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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.646 of 1986(T)

J.B.Lal Srivastava Plaintiffs

Versus

Union of India through General
Manager, Central Railway, Bombay. . . Respondents..

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

31/

Suit No. 165 of 1985 has been received on transfer from the Court of Civil Judge, Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985. Shri J.B.L.Srivastava and 10 Others are plaintiffs in this case. They were originally appointed as skilled Artisans and over the years came to hold the post of highly skilled Artisans grade I. According to the plaintiffs they were thereafter screened and posted as Chargeman grade 'B' in the Pay scale of Rs. 425 - 700 w.e.f. various dates which are shown in Annexure-I of their petition and they have been working as Chargeman grade 'B' drawing annual increments, crossing Efficiency Bar etc. The plaintiffs have claimed that they have officiated for more than 18 months, they acquired a lien to the post and they should be given automatic empanelment on the basis of

- 2 -

Railway Board's letter of 18.2.76 which says that care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In regard to their automatic confirmation they have relied on the Orissa High Court judgement ^{& in case number} No.2107 of 1980 K.C. Mohanti Versus Union of India and Others preceded by a similar ruling in D.B.Jena Versus Union of India and Others O.J.C. No.916 of 1979. Both these cases have been reported in S.L.J. 1983 Orissa High Court Page 28 and AIR 1985 Orissa Division Bench Page 149. They have also relied on the Bombay High Court judgement in Ramavtar Dubey Versus Union of India petition No. 168 of 1981 and on S.L.P. No, 2365 of 1981 Union of India Versus Ramavtar Dubey filed in the Supreme Court where principle of 18 months officiating has been upheld by the Hon'ble Supreme Court. According to the plaintiffs there are requisite number of vacancies available and the plaintiffs are also within the field of considerations. Plaintiffs 5 & 6 were also subjected to written tests and they ~~were~~ ³ successfully cleared the same but they were sent to Zimbabwe ² from October 81 to September, 1984, meanwhile their juniors were promoted and the promotion of plaintiffs 5 & 6 was held in abeyance purely on account of the deputation outside India. They have thus been

- 3 -

deprived of their promotion to higher grade on account of their deputation and they should not be allowed to suffer and they should be considered for promotion from the dates their juniors are promoted. The plaintiffs have claimed that they have now been borne on the seniority list of Chargeman grade 'B' and they are also due for promotion as Chargeman grade 'A'. They cannot now be reverted unless Discipline and Appeal Rules are followed and their promotion not being against fortuitous vacancies or for short gap measure they cannot be reverted now and cannot be subjected to any written test. According to the plaintiffs the defendant No.2 is adamant to resile from the service conditions already determined and inspite of the ratio and the principle laid down by the various High Courts and Supreme Court judgements. They are not inviting the plaintiffs for the viva voce test but on the other hand they are threatening them to face reversion without any chargesheet. The defendants are thus abusing the administrative power and therefore the plaintiffs have prayed that the defendants be restrained from reverting the plaintiffs from their present post of Junior Chargeman in the Diesel Shed at Jhansi to any inferior post whatsoever except under disciplinary rules and they may be directed to invite the plaintiffs for viva voce test to confirm them.

31/

- 4 -

2. The case of the defendants is that some of the plaintiffs are working as Adhoc Junior Chargeman in the grade Rs. 425 - 700 while some are working as Diesel Mechanic Grade I in the scale Rs. 380 - 560 as shown in Annexure 'A' to their written statement. The plaintiffs were originally holders of the post of highly skilled Artisans grade I in the grade Rs. 380 - 560. They were given chance to officiate on adhoc basis against the quota meant for direct recruits and Intermediate Apprentices. The drawal of the increments or crossing of the Efficiency Bar are not criteria to ascertain regular or temporary posting. The posts of Junior Chargeman are filled 50% by direct recruitment, 25% by Intermediate Apprentices and the balance 25% by departmental promotees holding the post of skilled Artisans. The Rule of 18 months officiating does not apply to those who are officiating on purely stop gap measure and the Railway Board's letter cited by the plaintiffs is in regard to formation of panels and is not relevant to the case. It also does not give a right for automatic confirmation. The defendants have further said that whatever vacancies were there in various quotas have been filled by adhoc arrangement and some of the applicants are working against those vacancies due to non-availability of direct recruits and Intermediate Apprentices. However on availability of proper incumbents adhoc arrangements will stand terminated.

- 5 -

The plaintiffs 5 & 6 who succeeded in the written test have not appeared in the viva voce on their own accord and preferred to go on deputation to Zimbabwe. They have been given a chance to appear in the viva voce test whenever a panel has been formed to Junior Chargeman against the departmental quota. As the plaintiffs are working on adhoc basis they also do not have any prescriptive right to be continued untill and unless they passed the selection consisting of written test and viva voce. According to the defendants the suit is not maintainable in this Tribunal since the plaintiff No.2 has been absorbed in the D.C.W. Shed at Patiala besides the posts of the plaintiffs are spread over.

3. In their rejoinder the plaintiffs have given the places of their postings. They have indicated that plaintiff No.2 is posted at Patiala, plaintiff No.7 is posted in the R.D.S.O. at Lucknow and the plaintiffs 4 & 5 were reverted as Highly skilled grade I but they have been repromoted w.e.f. 4.2.1987.

4. We have heard the learned counsel for both parties. The learned counsel for the defendants had denied that the plaintiffs were duly selected for promotion as Chargeman grade 'B'.

- 6 -

According to the defendants they had been promoted on adhoc basis as a purely temporary measure on account of non-availability of direct recruits and Intermediate Apprentices. The plaintiffs have not been able to show any order indicating that they had been regularly selected and empanelled and thereafter promoted against the vacancies. The contention of the learned counsel for the defendants that they were promoted on adhoc basis as a temporary measure has not been rebutted. Therefore the fact remains that the plaintiffs had been working on adhoc basis and the questions of their being called for selection which consists of a written test and viva did not arise as the vacancies against which they were officiating were either meant for direct recruits or Intermediate Apprentices. It was due to non-availability of this category of employees that the plaintiffs who are highly skilled Artisans were promoted to look after the work of the Chargeman grade 'B' on adhoc basis pending their replacement by regularly recruited and selected persons according to the quotas meant for them. We therefore do not accept the contention of the plaintiffs that they have been regularly promoted.

5. As far as 18 months officiating Rule is concerned, the Ministry of Railways's instructions on the subject are very clear. The protection afforded against reversion on general grounds of unsuitability of staff officiating in a higher grade

- 7 -

defendants have repelled the application of the guidelines laid down in the Board's letter on the plea that they were meant for SC/ST persons and they are not for general applications. The Board's instructions were for strict compliance. They have further clarified that these instructions should be particularly followed in regard to SC/ST persons. We cannot agree to the contention of the defendants that these instructions will only apply to the reserved community candidates. Reliance has been placed by the defendants in K.C. Mohanty Versus Union of India and Others (AIR 1985 Orissa.149) ^{37 a} ~~the~~ judgement of the Division Bench of the Orissa High Court delivered on 31.1.85. In this case the petitioner was appointed as Assistant Station Master in 1962. In 1971 he was promoted as Assistant Transport Inspector. There were three opposite parties in this case also. The next higher promotional posts for them were the post of junior D.T.I./T.I. grade III. Being senior to opposite parties the petitioner was promoted on adhoc basis in 1977. In 1979 the Union of India decided to hold a written examination and a viva to draw up a panel of 4 staff, 3 unreserved and one SC for regular promotion. The petitioner was not included in the panel though he had reached the field of consideration and had worked satisfactorily in the promotional post for more than 3 years. The Hon'ble High Court of Orissa held that the viva voce test to which the petitioner was called

should have been taken strictly in accordance with the instructions issued by the Railway Board in 1976. These instructions were not meant to be observed in their violation. Therefore it was held that the petitioner was entitled to be empanelled from 1980 the date on which the opposite parties 3 & 4 were empanelled. The plaintiffs have been promoted on different dates. According to the defendants as shown in Annexure-'A' of their written statement the position is as follows :-

| | | |
|---------------------------------|---|-----------|
| Shri J.B.L.Srivastava | : | 7.6.79 |
| " Rishipal Singh | : | 6.10.80 |
| " S.K.Gswami | : | 1.2.83 |
| " Babu Lal Beranlal Solanki(SC) | : | 27.3.80 |
| " Devendra Kumar Rajput | : | 18.2.83 |
| " Ram Narain Sharma | : | 23.10.63* |
| " Dashrath Dass | : | 20.4.83 |
| " Sohanlal Srivas | : | 2.5.83 |
| " J.Balasubramanian | : | 23.10.84 |
| " Harish Chand Gupta | : | 14.6.84 |
| " Ram Prasad Thakur(ST) | : | 28.2.84 |

This case was instituted by the plaintiffs in 1985. From the dates indicated above it will be seen that except for item 1 who has officiated from 1979, in items 2 & 4 who have officiated from 1980, ~~in~~ and item 6 whose date of officiation as claimed by the plaintiff is 1977 but as shown by the defendants is 1963, the others have officiated only for a very short period and have not even completed 18 months

- 10 -

of officiating on the date of institution of the suit as alleged by them while seeking protection against the 18 months rule. In their rejoinder submitted on 8.3.87 the plaintiffs have shown that except for H.C. Gupta and J. Balasubramanian the others are continuing to work as Chargeman grade 'B' without any break. These facts have not been controverted by the learned counsel for the defendants and therefore except for plaintiffs 4 & 5 who have been promoted from 4.2.87 the others have continued to work for periods of over 4 years and more. They have continued to work not on account of any Court injunction but by proper authorization by the defendants who had perfect liberty to revert them as they were adhoc promotees only. The very fact that the defendants have not chosen to revert the plaintiffs except plaintiffs 4 & 5 to their substantive post of highly skilled fitter grade I would indicate that their working has been satisfactory, that there ^{is} ~~was~~ still shortage of qualified persons against the direct recruitment and Intermediate Apprentices quota and that the plaintiffs have been able to meet the requirements of the posts of Chargeman grade 'B' to the satisfaction of the defendants. We therefore feel that under the circumstances the ratio of the judgement of the Hon'ble High Court of Orissa cited above ^{could} ~~will~~ apply equally well in the case of the plaintiffs. In this case ³ ~~also~~ the

- 11 -

³⁸petitioners have worked for long periods in the promotional post and their work has not been found unsatisfactory. However one thing is very clear, the plaintiffs were promoted on a temporary adhoc basis. It is another matter that this arrangement continued for such a long time. The plaintiffs have not been able to show any documents to indicate that they were duly selected before their adhoc promotion. The defendants have argued that rules provided for holding of written test and viva before a promotion can be regularly made and since the plaintiffs have not been subjected to this selection test they cannot be considered to have been regularly promoted. The defendants have gone on to stress that the plaintiffs will have to be subjected to this process and this will be done only when vacancies are available in the promotee quota. They have been promoted adhoc against the quota meant for direct recruits and intermediate Apprentices and therefore they have no right to continue on these posts. There is a lot of force in what the defendants say. But on the other side those who have been working satisfactorily on adhoc basis for such long time i.e. 6 to 7 years in certain cases and in the full knowledge of the defendants, it ^{is} ~~may~~ ^{be} debatable whether ^{it} ~~there~~ there would be any purpose served to subject them to these examinations. The Railway Board's instructions on adhoc appointments and formation of panels have in this case been followed in breach only. The panel should have been formed

in due time to avoid such long adhoc arrangement. Presently the plaintiffs have reached the field of considerations also. This has not been denied by the defendants. The very fact that they have been working for such long time and are working even at present will go to indicate that the quota system has failed. The defendants have utilized the plaintiffs to ensure that their work does not suffer in the absence of direct recruits and intermediate Apprentices needed to fill their quota. The plaintiffs ^{as thus} cannot be allowed to suffer because of the failure of the quota system.

7. The plaintiffs have relied on another judgement of the Hon'ble Orissa High Court D.B. Jena Versus Union of India (SLJ 1983(2)28) wherein the Hon'ble High Court had applied the 18 months protection rule even to the case of the adhoc promotees who continued to officiate as a stop gap arrangement for more than six years, who drew seven increments and who had no adverse remarks during the period and who were found fit to cross Efficiency Bar. Para 8 of this judgement is reproduced below:-

" Further, in Ram Chandra Pradhan & Others Versus Union of India & Others*, B. Jagannath Rao and Another Versus Union of India and Another** and Harihar Samantra and Another Versus Union of India and Others***, the

* 42(1980)C.L.T. 266.
** O.J.C. No. 1721 of 1978-D/17.3.1982.
*** O.J.C. No. 225 of 1978-D/17.3.1982.

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- 13 -

protection of the 18 months rule, as contained in Annexure-5, was made available to the petitioners who had continued to hold the promotional posts for more than eighteen months. In view of the Bench decisions of this Court referred to above, the Patna decision reported in P.N.Sinha Versus Union of India and Others, must be held to be confined to its own facts. In the present case, the petitioner has been allowed to serve in the promotional post for more than six years and during this period there has been no adverse remarks against him. On the contrary, he has received about seven increments and has also been found fit to cross the Efficiency Bar. Therefore, the appointment of the petitioner as Health Inspector, Grade III, though initially stated to be stop-gap, cannot be taken to be a stop-gap-arrangement in view of the petitioner's continued service for more than six years. The petitioner must be held to be entitled to the protection of the 18 month rule contained in Annexure-5.

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The Hon'ble Supreme Court in Narender Chadha and Others Versus Union of India & Others (ATR 1986.57) have made the following observations :

"....The appointments are made in the name of the President by the competent authority. They have been continuously holding these posts. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment. The orders of promotion issued in cases show that they are promoted in the direct line of their promotion. It is

- 14 -

expressly admitted that the petitioners have been allowed to hold posts included in Grade IV of the aforesaid services, though on an ad hoc basis. (See para 21 of the counter-affidavit filed by Shri P.G. Lele, Deputy Secretary, Department of Personnel and Administrative Reforms). It is, therefore, idle to contend that the petitioners are not holding the posts in Grade IV of the two Services in question. It is significant that neither the Government has issued order of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they ~~were~~ are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in grade IV. The above contention is therefore without substance. 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. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its willingness to continue them in the said posts....."

- 15 -

The plaintiffs' case has already been discussed above. They were promoted adhoc without being subjected to any selection and they continued to work not by any order of any Court ^{or but} ~~who~~ in the knowledge and by the sweet will of the defendants who found themselves unable to make alternative arrangements in time. The Hon'ble Supreme Court's observation 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 in that post. Such a person may be reverted from that post." cannot be lost sight of. The plaintiffs could be reverted by the defendants and we again reiterate^{3/} that we are not advocating that they should be regularized though they have not been regularly selected but in the case of the plaintiffs they have been allowed to function in the higher posts for long time and some of them have also been promoted as Assistant Loco Foreman. In Narender Chadha's case the plaintiffs had functioned in the higher post for 15 to 20 years and the Hon'ble Supreme Court observed that " it would be certainly unjust to hold that they have no sort of claim for such posts". In the case of the plaintiffs some of them have worked for over six years. We consider it to be a sufficiently long period. Adhoc arrangements if they are continued^{3/ for} over 4 months period or so need approval of the higher authorities. But normally they should not be continued and regularly

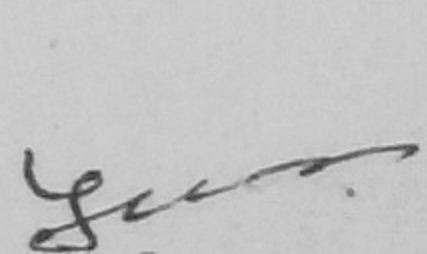
- 16 -

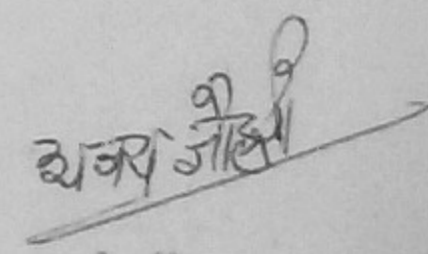
selected persons should be made to occupy the posts meant for them. There is also provision that rules could be relaxed and it is not the defendants' case that they have never resorted to such action. The defendants' contention that the plaintiffs cannot be continued on the posts because they are occupying the posts meant for somebody^{or else} and they are not regularly selected, will therefore under the above circumstances act harshly on the plaintiffs who have ~~never~~^{now} come to acquire certain aspirations after having continuously worked on the higher grade post for such a long time.

8. We also found that all the plaintiffs are not on similar footing. Some were reverted and ~~were~~^{or} promoted in 1981, Some were promoted in 1984. Some others were promoted from a much earlier date. Thus not all of them have been able to qualify themselves for "long officiating." We consider that those who have been officiating continuously for more than 3 years should now be considered for regular absorption as Chargeman grade 'B'. If posts are not available for them in the promotional quota and they have been continued because direct recruits and Intermediate Apprentices are not available to fill such posts they should be absorbed against the quotas meant for direct recruits and Intermediate Apprentices. The defendants should therefore immediately carry out

an exercise to check that the plaintiffs' work has^{or been} satisfactory and regularize them against the posts without subjecting them to written examination ^{should} which have been waived under the powers available to the defendants but which we are waiving at this stage on account of the long officiating of some of the plaintiffs. For others who do not ~~have~~ ^{or} qualify~~ed~~ for "long officiating" the defendants will be at liberty to subject them to the normal test or to revert them to their substantive posts but if it is decided to continue^{or then} they will also be subjected to the same treatment as ~~these~~ ^{or others} except that they may be subjected to the written and viva examinations. We leave it to the defendants to carry out this exercise.

9. We dispose of this petition accordingly in terms of the considerations that have found favour with us and that we have observed in the paras supra. Parties will bear their own costs.


V.C.


A.M.

Dated the 24th March, 1987

RKM