

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

12/5

Original Application No.217 of 1988

N.K.Basak

... Applicant

Versus

Union of India & others

... Respondents.

HON'BLE MR. JUSTICE R.K.VARMA -V.C.
HON'BLE MISS USHA SEN -A.M.

¶ By Hon'ble Miss Usha Sen-Member(A)¶

The applicant of this O.A.has sought the relief of setting aside the order dated 15-6-1987(Annexure 15 to the O.A.) in which it has been stated that the applicant working in the scale ^{of} Rs.950-1500 is appointed on a regular basis as Roneo Operator in the scale of Rs.800-1150 after having been found fit for that post and in accordance with his seniority. He has also prayed that he should be given the upgraded scale of Multilith Operator and the respondents should not interfere with his working as a Multilith Operator.

2- The facts of the case are that the applicant was appointed as a peon on 27-5-66 in the Diesel Locomotive Works, Varanasi. He was promoted as Ferro Printer in the scale Rs.105-135(AS) w.e.f.15-9-67 and thereafter as Multilith Operator in the scale Rs.110-180(AS) w.e.f. 26-12-73(Annexure 2 and 4 to the O.A.). Both these promotions were on ad-hoc basis as is evident from these annexures. In accordance with his seniority he was promoted on a regular basis as Daftary in the scale Rs.200-250(RS) w.e.f. 01-08-82 and as Roneo Operator in the scale Rs.210-270(RS)/800-1150(RP) w.e.f. 15-6-87(Annexure-15). However since he was working on an ad-hoc basis as Multilith Operator in the scale Rs.260-400(RS)/950-1500(RP) he was allowed to work as such till a suitable incumbent became available to replace him. The net result

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is that he has been working as Multilith Operator on an ad-hoc basis since 26-12-73 and is regular in the post of Roneo Operator since 15-6-87. The respondents have stated in para-12 of their counter that as several persons senior to the applicant within his avenue of advancement are still waiting for promotion to the next higher grades i.e. Rs.225-308(RS), 260-350(RS) and 260-400(RS) and there is no post of Multilith Operator in the grade of Rs.300-480(RS) to which the applicant is ^{asking} ~~working~~ for a promotion, the question of promotion of the applicant on a regular basis to these grades does not arise.

3- The applicant has stated in the rejoinder that no seniority list has ^{ever} ~~even~~ been circulated by the respondents and no opportunity given to file objections thereto. He has also quoted the Railway Board letter of 23-10-73(Annexure 3 to RA) which is to the effect that an employee promoted on a regular basis whether against permanent or temporary post should be given all the benefits of confirmation on completion of two years continuous officiating service provided there is a clear permanent vacancy at that time and the employee is fit for confirmation. He has further stated that in response to his representations he had been informed by the G.M., DLW vide a letter dated 15-7-1987(Annexure-2 to RA) that the avenue of promotion to a Multilith Operator in the scale Rs.260-400(RS) is already available to the post of Multilith Operator in the scale Rs.330-480(RS) vide "this office notification No.DLW/ES/Avenue/D-Class IV dated 12-6-84." The learned counsel for the applicant also produced the judgment dated 22-11-1990 delivered by the Allahabad Bench of the C.A.T. in T.A.No.175 of 1986 ^{by} ~~in~~ which the appeal of the Union Of

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India had been dismissed. ^{In this case} the appeal had been filed against the order dated 18-4-85 of the 6th Additional Munsif, Varanasi, in which it was decided that the plaintiff who had been continuously working for over 18 months on an ad-hoc basis could not be removed without proceedings under Disciplinary & Appeal Rules 1968 even though the plaintiff in that case had not passed the required test for holding the post ^{on} of a regular basis. It is seen that this judgment ^{dt. 22-11-90 of the LAT (Supra)} was a concession judgment. The relevant wordings are, "By this observation it does not mean that a person given an ad-hoc promotion has not to pass selection test for the selection post. It is only a concession judgment as was of T A No.561/86." On the other hand the counsel for the respondents showed a Full Bench judgment in the case of of Jethanand and others Vs. Union of India decided on 5-5-89 by the Principle Bench (Full Bench Judgment 1986-1989) in which it has been held that the Railway Board circular 9-6-65 ^{to the effect} that an employee who had officiated in a promotional post more than 18 months ^{is} ~~is~~ not liable to be reverted without following the Discipline and Appeal Rules ^{applies} ~~applied~~ only in the case of those Railway servants who have been selected ^{and} ~~or~~ empanelled for the said promotional post.

4- Considering the facts mentioned above, we are of the view that the right to continue in the post of Multilith Operator on the ground of having worked on it on an ad-hoc basis for over 18 months cannot be conceded in the light of the Full Bench judgment of the Principle Bench *ibid* because the applicant had not been empanelled for the post for regular promotion. It is however, seen from the Railway Board's circular dated 23-2-74 at Annexure-21 to

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the O.A. that ad-hoc promotion should not normally extend beyond 3 months and in any case beyond 6 months save in exceptional circumstances like "where a panel cannot be formed because of stay orders from the courts etc." It is also stated in this circular that the seniormost person available in the seniority list should normally be promoted in the ad-hoc arrangement unless the authority ordering the promotion considers him unsuitable. The applicant has been continuously working on the post of Multilith Operator on an ad-hoc basis since 26-12-73. The respondents state that he has been allowed to work as such till a suitable incumbent becomes available. If no suitable incumbent from amongst his seniors, if any, is available, would not the applicant deserve to be considered for regular promotion to this post. ?

5- In the circumstances of the case we are of the view that the respondents should firstly publish the seniority list which the applicant alleges has not been published and settle objections thereto, if any. Thereafter, regular promotion should be made to the post of Multilith Operator in accordance with the prescribed rules. This process should be completed within a period of four months from the date of communication of this order. Till a regular promotion is made the applicant ^{& may} ~~may~~ be allowed to continue in this post on an ad-hoc basis as hithertofore. The advancement of the appointee to the higher grade of Multilith Operator viz. Rs.330-480(RS) should also be considered in the light of the Notification dated 12-6-1984 mentioned in the GM, D.L.W. letter dated 15-7-87 (Annexure 2 to the R A).

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The respondents are directed accordingly as per the views expressed in this paragraph. With this direction the D.A. stands disposed of.

There will be no order as to costs.

Urbi. Sen
MEMBER (A)

R. K. Vam
VICE CHAIRMAN

DATED: Allahabad April 11th 1994.

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