

Court No.2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.641 of 1987

(W.P. No.204 of 1985)

Lalit Kumar Petitioner

Versus

Union of India & Others Respondents

Hon.Mr.D.K.Agrawal, J.M.

Hon.Mr. K.Obayya, Member (A)

(By Hon.Mr. D.K.Agrawal, J.M.)

Civil Misc. Writ Petition No. 204/84 instituted in the High Court of Judicature at Allahabad on transfer to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 was registered as T.A. No.641 of 1987 as indicated above.

2. The petitioner aggrieved with the order of reversion from the post of Storeman to the post of Khalasi filed the present Writ Petition claiming his seniority over respondents 4,5 & 6; quashing of the order of promotion of respondent No.4 as Storeman and quashing of the order of reversion dated 12.12.84 whereby the petitioner was reverted from the post of Storeman to the post of Khalasi.

3. Briefly stated the petitioner's allegation is that he was appointed from loyal quota on 27.2.75 to the post of Khalasi and in pursuance of the Railway Board's letter No.E/NG/III/79-RC-1/80 dated 14.4.80 his appointment as Khalasi was to be deemed as a regular appointment. The Railway Administration, however, it appears, did not treat the petitioner regular from the date of his appointment. The plea contained in para 9 of the Counter Affidavit is to the effect that the petitioner alongwith

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respondents 4 to 6 was empanelled as Khalasi in the year 1983. What appears to be is that there was some sort of test for the empanelment of Khalasi in the year 1983. The petitioner as well as respondents 4, 5 & 6 were made to sit at the alleged test and they were all empanelled. The Railway Administration has accordingly determined the seniority of the petitioner on the basis of the panel of 1983 and placed the petitioner junior to respondents 4 to 6 on the substantive post of Khalasi. It resulted into further anomalies. When a trade test for Storeman was held and all the candidates i.e. petitioner as well as respondents 4 to 6 qualified in the said trade test, their seniority in the panel of Storeman was arranged in accordance with the seniority so determined by the Railway Administration as Khalasi on the basis of panel drawn in the year 1983. Consequently, the petitioner was placed junior to respondents 4 to 6 in the panel of Storeman. The petitioner's contention is and rightly so that having been appointed from the Loyal Quota which is evident from the service record perused by us today he should rank senior to respondents 4 to 6 who were empanelled as Khalasis in the year 1983. Once we reached to a conclusion that the petitioner was senior in the feeder cadre of Khalasi, there would remain no problem for determination of the seniority in the panel of Storeman. The conclusion is inevitable from the very facts of the case that the petitioner was senior to respondents 4 to 6 on the substantive post of Khalasi. Consequently, he shall rank senior on the promoted post of Storeman.

4. Before we proceed further, we may mention that relevant documents have not been produced before us.

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However, it is clear from the pleadings as contained in paragraphs 10,11 and 12 of the Counter Affidavit of the Railway Administration that a trade test was held for the empanelment of Storeman. It is also clear that the petitioner as well as respondents 4 to 6 were cleared in the trade test. Thus all of them had to be deemed as empanelled Storeman and provided for the post of Storeman if and when available in accordance with their seniority. The factual position is that the petitioner has been working on the post of Storeman since 17.7.76 and empanelled for the said post vide orders dated 17/19.11.84. The respondents 4 to 6 who were also empanelled by the same order began to work as Storeman ^{at a} ^{date} ^{later} ^{than} the petitioner. However, the Railway Administration, ^{has} ^{no} ^{good} ^{reason} ^{to} ^{pass} ^{an} order of reversion dated 12.12.84 in respect of the petitioner while respondents 4 to 6 continued to work as such. It may also be mentioned here that respondent No.4 voluntarily sought reversion to the substantive post of Khalasi on 17.9.85 and he was actually relieved from the post of Storeman with effect from 20.9.85. There is yet another fact which may be mentioned here that the petitioner was also granted stay order by the High Court of Judicature at Allahabad on 21.2.85 and as such he is also working on the post of Storeman since that date.

5. In the light of the above facts and circumstances, we have only to determine the seniority of the petitioner as against respondents 5 & 6 (who are actually working on the post of Storeman) as well, record a finding as to whether the order of reversion dated 12.12.84 was bad in law. On the

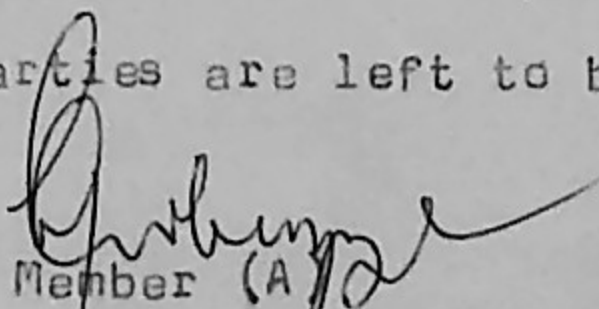
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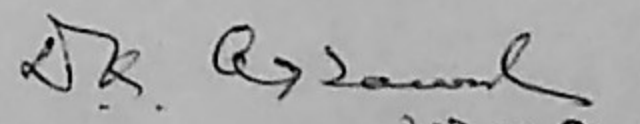
question of seniority we have already mentioned in the preceding paragraphs that the petitioner was senior to respondents 5 & 6 in the feeder cadre of Khalasi having appointed from the Loyal Quota as early on 27.2.75 notwithstanding a fact that he was made to appear for the empanelment of Khalasi in the year 1983 alongwith respondents 4,5 & 6. As to the illegality of the reversion order dated 12.12.84, it would suffice to say that once it is established that the petitioner was senior to respondents 4 to 6, the reversion order of petitioner cannot be sustained in the eye of law. If there was no vacancy, the reversion order should have been passed in respect of the junior person and not the petitioner. We may also mention here that we are not satisfied that no vacancy has come into existence since the year 1984. If a vacancy was caused on or after 12.12.84 there is apparently no good reason for not having provided the petitioner in the said vacancy. We have number of times repeated that in a welfare State, it is the bounden duty of the State to reduce the grievance of the employees and not wait until the decision of the Court. Inaction on the part of the Executive Authorities to take recourse to such an action which puts an end to the grievance of an employee does not sound well nor it is in accordance with the rule of law. If there was a vacancy or the matter of seniority could be settled by an executive action there is no good reason why the Railway Administration should not have acted on its own and remedied the grievance of the petitioner. In any case, we hereby lay down that the petitioner was senior in the feeder cadre of Khalasi to respondents 4 to 6. The reversion order dated 12.12.84 was not validly passed.

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6. We may also deal with the aspect of regularization of the petitioner on the post of Storeman. The Railway Administration has already regularised respondents 5 & 6 on the post of Storeman vide order dated 12.12.84. The grievance of the petitioner is that he being senior to respondents 5 & 6 in the feeder cadre of Khalasi was entitled to be regularised prior to the regularization of respondents 5 & 6. We have no doubt in our mind that the petitioner is entitled to the consequential benefits. To our mind, the only consequential benefits which the petitioner is entitled to is his regularization on the post. The petitioner is already working on the post of Storeman. The only question is whether he should be deemed to be regularised on the said post in view of the above facts. It is just and proper that the petitioner should also be deemed to have been regularised on the post of Storeman from the date his juniors i.e. respondents 5 & 6 have been regularised on the said post.

7. In the result, the Writ Petition is allowed in part. The reversion order dt. 12.12.84 is hereby quashed as regards the reversion of the petitioner. The petitioner is declared senior to respondents 4 to 6. The prayer to quash the promotion order of respondent No.4 has become infructuous. Parties are left to bear their own costs.


Member (A)


Member (J) 25.10.91

Dated the 25th October, 1991.

RKM