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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 575 of 1987.

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| Khacher Pal Singh & another | | Applicants. |
| | Versus | |
| Union of India & others | | Respondents. |

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

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

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The applicants in this application, filed under Section 19 of the Administrative Tribunals Act XIII of 1985, were promoted to work as ad hoc Ticket Collectors (TC) in 1978. Thereafter, a departmental test was held in 1982 to regularise them. Their results were withheld because they had brought a stay from the Court. As a result of an application O.A. No. 552 of 1986, K.P. Singh & another v. Union of India & others, decided by this Tribunal on 18.3.1987 their results were declared by the respondents and it was found that they had been declared fit in the examination held on 19.7.1982. The applicants were, however, ^{before the filing of OA No. 552/86} ordered to be reverted in July, 1985. After the declaration of the result on 3.4.1987 they have been representing for being given duty as TCs and they represented in this respect on 15.4.1987 to the Divisional Railway Manager (DRM). They filed this application on 10.7.1987, and a notice was issued to the respondents to show-cause as to why the application should not be admitted. The respondents did not file any reply to the notice, hence on 24.7.87 the application was admitted. By this application the applicants have prayed for issue of a direction to the respondents to issue the posting orders to them as TCs and to treat them working in class III service as TCs from 19.7.1982 and give them all benefits. They have also prayed that the portion of the order dated 3.4.1987 which says that the result will not confer any right for empanelment and regularisation

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of their promotion be set aside and the reversion order dated 17.7.1985 be declared null and void.

2. In their reply filed by the respondents they have said that the applicants were earlier appointed to officiate as ad hoc TCs and at present there are no vacancies, as such the question of posting does not arise. This has been challenged by the applicants in their rejoinder affidavit where they have said that there are 10 vacancies of TCs at Aligarh. They have further said that since they have officiated for more than 18 months they could not be reverted without following D&A Procedure.

3. We have heard the learned counsel for the parties. On behalf of the applicant the learned counsel contended that since the applicants have been declared successful in the result which was declared as a result of the orders in O.A. No. 552 of 1986 and 10 vacancies exist^{3/} at Aligarh, the applicant should be considered for promotion and they should also be given continuity of service from the date of their reversion. These contentions were opposed by the learned counsel for the respondents on the ground that the present application is res judicata and the applicants have not filed any representation to the Department and, therefore, on these two grounds alone the application is liable to be dismissed. He further submitted that there are no vacancies at present and the case of the applicants will be considered only when vacancies arise. We have gone through the paper book and the replies filed.

4. This application was filed on 6.7.1987 and the applicants had represented to DRM on 15.4.1987, after their results were declared, requesting for being given duty as TCs. Though at the time of filing the application the period of six months had not expired and a notice was given to the respondents to show-cause as to why the application should not be admitted, the respondents did not file any reply and hence when the application was again heard on 24.7.1987 it was decided to admit the same and the application was accordingly admitted on the same date. In the order given by this Tribunal in

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O.A. No. 652/1986 the Tribunal rejected the challenge of the applicants to the reversion order dated 17.7.1985, as not pressed by them. Further the directions given were for the results to be declared. Now the applicants have come before us seeking relief for issue of a direction to the respondents to issue their posting orders and to treat them as working in class III service from 19.7.1982, as also against the reversion order dated 17.7.1985 for it being declared null and void. The applicants were promoted as ad hoc TCs in 1978. It has not been said anywhere as to what was the nature of the examination that was held in 1982, except that the results of the applicants were withheld because they had obtained a stay order from the court. It was this result that was ordered to be declared by this Tribunal by its order of 18.3.1987. It would, therefore, seem that if this examination was held after the applicants had worked for nearly 4 years on ad hoc basis the purpose of the examination must have been to regularise the ad hoc appointees against the appointment. A number of persons who were also working ad hoc along with the applicants and who also appeared in the examination and whose results were declared were evidently regularised after 1982. They ^{respondents} do not mention as to against which order the applicants had obtained the stay from the Court. It would seem that it must have been against their likely reversion in case they failed in the examination because they had appeared in the examination and they perhaps took the stay as a measure of ^{ant} ~~abandon~~ ^{pre}caution to avoid their reversion. However, ^{since} ~~since~~ no light has been thrown on the nature of the stay order, but it is all the same strange to see that as a result of the stay granted by the Court the results of the applicants were withheld and they had to move this Tribunal in their earlier application for the declaration of the result. We feel that this action of the respondents was definitely not called for and the applicants' results should have been declared along with the results of other persons irrespective of the fact that they had obtained the stay order. It is also not known as to under what circumstances the applicants

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were ordered to be reverted in 1985. If it was because they had not been regularised on account of their results not having been declared, ^{or they} ~~about~~ would have a case for consideration of regularisation as well as continuance in service as TCs from the date of their reversion, i.e. 17.7.1985. Annexure '8' to the application is a note from the Senior DPO to DPO dated 7.9.1986 wherein Sr.DPO has mentioned about the court case having been decided and has suggested to DPO to put up the case to the Selection Board who had conducted the selection and also declared the results of those whose results were withheld and get the persons regularised with the approval of the competent authority. The applicants, however, appeared to be on sick leave from the date of their reversion as is indicated in the Attendance Register, extracts of which they have filed as Annexure 'RA-2', as well as in the casualty list, extract of which they have filed as Annexure 'RA-1'.

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5. It is the applicants claim that there are 10 vacancies at Aligarh and in support of the same they have given the extracts of the casualty list as well as the Attendance Register. On the other hand the respondents have said that they have no objection to promote the applicants ^{or when} a vacancy ^{or exists} exists. The two positions, however, are at variance and the learned counsel for the respondents could not specifically bring out whether the averment made by the applicants that there are vacancies at Aligarh was correct or not. However, posting of the applicants can only be made if the vacancies still continued to exist after their reversion in July, 1985.

6. The fact remaining that the applicants had also qualified in the examination in 1982 and they had continued to work as ad hoc TCs till July, 1985 and the present status of the applicants, according to the application, being TCs, as claimed by them, the applicants have a case for being given a posting order as TCs in a regular measure immediately. As a matter of fact the respondents should have taken action on these lines after the declaration of the results on 3.4.1987.

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7. In view of the above we direct that the applicants should be considered for being regularised as TCs immediately against the vacancies on the Division, not necessarily at Aligarh if they do not exist there, and they should also be considered as regularised along with the others whose results were declared in 1982 and the seniority be fixed accordingly on the basis of those results. We further direct that the period from the date of their reversion to the date they are put to work should count against their service in TC's grade and depending on whether they have been on leave or they have performed duty in the lower grade consequent to the reversion, the period should be regularised according to the rules.

8. The application is disposed of in the above terms with no order as to costs.

[Handwritten Signature]

MEMBER (J)

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MEMBER (A).

Dated: ~~October~~ ^{November} 1st, 1988.

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