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Registration (O.A.) No. 1182 of 1987.

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

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

These applications have been received under Section 19 of the Administrative Tribunals Act XIII of 1985. The orders in Registration (O.A.) No. 744 of 1987 will also govern in Registration (O.A.) No. 1182 of 1987 as the matters involve³¹ the same legal points and are of a similar nature³² *challenge the same order.*

2. The facts of this case are that the applicant, D.P. Saxena was appointed as a Telephone Operator (TO) on 14.12.1959 and during the course of the years got promoted to the post of Chief Telephone Operator (CTO) in the grade of Rs. 550-750 on 3.1.1981 after due selection. He was also confirmed on these posts with effect from 27.7.1983 certain posts of Superintendent (Telephones) were created in the Northern Railway as a result of upgradation of posts. Two of these posts got allotted to the Allahabad Division of the Northern Railway. These are Headquarter Controlled Posts and they were lying vacant for a long time. The post having been upgraded by an order dated 23.10.1984. The Allahabad Division approached the Headquarters of the Northern Railway on 19.1.1985 to fill up these

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posts. In the meantime lot of representations were received from the staff of the Allahabad Division for posting of Superintendent (Telephones) or making local ad hoc arrangements. On checking up with the sister Division at Lucknow, the Allahabad Division also decided to promote the applicant on purely local ad hoc basis on 17.6.1985 and issued orders to that effect. They also advised HQ office on 26.6.1985 in this respect and solicited orders for regular promotion, but since no regular promotion orders were received the ad hoc promotions were continued. It was on 19.5.1987 ^{that a} ~~the~~ letter was received from HQ office making a query on the filling up of these posts by the Division. Ultimately, ^{by} ~~the~~ impugned order dated 22.7.1987 issued by the Chief Personnel Officer (CPO), ~~North~~ Northern Railway, the Divisional Railway Manager (DRM), Allahabad was directed to revert the applicant to his substantive post in the grade of Rs.550-750. It is this reversion order that is under challenge.

3. The respondents' case is that this was a HQ controlled post and no ad hoc arrangements could be made against an upgraded post as it involved payment of certain arrears and any ad hoc arrangement against HQ controlled post could only be made by HQ office. The orders issued by the Allahabad Division were outside jurisdiction. It has also been said by the respondents that they could not make any promotion orders against three of the upgraded posts, 2 at Allahabad and 1 at Lucknow, on account of certain disputes in regard to seniority of some of CTOs belonging to the Delhi Division in which the Delhi High Court had issued an order of stay by which promotions could not be made. Since these orders were made without jurisdiction by the Additional Divisional Railway Manager (ADRM) the orders issued by CPO asking him to revert the applicant could not be challenged and were wholly within the jurisdiction of CPO.

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4. There is no doubt that the post of Superintendent (Telephones) in the grade of Rs.700-900 is a HQ controlled post. This is also clear from the letter issued by ADRM on 27.4.1988 to CPO on the subject of promotion of the applicant. If it is a HQ controlled post the promotion to the post have to be made from amongst CTOs on Railway basis, i.e. after considering all CTOs working on the various Divisions of the Northern Railway.

5. The applicant's claim is that he has been confirmed and, therefore, he is the senior-most and now that he has been working on ad hoc basis for such a long time he has a claim for permanent absorption against the post. On his own showing the applicant has indicated that he was appointed on 14.12.1959 and that he was promoted as a CTO in the grade of Rs.550-750 on 3.1.1981 and was confirmed with effect from 27.7.1983, but this position is as far as his position on the Allahabad Division is concerned because the post upto the grade of Rs.550-750 in this Department are divisional controlled post. Once the eligibility for filling up the post has to be determined on Railway basis the length of service in equivalent grade has to be the criteria for determining the inter se seniority amongst the various ³¹ ~~persons~~ ^{applicants} for the post. In the seniority list which has been filed by the applicant in regard to TOs of Delhi Division it is seen that persons who are involved in the litigation in the Delhi High Court have been officiating in the grade of Rs.550-750 earlier to the applicant and since there is a dispute of their seniority it is natural that HQ office ³¹ ~~will~~ ^{not} be able to make any arrangement for regular promotion against the remaining posts which are not yet filled by them on account of litigation and the stay order.

6. The Delhi High Court's ³¹ ~~judgment~~ ^{order} was not produced before us by the learned counsel for the respondents, but we presume that the stay order that must have been granted must have ³¹ ~~only~~ ^{been} for regular promotions and it ³¹ ~~cannot~~ ^{will not place a} ~~debar~~ ^{on} making ³¹ ~~an~~ ^{ad hoc}

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arrangement pending finalisation of the court case. In any case this case must have also now been transferred to the Central Administrative Tribunal, Principal Bench at New Delhi.

7. So if ad hoc arrangements could be made by HQ and inspite of repeated references from the Division the same have not been made on one pretext or the other while the authority of HQ for making arrangements for filling up posts which are controlled by them cannot be challenged, ³¹ the action taken by DRM to man the post temporarily and informing HQ office of the same action asking and seeking their orders on the subject of either letting the arrangement continued ³² or making another alternative arrangement will satisfy the requirements that HQ office should be consulted before making any ad hoc arrangements. There is no doubt that for upgraded post some arrears may also be involved but for payment of arrears from a retrospective date normally it is the actual incumbent of the post which is upgraded, ³³ ~~who would get~~ ³⁴ gets entitled to the arrears. In any case it is for the respondents to decide as to who is the actual incumbent for getting those arrears but the casualness with which HQ office has dealt with a request of the Division in regard to filling up the post cannot be pushed aside. When the Division made a reference and they made repeated reminders some action should have been taken either to permit them to make local arrangements qualifying the position in regard to payment of arrears or HQ office itself should have made the ad hoc arrangements. No doubt that ad hoc arrangements normally should not last for such long time but if a litigation is resorted to in such cases perhaps ³⁵ ~~ad hoc~~ ³⁶ long ad hoc arrangements cannot be held.

8. Under the circumstances of the case we find that DRM had no alternative but to fill up the post and if he has filled up the post on ad hoc basis and has informed HQ office the order issued by HQ office ordering reversion without making any alternative arrangement would not be sustained on account of their own desire

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to improve the performance of the Railway on the whole and Division in particular ^{or as} ~~as~~ manning of such important post goes a lot towards efficient performance of the functions.

9. We, therefore, quash the order dated 22.7.1987 issued by CPO directing DRM to revert the applicant from the purely ad hoc local officiating arrangement and direct that if the applicant is the senior-most on the Division, he will be allowed to continue in the ad hoc temporary officiating arrangement without any claim for the arrears or for regular absorption against the post on the basis of this ad hoc arrangement till he is replaced either by another person to be appointed by HQ office in a regular manner or in a ad hoc manner.

10. In the circumstances we allow the application in terms of the above orders with no order as to costs.

[Signature]

MEMBER (J).

[Signature]

MEMBER (A).

Dated: May 30th, 1988.

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