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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

....

Registration T.A. 726/86

(Arising out of O.S. 88/82)

A.K. Tewari

...

Plaintiff

vs

Union of India and ors ... Respondents

Hon' Mr K. Obayya, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr J.P. Sharma, J.M.)

The plaintiff-applicant was originally appointed as Tracer and was posted at Itarsi on 23-1-76. Afterwards the plaintiff was promoted as Assistant Draftsman w.e.f. 9.9.76. The plaintiff was promoted to Senior Draftsman on 30.3.78, but this was only stop gap arrangement as the Senior Draftsman Grade ^{was.} 425-700 which is a selection post. The plaintiff has a grievance with the seniority list, which was issued on 1.7.79, where the position of the plaintiff is shown at sl.no.18. A selection for the post of Senior Draftsman was held and the result was published on 14.8.81 in which the plaintiff's name was not present and he apprehended reversion. The plaintiff filed the suit on 28.1.82 for the decree that the selection held on 27.8.80/25.2.81 and declared on 14.8.81 for the post of Senior Draftsman be declared illegal and void. The other relief plaintiff claimed was mandatory injunction against the defendants to re-hold the selection test. The Union of India contested the suit and filed the written statement. However, earlier to this, the learned Munsif decreed the suit ex-parte in March, 1983. Union of India preferred an appeal which was decided on 13.10.83 and the ex-parte judgment was set aside and the case was remanded for decision to the learned lower court and

injunction was also granted against the defendants not to revert the plaintiff. After remand the Union of India filed the written statement on 10-10-83. The contention of the Union of India is that selection was held in the office of C.M.E. Bombay on 25.2.81 and the plaintiff also appeared in that selection, but failed and those who passed were placed on the panel for the post of Guardman Loco. The plaintiff has, therefore, no right to challenge the selection and panel approved by the C.M.E. The applicant being an ad-hoc promotee cannot claim the post without passing the test. The plaintiff was not working on a substantive post and was only put to officiate on the higher post of grade 425-700 in view of the Railway Board's letter dated 15.1.86. The golden rule of 18 months cannot apply to the case of the plaintiff because the plaintiff was promoted in a stop gap measure and could be reverted to his substantive post of 330 - 560 ^{when the successful incumbent from the panel joins}. After appearing in the examination and selection, the plaintiff cannot challenge the selection or its procedure as ^{he} is not aggrieved party. In every selection juniors and seniors who are eligible appear and those who passes the selection are empanelled. The plaintiff was rightly and correctly ordered to be reverted vide DRM's letter dated 9.2.82 and the empanelled person Shri G.D. Gaur was posted vice plaintiff. But because ^{of} the injunction of the Court, the plaintiff could not be reverted. It is further said by the defendants that the suit is bad for non joinder of necessary parties.

2. In the mean time the Administrative Tribunals Act No.XIII of 1985 came into force and the suit stood transferred to this Tribunal. ~~registered as~~ TA 726/86.

3. We have heard the learned counsel at length. The learned counsel himself has relied on the judgment of T.A. 646/86 J.B. Lal Srivastava vs. Union of India

decided by Allahabad Bench of this Tribunal on 24.6.87. In fact this judgment goes against the plaintiff. The claim of the plaintiff is that since he has officiated for more than 18 months, so acquired a lien to the post. In this TA 646 also the plaintiff continued to serve on the officiating post for more than 18 months. Some of the applicants did not qualify in the promotional examination, but they too were given relief. However, it has been clearly held that,

" 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."

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" Therefore, the fact remains that the plaintiff 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 plaintiff who are highly skilled Artisans were promoted to look after the work of the Chairmen grade 'B' on ad-hoc 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 or post applies to persons who are officiating on promotion after empanelment or after passing the suitability test by virtue of which they come to acquire a prescriptive right to the officiating post. This safeguard does not apply to those who are officiating on promotion as a stop gap measure and also to those cases where

an employee duly selected has to be reverted after a lapse of 18 months because of cancellation of Selection Board proceedings or due to a change in the panel position consequent to the rectification of ~~xxx~~ mistaken seniority. The plaintiffs had been promoted only on an ad-hoc measure. They were not duly selected and therefore, the protection available under this proviso of the Railway Boards' letter against which they are seeking their own protection does not apply to them and their contention on this accord is not accepted. "

4. Thus, the final conclusion drawn in the case was that the plaintiff of this T.A. 446/86 have continued to work not on account of any Court injunction, but by proper authorisation by the Defendants who had ~~received~~ liberty to revert them as they were ad-hoc promotees only. In the present case, there was injunction in the learned lower Court against the Defendants. The position that remains now is that the plaintiff has taken the examination, but he failed, so he cannot claim the selection post only by virtue of having been given ad-hoc promotion for a definite period till selection is held. The order of reversion mentioned in the written statement in para 13 issued by D.R.M. could not be carried out because of injunction by the Civil Court. Shri B.D. Gaur has come after due selection and he cannot be condemned without being made a party. Thus the plaintiff cannot get any right to stick to the post. The learned counsel for the defendants relied on A.I.R. 1971 Patna page 18 Pashupati Narain Sinha vs. Union of India and ors. The view that has been taken is that a person who has been given ad-hoc promotion to higher grade as a stop gap measure cannot claim that post as a matter of right.

5. The learned counsel Mr R.K. Nigam pointed out referring to Annexure-A-6 of an order of the Railway Board to All General Managers, but this does not help the

applicant as it only prescribes quota of different sources at the time of recruitment, 50% direct, 25% Tracers, 25% Assistant Draftsman. It is not disputed that B.D. Gaur was a Tracer. It is also not disputed that there were 17 vacancies of which 13 were of general category. The learned counsel could not show as to how the selection is against the rules. There was a written test where everybody was informed and juniors and seniors were allowed to take the examination. The plaintiff also appeared, so there is no grievance available to him. He only wants to continue on the officiating post without the requisite qualification. If for selection any test is to be undertaken then the person has to pass that test and the golden rule of 18 months will not come to his help.

6. Thus the relief claimed by the plaintiff in the suit also have become redundant in as much as those who were selected in the panel drawn on 14.8.81 on the basis of selection held on 27.8.80 have joined and in any case they cannot be asked to go unless and until they are made parties and orders are passed after hearing them. As regards the relief No.2 the selection is held as and when necessity arises according to rules and the relief of mandatory injunction to the respondents to hold examination, does not arise. Thus the plaintiff is not entitled to any of the reliefs, he has claimed on account of the reasons discussed above. The selection held on 27.8.80/25.2.81 is a valid selection according to the rules and practice prevailing for the promotional post of senior draftsman grade 425-700. The suit is totally devoid of merit and is dismissed without any order as to costs. The injunction granted by the learned Munsif not to revert the applicant **

** In view of the DM's letter dt.9-2-82 is vacated.

MEMBER (J)

MEMBER (A)

(ens)

M 9.8., 1990

Allahabad.

Dece — 9/8.