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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 265 of 1987.

Nawazish Ali Petitioner.
Versus
Union of India & another Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this writ petition received on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 from the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, the petitioner, Nawazish Ali, has challenged the order dated 19/20.8.76 reverting him from the post of Assistant Signal Inspector, Grade III (ASI) and prayed for a direction to be issued to the respondents to treat him as a confirmed incumbent of the post of ASI.

2. The petitioner was working as a Chargehand Interlocking Supervisor (CIS) with effect from 31.8.1967 in a regular manner. In the seniority list of CIS published on 31.8.1967 by the Lucknow Division the petitioner's name appeared at Sl.No.7. When a consolidated seniority list was prepared by the Head Quarter Office (HQO) the name of the petitioner did not appear in the list. For a proposed suitability test for the post of ASI in July, 1969 the petitioner was not called. This test was ultimately not held. The petitioner had originally been given CPC Scales on 5.1.1962 and should have been regularly absorbed in the cadre with effect from 5.1.1963 in terms of the circular governing the terms of appointment of Electric Signal Maintainers (ESM), the post on which he was initially appointed. He was, however, screened on 5.1.1970 and the panel was approved on 7.1.1970. On 9.11.1970 the petitioner was put to work as ASI (LR)

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and had continued to work as such since then. The post of ASI was a non-selection post and was to be filled on the basis of seniority-cum-suitability. But in 1975 the petitioner was asked to appear in the selection for the post of ASI. The petitioner appeared in the selection ^{and} ~~but~~ failed to qualify. Prior to this the petitioner was not called to appear in the suitability tests held for this post in 1971. The petitioner's allegation is that some of his juniors had been called in these tests. On his failure in the selection the petitioner was ordered to be reverted by the impugned order of 19/20.8.1976. Since he had officiated for more than 18 months the petitioner has claimed protection under the 18 months officiating rule where a regularly selected person cannot be reverted if he has continued to officiate for more than 18 months without following D&A Procedures. Hence this petition.

3 3. In their reply the respondents have said that the petitioner was promoted as CIS in a regular manner from 18.5.1967. A final seniority list of the CISs on N.E.Railway was circulated on 2.6.1969 where the petitioner's name did not figure. On 6.11.1970 the petitioner was promoted locally on ad hoc basis and he joined as ASI on 10.11.1970. The petitioner came in the field of consideration and eligibility for the post of ASI in 1975. He was called for the test and failed. His seniority as ESM counts from 7.1.1970. The General Manager's letter of 19/20.8.1976 reverting the petitioner could not be implemented because in the meantime the petitioner brought a stay order from the High Court. The petitioner continued to work on ad hoc basis and was not ^{considered} ~~declared~~ suitable when the post was non-selection and could not qualify in the selection when the post was ^{u/} ~~declared~~ a selection post.

4. In the supplementary counter affidavit the respondents have further clarified the position that the petitioner was holding ^{u/} ~~substantive~~ lien on the post of ESM and till 1970 ~~u/~~ he was working

on the post of CIS on ad hoc basis. So he had to be called for suitability for the post of ASI only on basis of seniority and he became eligible only in 1975.

5. It is not under dispute that the petitioner was screened on 5.1.1970 for regular absorption and his name appeared in the panel announced on 7.1.1970. Prior to this he had been put to officiate as CIS on 18.5.1967. He was further promoted as ASI on 10.11.1970. It is also not disputed that ad hoc promotions do not count for seniority. For regular selection to the post of ASI the petitioner could only be called on his due turn. Though he was promoted as CIS on 18.5.1967 he was actually not yet regularly absorbed ^{even as} ESM for which post he was screened only in January, 1970. So he could have no claim for being considered as CIS and this appears to be the reason why he did not figure in the seniority list of CIS's published in ~~1969~~ 1969.

6. One ad hoc promotion after another seems to have been the order of the day on the North-Eastern Railway in the Signal Department at that time. Ad hoc promotions cannot be made again from ad hoc holders of a job. This practice was wrong. After all ad hoc promotions are for short periods and are made when post cannot be kept vacant and regularly selected hands are not available. But the respondents continued such practice in the case of petitioner from year to year and for such a long time. The petitioner was recruited in 1960 and appointed as ESM on 5.1.1962 but he was screened for the post only on 5.1.1970. Such irregular practice gave rise to this litigation.

7. In our opinion after screening the petitioner in 1970 for the post of ESM he should have been considered regularised from the date [✓] of his original regular appointments in the posts of Head Signal Maintainer (HSM) and CIS. He was adjudged suitable for the post of CIS on 18.5.1967 as averred by the respondents. His

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seniority as CIS should have been fixed retrospectively in 1970 in the CIS's cadre from 18.5.1967 and then he would have become eligible for promotion to the post of ASI which was non-selection post till 1.1.1973. The fact that he was continued till 1975 would go to show that his working as ASI, after his ad hoc promotion to the post on 9.11.1970, was not ^{by entirely} unsatisfactory. But due to the administrative sloth the matter moved in its own stride and the aspirations of the petitioner never matured.

8.

We are not aware if the petitioner has since been repromoted as ASI after the stay order was vacated by the High Court in 1984.

9.

On the above considerations we order that the petitioner and others similarly situated will be placed in the seniority list of CIS's published in 1969 at the bottom of the list. The petitioner will be considered for regularisation as ASI in the selections held in 1971 ^{31 to which} ~~when~~ he was not called and if he is found suitable he will be considered to have been regularised as ASI from that date.

10.

The application (Writ Petition No. 2665 of 1976) is disposed of in the above terms with no order as to costs.

S. Narasimha
MEMBER (J).

3/5/84
MEMBER (A).

Dated: March 29, 1988.

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