

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1632 of 1987.

Union of India & others Defendant-Appellants.

Versus

Bhikam Pal Singh Plaintiff-Respondent.

Hon'ble Ajay Johri, A.M.

Hon'ble G.S. Sharma, J.M.

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

This appeal, which has been received on transfer from the court of District Judge, Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985, ³ arises out of Suit No. 315 of 1974 decided by the Munsif (West), Allahabad on 30.10.1979. The grounds of appeal against the judgment and decree passed by the trial court are that the plaintiff-respondent had no lien on the post of Assistant Permanent Way Inspector (APWI) and his promotion was purely ad hoc in local arrangement. His officiating appointment had specifically mentioned that the promotions will not give him any lien to the post and attending the refresher course does not entitle him to claim regular absorption against the post because he is not entitled to the benefit of officiating for 18 months under the circular letter of 1964. Also reversion of the plaintiff-respondent to his substantive post would not be a proceeding under the Discipline & Appeal Rules (D&A Rules) as decided by the trial court. The findings of the court that the plaintiff had been confirmed on the post is also contrary to evidence.

2. The plaintiff was promoted as a Permanent Way Inspector Mistry in 1961 and on the basis of his seniority he was further promoted as APWI in 1963. He had been working as APWI upto 1974 when he was threatened to be reverted to his substantive post. The plaintiff had claimed that since he had worked for more than one year on the post of APWI he should have been considered confirmed

and he could not be reverted. The trial court had framed various issues including issue no.1, whether the order of reversion issued on 29.5.1974 was legal and issue no.5, whether ^{the} plaintiff was entitled to continue on the post of APWI and whether the refresher training which he had completed gives him any right to continue on the post. On issue no.1 and issue no.5 the trial court had held that the plaintiff had worked for nearly 11 years on the post of APWI though his promotion orders were for a temporary promotion only and since the 1964 instructions of the Railways laid down that a person, who has officiated for more than 18 months, cannot be reverted without following D&A Rules, so he could not be reverted without following proper procedure and thus the trial court decided that the plaintiff was entitled to continue to work as APWI and his reversion order was illegal. In regard to the effect of the training during 1976 the trial court had reached a conclusion that after the training the plaintiff had not come to possess any special rights to continue on the post. He, therefore, decided this issue against the plaintiff.

3. We have heard the learned counsel for the parties. On behalf of the appellants, Union of India, it was contended before us that the applicant had no right to continue on the post as he had not been regularly selected and that the provision of confirmation after one year's probation does not apply to him as it was applicable only to direct recruits. Moreover, the applicant was not the senior-most in his group and, therefore, he had in any case no right to be considered for regularisation in preference to his seniors. In regard to the 18 months officiating rule the contention raised was that the rule has been mis-interpreted and it only applies to selected hands and not ^{to} those who are officiating in an ad hoc manner. According to the learned counsel for the appellants the plaintiff had also not been confirmed and he was only a substantive Gangman, though he was put to officiate as PWM in 1961 and as APWI in 1963 and has continued to work as such. On behalf of the plaintiff-respondent reliance was placed on para 104 of the Indian Railway Establishment

Manual and the fact that if a period of probation is laid down and there is no provision of extention sufficient law was available on the subject that in such cases a person would stand to be confirmed.

4. No documents have been produced before us to show that the plaintiff had been promoted as PWM and thereafter as APWI as a regular measure. Paper No. 33-A in the suit file clearly shows that the plaintiff was an officiating PWM and he was temporarily promoted to officiate as APWI in the Construction Department of Northern Railway. The order further says that the promotion was purely temporary and in the Project and did not confer upon him any claim for seniority or promotion over his seniors and that he was liable to be replaced by a senior as and when one become available. This order is dated 3.5.1963. The plaintiff, however, was made to continue to work as APWI upto 1974. This would go to indicate that the respondents had not been able to find a senior man to replace him and neither did they feel it necessary to revert him back to his parent department for ineffeciency in work, etc. The respondents have said that the plaintiff had not been confirmed as APWI. We have not been shown any supporting document by the plaintiff to support his claim that he had been confirmed as APWI.

5. A claim has been made by the plaintiff that he could not be reverted after ~~being~~ ^{✓ having} officiated for 18 months as there was a safe-guard provided against reversion without following disciplinary ^{✓ regard} procedure. In this ~~✓~~ the learned counsel for the plaintiff has placed his reliance on the decisions given in the cases of Chakradhar Das v. Union of India & another (1987 (3) SLJ 451), G.V. Swamy and others v. Union of India and others (1987 (2) SLJ 609), Aparty v. Union of India and others (1987 (2) SLJ 647). These three cases are judgments given by the Cuttack Bench of this Tribunal. In the judgments a mention has been made about a circular issued by the Railway Board contained in their letter No.P/R/CON/D&A/PT. VII, dated 1.7.1966 and the decision of the Orissa High Court in the

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cases of S.K.Mohanty v. Union of India (1980 (49) CLT 382) and D.B. Jena v. Union of India (1983 (55) CLT 290). Evidently in all these cases the Railway Board's circular, quoted above, has been relied upon. As a matter of fact the Board's order issued vide their letter No. E(D&A) 65 RG 6-24, dated 9.6.1965, as quoted in the Railways' Establishment Manual, published by Bahri Brothers, on page 96, provides that ^{3/} ~~safeguard against~~ reversion of an employee, without following DAR procedure, who has acquired a prescriptive right to the post do not apply to stop gap arrangements or in cases of reversion of selected employees after 18 months due to cancellation of Panel or change of their position in panel. As a matter of fact in continuation of their letter of 9.6.1965, which was a little ambiguous on the point of reversion of employees, who had officiated for 18 months, the Railway Board had issued another letter No. E(D&A) 65 RG 6-24, dated 15.1.1966, which was addressed to all General Managers. This letter reads as follows :-

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"Reference Bd's letter of even number dated 9.6.65 wherein it has, interalia, been stated that, in future, any person who is permitted to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Disciplinary & Appeal Rules. A question has been raised whether this safeguard applies to persons who are officiating on promotion as a stop-gap measure and not after empanelment (in the case of selection posts) and after passing the suitability test (in the case of non-selection posts). It is clarified that the safeguard applies to only those employees who have acquired a prescriptive right to the officiating posts by virtue of their empanelment or having been declared suitable by the competent authorities. It does not apply to those 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 rectification of mistake in seniority etc."

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6. In the case of S.R. Pooniah v. Union of India (1987 (4) ATC 321) the same question of protection against reversion when officiating promotion continues for more than 18 months also came into consideration. The Calcutta Bench of this Tribunal had in paras 5 and 6 of this judgment held that these instructions do not apply when an employee fails in the written test prescribed for promotion. The Calcutta Bench had also drawn support on a judgment given by the Calcutta High Court in the case of General Manager, Eastern Railway v. B.B. Roy (1976(2) Cal.LJ 260) wherein the Calcutta High Court had held that a railway employee is not entitled to the benefits of 18 months rule for protection against reversion unless he has been promoted in a regular manner and successfully undergone a test for selection under the Rules for promotion. Even a Bench of this Tribunal in Registration (T.A.) No. 646 of 1986, J.V.L. Srivastava v. Union of India, had observed in the month of March, 1987 in para 5 of the judgment that the protection afforded against reversion on general grounds of unsuitability applies to persons who are officiating after empanelment or after passing the suitability test by virtue of which they have come to acquire a prescriptive right to the officiating post and that this safeguard ~~does~~ ³¹ not apply to those who are officiating on promotion as a stop-gap measure. A similar view was held by a Bench of this Tribunal in Registration (O.A.) No. 93 of 1986, Ram Payne v. Union of India, also decided in March, 1987.

7. So we are of the firm view that the protection of 18 months officiating rule is not available to those who are not regularly promoted and the plaintiff is not entitled to any benefit on this account.

8. However, be it as it may, as far as the plaintiff is concerned, he had officiated for nearly 11 years and it was not considered expedient or necessary by the respondents to send him back to his parent department and to get him replaced by a senior suitable person. We are not aware of the circumstances under whi

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such long ad hoc and from ad hoc to another as hoc promotions were allowed to continue unless the respondents were so helpless in view of the station of posting where the plaintiff was working that they could not get any one to move to that station or some other unexplained reasons that they could not revert the applicant back to his substantive position. So in our opinion, on account of his long continued officiation the applicant does have a case for being continued in the promoted post in the Construction Department notwithstanding the fact that he has not yet been regularised in the promoted post in his substantive cadre. We also feel that if the respondents have allowed the applicant to continue in the Construction Department for nearly the entire span of service life why they may not tolerate him for a few years more and save him the embarrassment of facing reversion. If the applicant has to be repatriated due to reduction in establishment or winding up of the department, the applicant cannot have any claim over his seniors in the parent department, who are waiting for promotion legitimately and without having failed in the promotional tests, and also has no legal right of continuing on the promoted posts without passing through the selection procedure unless the respondents invoke their inherent powers of relaxing the requirement in view of his long satisfactory service in the promoted post.

9. The rule of confirmation after one year's probation also does not apply to the applicant. In ad hoc

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promotions, pending selection, no such rule is applicable. Confirmation of probationers is possible after completion of the probation as they are appointed against specific posts while in case of ad hoc promotees the confirmation depends upon the availability of a permanent vacancy.

10. On the above considerations we allow the application (Appeal No. 102 of 1980) and set aside the decree and judgment of the learned trial court in Suit No. 315 of 1974 but with observations in para 8. We order that parties will bear their own costs throughout.

S. Rama Rao

MEMBER (J).

S. P. Srivastava

MEMBER (A).

Dated: July 26, 1983.

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