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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 993 of 1986 (T)

S.K. Chakravarti Applicant
Versus

The General Manager Central Railway & Others, Respondents.

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

(Hon. Ajay Johri, A.M.)

This is a writ petition No. 2247 of 1985 received on transfer from the Hon'ble High Court of Judicature at Allahabad under Section 29 of the Central Administrative Tribunals Act XIII of 1985. The petitioner S.K. Chakravarty joined the Railway on 11.9.47 as an Apprentice Bridge Inspector and after ~~receiving~~ training for 5 years he was posted as Bridge Inspector. He advanced to the post of Senior Bridge Inspector in the pay scale of Rs. 700-900 and thereafter was promoted to Class-II service and posted as Assistant Engineer (Track Machine) on Jhansi Division of Central Railway w.e.f. 15.11.78. Thereafter he worked as Assistant Engineer at Gwalior, Bina Jhansi and was working at Jhansi when the currency of the post expired in June, 1984. According to the petitioner he was thereafter forced to proceed on leave indefinitely vide office order dated 16.5.84 which is placed at Annexure-2 of the writ petition. In his petition the petitioner has brought out that he was subjected to selection in class-II gazetted rank (Assistant Engineer) in the year 1974 and though he successfully cleared the written examination he was deliberately dropped from the panel in the Viva-Voce test. He again appeared in the selection in the year

1982 but again in the Viva-voce he was not cleared. The petitioner has claimed that as far as his professional ability was concerned he would have secured full marks in the professional ability test and similarly in the personality, address and leadership he expected that he would have also secured maximum marks. He also claimed that comparatively he possesses better merits than his juniors and senior counter parts in the cadre of Assistant Engineer but the administration has not followed the principle of 'Last come and first go' because his juniors are still working in the cadre ~~because though~~ ^{as} of sanction ~~of~~ ^{as} of ~~expiry~~ ^{expiring} he has been sought to be reverted consequent on the expiry of the post. According to him he did not have any doubt that ~~the~~ ^{the} ~~petitioner~~ was being dropped from being qualified in these two selections on account of pick and choose policy of the administration. Even though he was not empanelled, ~~and~~ he was allowed to continue to hold the post of Assistant Engineer and there was no occasion of his reversion and he was not reverted even after his failure in 1983. He has completed nearly six years as a gazetted class II officer and has cleared the Efficiency Bar in the scale of Rs.810/- and the second Efficiency Bar at stage of Rs.1000/- . He has therefore challenged the decision of the defendants to revert him ~~as~~ ^{by} ~~account~~ ^{on} ~~of~~ ^{as} it being unjust and irregular. According to the petitioner after he proceeded on leave he preferred an appeal to the General Manager but he got no reply. When he reported as Assistant Engineer at Jhansi he was told vide letter of 19.6.84 (Annexure-6) that he stood reverted to the

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post of senior Bridge Inspector. The petitioner has challenged this impugned order dated 19.6.84 saying that it is not at all a reversion order of the petitioner but merely an administrative order issued by the Divisional Railway Manager (P) Jhansi granting the leave in favour of the petitioner. The petitioner was not allowed to resume his duties as Assistant Engineer on 15.1.85 and he was told that by virtue of the letter of 19.6.84 he stood reverted which is a wrong contention and the letter was being misconstrued. The petitioner has placed reliance on Railway Board's letter No.75.E/SCT/16/48 of 9.12.75 which directed the Railways that long term adhoc arrangement should be made strictly according to the seniority and suitability to avoid harassment and that the panels should be formed in time to avoid adhoc promotions, exercising care that employees who have been working quite satisfactorily as adhoc measure are not declared unsuitable. The petitioner has further claimed that his performance has been satisfactory and he has never been administered any oral or written warning for any unsatisfactory performance or failure. He has therefore prayed for quashing of the letter dated 19.6.84 so far as it relates to the direction compelling the petitioner to proceed on forced leave and for issue of ~~the~~^{an} order directing the respondents to allow the petitioner to resume the duties as Assistant Engineer and not to revert him or reduce in rank to any inferior post in class II except in due process of law.

2. The respondents' case is that the petitioner was promoted as Assistant Engineer purely on adhoc basis and posted at Jhansi with stipulated warning that his

promotion was on adhoc basis without conferring on him any prescriptive right for promotion over his seniors or continuity as such in future. According to the respondents adhoc arrangements are purely temporary ^{as made} ~~for~~ when no selected employees on panel are available and such arrangements continue till regularly selected employees are made available after a process of selection. The respondents have denied that the petitioner was forced to proceed on leave. According to them he was and still is at liberty to resume duties on his regular post as Chief Bridge Inspector as per order No.287/1984 dated 12.12.1984 placed at Annexure-I of their reply. The respondents have said that there were 15 officers who were working on adhoc measure as Assistant Engineer out of which 4 were allowed to retire voluntarily before they were actually relieved of their class-II posts and that the petitioner appeared in the class II selection but was not found suitable to be included in the panel. Nothing has been done deliberately against him. The respondents have averred that passing of Efficiency Bar does not qualify the petitioner in the selection. The facts of his qualifications - educational or technical and training through which the petitioner had undergone did not give him any right for promotion to the class-II post and all adhoc Assistant Engineers who did not qualify have been reverted. Some of them took voluntarily retirement as indicated earlier. The petitioner was continued as Assistant Engineer on adhoc basis due to availability of vacancies and non-availability of selected hands. The respondents have further denied the applicability of the Railway Board's letter

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of 28.4.82 which has been referred to by the petitioner in his Supplementary Affidavit to adhoc promotions. They have also said that the Maxwell's Interpretation of Statute provision is not applicable to the petitioner's case. He is also not covered by the 18 months officiating rules which apply to regularly selected candidates and he can be reverted without following Discipline and Appeal Rules as he has failed in the regular selection.

3. We have heard the learned counsel for both the parties. The facts of the case are not much in dispute. The question is that the petitioner was allowed to continue as an adhoc measure for a very long period ^{3y} and even though he did not qualify in the written test. This adhoc promotion was continued as enough selected hands were not available. He failed in the examination in 1974. ~~but~~ ^{at} He was promoted in November, 1978. ~~on adhoc basis~~ He again appeared in the examination in 1982 and he failed and was continued till June, 1984. He therefore officiated for a period of just a few months less than six years all in the adhoc arrangements. ^{3y and in one spell} The learned counsel for the petitioner has placed reliance on A.I.R. 1985 Orissa 149 K.C. Mohanty Versus Union of India and Others. In this case the petitioners were class III employees of the Railway. The observations made in paras 6 and 7 are as follows :-

"6. On behalf of the petitioner reliance is placed on Establishment Serial No.47/76, Annexure-D, which is reproduced hereunder:-

"Estt. Srl. No. 47/76
No. P/R&R/SCT/RB/Pt. VIII dated 18.2.76.
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"2.2. Panels should be formed for selection

posts in time to avoid ad hoc promotions. Care should be taken to see, while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

The Board desire that instructions should be issued to all concerned, for strict compliance of the decision particularly in regard to SC/ST persons."

7. The petitioner has specifically asserted in his writ application that ever since his promotion as Junior D.T.I. on 11.3.77 he has been performing his duty satisfactorily and that no defect in his work has been noticed. This assertion has not been denied by the opposite parties in their counter. In the present case the petitioner after working as Junior D.T.I. for more than three years was required to take a written examination and a viva-voce test for regularisation of his promotion. It appears from the counter of the opposite parties that the petitioner passed the written examination but failed at the viva-voce test. The question is whether the petitioner should have been declared unsuccessful at the viva-voce test after working in the promotional post for more than three years. This question was examined earlier by this court in the case of Rama Chandra Pradhan Vs. Union of India(1980)49 Cut LT 266, and it was answered in the following words:

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"There is no dispute that each of the petitioners has been holding the post to which he was promoted for more than two years by the date selection was undertaken. Petitioners therefore, contend that without a disciplinary proceeding they should not have been reverted. Reliance is also placed on the Establishment Serial No.47/76 dated 18.2.1976(Annexure.2) running to the following effect :-

"Panels should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment."

The Board desire that instructions should be issued to all concerned for strict compliance of the decision...."

Petitioners have asserted that they had

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worked for a long period in the promotional posts and their work was satisfactory. The assertion has not been refuted in the counter affidavit. Mr. Pal appearing for the Railway Administration with a view to avoiding application of the Establishment Serial in question contended that statutory rules had been framed prescribing holding of written tests for selection and the decision under Annexure-2 could not override the same. There does not seem to be any force in this submission of Mr. Pal. Annexure-2 is an Establishment Serial and the position appears to be beyond dispute that the Railway Board is entitled to issue general directions with reference to its employees which would be taken as statutory to that effect is the ratio of the decision of the Supreme Court in the case of The Railway Board V. P.R. Subramaniyam, AIR 1978 SC 284. Mr. Pal's submission on the basis of a single Judge decision of the Rajasthan High Court in the case of Jagdish Singh V. Union of India, (1975) 2 Service Law Reporter 469, is not acceptable as the proposition runs counter to the ratio of the Supreme Court decision. Besides on facts, the case is also distinguishable. We are inclined to accept the position that under Annexure-2, the Board clearly decided that those who have been working on adhoc basis satisfactorily should not be required to undertake a written examination and steps should be taken to see that they are not declared unsuitable in the interview i.e. the viva-voce test. The persons who have been empanelled are junior to the petitioners. They were still in Class-IV while petitioners were for quite a long time working in the Class-III cadre. There can, therefore, be no dispute that the petitioners had reached the field of consideration and were squarely covered by the direction in Establishment Serial No. 47/76. In that view of the matter, there is considerable force in the submission of Mr. Dora for the petitioners that they should not have been forced to take the written examination and should have only been called to the viva voce test of the interview and that interview should have been carried keeping the spirit of Annexure-2 in view."

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A similar judgement has been given by the Orissa High Court in S.L.J. 1983 Vol.2, 28. D.B. Jena Vs Union of India and Others.

4. Reliance placed by the petitioner on the Calcutta High Court Judgement S.L.J. 1975 M.O.C. XLV M.R. Nafday Versus Union of India and Others which was

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a case concerning the Ministry of Railways' Circular laying down the principles that no reversion from officiating service after completing 18 months should be made without following the procedure prescribed under the Disciplinary & Appeal Rules, is not correct as this principle applies in the case of regular appointments where performance has to be kept under watch for the first 18 months of officiating and an employee officiating in a higher grade in a regular arrangement could be reverted within this period without resorting to normal Discipline & Appeal Rules.

5. As has been rightly observed in AIR 1978 SC.284 cited in para 3 above Railway Board's instructions would be taken as statutory and the petitioner's grievance due to non-following of the Board's instructions is based on genuine grounds. The purport of these instructions has been very elaborately sketched out in AIR 1985 Orissa 149 cited in para 3. A person works for six years and has a reasonable personality & generally good performance does not come to the satisfaction of the Interview Board. Does it not sound strange?

6. The respondents in para 23 of their reply have stressed about their right to revert the petitioner to his substantive post of Senior Bridge Inspector on the plea that the selection to class II posts are held on the basis of written test as well as viva and even adhoc promotees are required to take up these tests and pass the tests and get empanelled. Another plea has been taken by the respondents that passing of test is also essential in the case of Assistant Engineers because these posts are in safety category. This emphasis is not understood unless what the respondents mean here is that written and viva could be waived if the post was not in safety category. The

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respondents have attached Railway Board's letter of 23.3.81 as Annexure-2 of their reply. The context of the issue of this letter of Railway Board is entirely different and we fail to understand how this letter applies to the petitioner. There were very clear instructions from the Railway Board in regard to the panels being formed in time to avoid adhoc promotions. The petitioner was performing his duties satisfactorily and nothing adverse was reported against him in the six years that he officiated ³¹ ~~on~~ an adhoc measure. He even qualified in the written examination but he failed to qualify in the viva. The observations made by the Orissa High Court in K.C. Mohanty Versus Union of India and Others as reproduced in para 3 above amply describe the situation in the case of petitioner as well. Though those observations were made in regard to petitioners who had officiated for a much smaller period compared to the petitioner, It was held in Mohanty's case that the petitioners in that case should not have been forced to take the written examination and should have only been called to the viva test and ^{as} ~~out~~ ³ ~~view~~ that the interview should have been carried ~~on~~ keeping ⁱⁿ the spirit of the Board's letter. It has been held in A.I.R. 1980 S.C. 1975 Miss Nisi Maghu Versus State of J & K that it was difficult to see how it is possible within a short span of a few minutes to take a fair estimate of a candidate's suitability of factors like physical fitness, personality aptitude, general knowledge and general intelligence. The professional competence is tested by written examination and the viva normally determines other ³¹ ~~traits~~ ^{exudes} of the personality of the person being interviewed and if a person has

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worked satisfactorily, has not given any adverse account of himself we fail to comprehend the grounds on which he could not satisfy the Interview Board about his other traits. There is also no categoric denial in the counter affidavit given by the respondents that the petitioner did not qualify in the written test. The respondents have only averred that he did not qualify to be included in the panel. In para 14 of their reply the respondents have also said that the Selection Board did not find the petitioner suitable in the viva voce test. We have already given our observations in this respect. If his professional competence has been found adequate, if his working has been satisfactory and he had been utilized at various places for the convenience of administration he cannot be such a bad egg as to be unsuitable in a very subjective test - the viva. Such assessments tantamount to harassment which the Railway Board had rightly instructed the railways to avoid. These appeared to have been honoured more in their ~~breach~~ ^{by} than otherwise by the Selection Board in the case of the petitioner.

7. The petitioner's date of birth is 1.6.1929. He has hardly eight months more to superannuate. We are not aware if he has joined as Chief Bridge Inspector in the grade 840-1040 as per his last posting order issued by the railway. He was not a person taken out of ~~mouth~~ balls when he was promoted to officiate in the class II service. He continued to officiate for nearly six years. What seems necessary is to put him under the microscope once again and not treat the exercise as a mere name plate on the door.

8. In conclusion, we would direct that the

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petitioner be interviewed by the General Manager of the Railway personally and if he finds him to fill in the requirements of the onerous office of Assistant Engineer, he be continued in the class II service, and be saved the humiliation of reversion after such a long spell of officiation in the service. The mere accident of his failure in the viva should not remain a cause for him to brood upon after his retirement which he is soon approaching after an honest industrious and devoted spell of six years in class II Service.

9. The petition is accordingly disposed of with no order as to costs.

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Dated the 14th Nov., 1986.