In our opinion, the contention of the learned counsel for the Railway Administration must be accepted. The benefit of the Board's Circular of 1956 ~~in~~ view of the clarification, is available only to those employees, who had been promoted to the higher post as a result of proper selection or empanelment or after declaration for their suitability by the competent authority. This was the view taken by a Division Bench of this Court in Special Appeal No.100 of 1971, the General Manager North East Railway, G.O.P. Saxena decided on October 16, 1974. Again another of 1974, Birendra Kumar Versus Union of India decided on December 3, 1974. The learned Single Judge has himself in a subsequent case writ petition No.7323 of 1971, Nawal Kishore Bhatnagar Versus Principal Sri Shiv Kumar Chaturvedi Eastern Railway Inter College Moghal Sarai, decided on May 3, 1976, taken this view."

In ~~another~~ <sup>the</sup> Civil Misc. Writ No.4103 of 1974 Birendra Kumar Versus Union of India the Hon'ble Justice K.B.Asthana and Hon. Justice Satish Chandra had made the following observations :-

" It was then pointed out that another circular of the Railway Board, Annexure(4) to the rejoinder-affidavit of the petitioner, made it clear that the earlier directions of the Railway Board were applicable to the appointments made purely under temporary or local arrangements. This ~~latter~~ circular of the Board applies only to officers or servants posted under a purely temporary local arrangements on selection posts. It is not disputed that the higher post on which the petitioner worked was not a selection post. The petitioner, therefore, ~~will~~, will not be entitled to the benefit of the ~~latter~~ circular. This petition has no merits and is rejected.

Sd/ 2.11.74

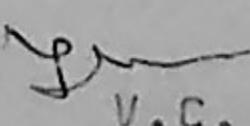
On the representation of the learned counsel when the Court was rising for the day yesterday we did not sign the above order. The learned counsel today drew our attention to an unreported decision of a learned single Judge of this Court in the case of O.P.Sharma Versus General Manager N.E.Railway, Gorakhpur (decided on 3.8.71) and contended that the Rule for placing the papers before the General Manager and taking an order from him applies equally to a servant who has officiated for more than 18 months and on an

R/6

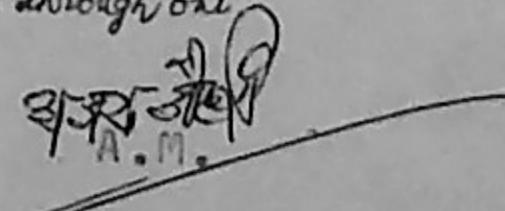
adhoc basis on a non-selection post also. We do not agree with the learned single Judge's decision as we find that the circulars are clear and the effect of the various circulars has not been properly appreciated some of the decisions of this court which have been noticed in the judgement and on which conclusion is based have been overruled by special Appeal Benches of this Court. We think the order passed by us rejecting the petition yesterday does not need any modification or change.

This petition is rejected. "

7. The plaintiff respondents have not produced any documents to show that they had been properly selected and their officiating appointment had the approval of the competent authority. The only paper that they have submitted is an Office Order issued by the Loco Foreman Jhansi putting them to officiate as Store Issuers. In the absence of any other documents to show that they had been properly selected there is no escape but to accept the contention of the defendant appellants that the plaintiff respondents had not acquired any prescriptive right to the officiating post and they had not been declared suitable by the competent authority. The observations in the cases cited in the para supra pertaining to the Hon'ble High Court of Judicature at Allahabad therefore apply to the plaintiff respondents' <sup>3/6 with all due</sup> case ~~in bar~~. Being only officiating in an adhoc arrangement they cannot seek protection under the 18 months officiating rule as claimed by them and as decided in their favour by the learned Munsif Jhansi. This application(Civil Appeal No.148/82) is therefore allowed and the judgement and decree in suit No.114/81 given by the learned Munsif Court VII Jhansi on 15.4.82 is set aside. Parties will bear their own costs <sup>3/6</sup> throughout.

  
V.C.

RKM

  
A.M.

Dated the 3/10 Oct., 1986.