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Court No.2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.109 of 1987

Jai Prakash Mishra Applicant

Versus

Union of India through General
Manager, Central Railway, Bombay VT
and Another. Respondents

Hon.Mr. A.B.Gorthi, Member(A)

Hon.Mr. S.N.Prasad, Member(J)

(By Hon.Mr.A.B.Gorthi, AM)

By means of this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, Jai Prakash Mishra has sought the undermentioned reliefs:-

(a) That the order dated 10.12.85 reverting the applicant from his post of Junior Instructor in the grade of Rs.425-700 to the lower grade post of Welder grade I (Rs.380-560) be quashed.

(b) That he be given the benefit of special pay @ 12½% of his pay for the period that he worked as a Junior Instructor in the Basic Training School (B.T.C.).

2. The applicant who was Welder grade I in the scale of Rs.380-560 was promoted as Chargeman grade 'B' in the scale of Rs.425-700 on 1.3.1983. He continued in the said appointment till 8.1.1985. He was then selected and sent as Junior Instructor at the B.T.C. of the Systems Technical School in the grade of Rs.425-700. He worked as Junior Instructor till 10.12.85 when the impugned order of reversion was passed.

3. The respondents admit that the applicant was a Welder grade I and that he was appointed as a Chargeman grade 'B' for the period from 1.3.83 to 8.1.85 till he

was posted as Junior Instructor. The respondents also admit that he was reverted to the lower grade of Welder grade I with effect from 10.12.85. The contention of the respondents however is that the applicant was promoted as a Chargeman grade 'B' purely on an adhoc basis and that the said promotion was to a ~~next~~^{ex-} cadre post. Further, the respondents explained that since there were no trainee candidates to come before the B.T.C., as many as 11 Junior Instructors working therein including the applicant had to be reverted. The said reversion was purely on administrative grounds. As regards the grant of special pay, the respondents' contention was that the applicant was not entitled to it as per Policy Letter dt. 21.7.79 (Annexure-2 to the Counter Affidavit) unless the applicant had opted for the pay he would have drawn in his parent Department plus special pay as per extant instructions for performing instructional duties.

4. The learned counsel for the applicant could not say, for certain, whether the applicant did exercise an option at the relevant time. In any case, the learned counsel for the respondents states before us that in accordance with the revised instructions issued on 4.4.86 the case of the applicant would be reviewed for the grant of special pay to him.

5. As regards the reversion of the applicant from the post of Junior Instructor, it is quite apparent that it resulted on account of administrative exigencies. There can be no doubt that the ~~policy~~^{abolition} or creation of a post is the exclusive prerogative of the administration. Moreover, we have seen from Annexure-E to the application that besides the applicant ten other similarly situated Junior

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Instructors had also been reverted. We therefore find no such irregularity or illegality in the impugned order which would warrant our intervention.

6. Admittedly, the applicant worked as a Chargeman grade 'B' in the scale of Rs. 425-700 with effect from 1.3.83 to 8.1.85. The learned counsel for the applicant strongly pleaded that the applicant could not have therefore been reverted to the lower grade of Rs. 380-560 on the ground that the Railway Board circulars on the subject give a protection to such an employee from being so reverted. In Jetha Nand Versus Union of India (1990) 13 ATC 212, it was held that the bar against reversion after rendering 18 months service would apply only after an employee had acquired a prescriptive right by virtue of his empanelment by passing the prescribed test and that no such protection would be available to those who have merely officiated for 18 months or more on adhoc basis without passing the prescribed test. It is thus obvious that where an employee is promoted as a stop gap measure or on adhoc basis he cannot claim immunity from reversion. The applicant's claim for special allowance for the period that he worked as a Junior Instructor from 9.1.85 to 1.12.85 appears reasonable in the light of the existing instructions unless he had opted against the drawing of the pay admissible to him in his parent cadre and the special allowance as provided in the Policy Letter dated 21.7.79 (Annexure-2 to the CA) and ~~has~~ further clarified vide letter dated 4.4.86 (Annexure-I). We

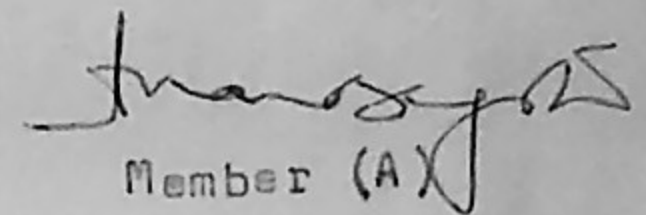
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therefore direct the respondents to work out the details of the special pay to which the applicant is entitled to as per extant instructions and pay the same within six months from today.

7. The application is thus partly allowed. We make no order as to costs.


Member (J)


Member (A)

Dated the 2nd Aug., 1991.

RKM