

(4)

13

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 425 of 1988.

Umesh Behari Mathur **Applicant.**

Versus

Union of India & others **Respondents.**

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

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

The applicant in this application, filed under Section 19 of the Administrative Tribunals Act, 1985, has challenged an order dated 23.9.1987 issued by the respondents reverting him from the post of Superintendent (Typist) to Head Typist, a post two grades below. The applicant's case is that after having been appointed as Typist on the Northern Railway in the Divisional Office at Lucknow he was promoted to the post of Senior Typist on 1.4.1965 and then to the post of Head Typist on 14.4.1983. He, thereafter, appeared in a selection for the post of Assistant Superintendent (Typist) (AS(T)) and was placed at Sl.No.2 in the list of successful candidates and was put to work as AS(T) on 1.11.1983. On 2.4.1986 he was put to work on the post of Superintendent (Typist) and continued to work as such for more than 18 months. According to him, after this period he was to be considered as confirmed on the said post. In the seniority list of Superintendent (Typist) published on 9.2.1987 he was shown at Sl.No.4. All of a sudden by the impugned order dated 23.9.1987, without resorting to any D&A procedure or giving him a hearing he was reverted two grades below the post of Superintendent (Typist) (S(T)) as Head Typist (HT). He represented against the same but his representations were not attended to. He has, therefore, by this application, prayed for quashing of the order dated 23.9.1987.

2. The respondents have, in their reply in opposition, denied that the applicant has made any representation against the impugned order. They have said that the applicant ^{was} ~~was~~ working on an ad hoc basis, was, on being replaced by selected candidates, ^{was} ~~was~~ reverted. According to the respondents the post of AS(T) is a selection post. The process of selection was started in the year 1984. The results of the tests held then were cancelled. A fresh test was arranged in 1987 in which the applicant attended but he failed. His appeal dated 9.7.1987 against his failure was rejected. The persons, who were declared successful, were, thereafter, regularly promoted and he was reverted to provide them. The applicant has been again promoted

with effect from 22.2.1988. Since none of the selected candidates had done a minimum of two years in the grade the post of S(T) was down-graded on 3.2.1988 and is being operated as AS(T). The respondents have said that the results of the type test held in 1984 is not relevant since the same was cancelled and it was decided to hold the test de novo. The applicant was given officiating allowance on the post of AS(T) with effect from 1.11.1983 as no empanelled candidate was available. This was an ad hoc promotion. When the holder of the post of S(T) retired on 30.4.1986 the applicant was asked to look after the post of S(T). This was also purely on ad hoc basis. According to the respondents, the protection of 18 months officiating rule is not available to an ad hoc appointee who have no prescriptive right for the post. Such persons could be reverted without resorting to D&A procedure.

3. In his rejoinder affidavit the applicant has said that the orders of his promotion do not show that he was promoted on ad hoc basis. According to him, he was promoted after due selection. In the results of the selection he was placed at Sl.No.2. He had appeared in the selection held in 1987 because he was assured that it was a mere formality. According to him the applicant could not even by consent be made to give up a position that he has acquired. So when he had acquired the position of Superintendent he cannot be reverted from that post.

4. We have heard the learned counsel for the parties. It was contended before us by the learned counsel for the applicant that mere appearing in the selection held in 1987 when the applicant was working in the higher grades for such a long time after having been selected in 1984 cannot wipe off the 1984 results. The 1984 tests were never cancelled and the posting orders do not say that the promotions were ad hoc, so the applicant cannot be reverted without following proper procedure. On behalf of the respondents it was submitted that the fact that the applicant appeared without any protest in the 1987 test will prove that his earlier promotion was

(R)
(3)

(6)

-: 3 :-

not regular and the protection of the 18 months officiating rule is not available to the applicant.

5. The facts which are not under dispute are that the applicant was promoted to officiate as AS(T) on 1.11.1983 and thereafter he was also put to work as S(T) with effect from 1.5.1986 till he was reverted by the impugned order of 23.9.1987.

6. Annexure '2' to the application is the order issued by Sr.DPO dated 12.10.1984 which reads as follows :

"In the speed test held for the above post on 22.7.1984 the following candidates have qualified....."

The applicant's name is at Sl.No.2 and his designation is shown as Offg.AS(T). By another order (Annexure '4' to the application) dated 2.4.1986 the applicant was required to take over as S(T) on the retirement of T.Dey. None of these orders say that the promotions ordered by Sr.DPO were ad hoc and temporary pending selection. It is noteworthy that the applicant has been officiating as AS(T) with effect from 1.11.1983 and was also paid officiating pay of this post.

7. Railway Board's letter of 20.4.1985 (Annexure '5' to the application) in para 2 says so :-

"2. Arising out of certain cases decided by courts of Law of reversion of railway servants, who had been officiating in higher grades for long periods, this Ministry had occasion to reiterate their earlier instructions for avoiding situation where ad hoc promotion have continued for long periods vide this Ministry's letter No. E(MG) I-82-PMI/204, dated 27.6.83."

It, however, makes it clear that the safeguard of 18 months officiating rule is only available to duly selected hands who have been regularly promoted. There is a guideline available that cases of persons who have been officiating for long times must be carefully considered at the time of their selection but such guidelines do not mean or result in such ad hoc arrangements being regularised without taking into consideration the results of the selection.

8. Another document produced by the applicant is the provisional seniority list of the Typists of Lucknow Division issued

-: 4 :-

3/

on 9.2.1987. This list shows the applicant at Sl.No.4 and working as Superintendent and continuously officiating as Superintendent in the grade of Rs.700-900 with effect from 1.5.1986. Northern Railway's letter of 29.10.1986 (Annexure 'R-1' to the counter reply) modifies certain orders of 16.7.1985 and lays down that the post of AS(T) will be a selection post. On 1.7.1986 the applicant had represented to the Divisional Railway Manager on 17.7.1986 (Annexure 'R-2' to the counter reply) that the selection of the post of AS(T) has not been held for two years and he has been working on ad hoc basis for the last so many years. In this letter he has also made a mention of the previous procedure where only written examination and viva voce was to be held and there was no type test, which was later on, on 4.3.1986, changed to viva voce only. Notwithstanding this on 27.2.87 certain persons were required to appear in the speed test for typing for selection to the post of AS(T). The applicant was No.1 in this list. The applicant had also opted to appear in the speed test in English, as Annexure 'R-5' to the counter reply shows. Annexure 'R-5' is a list of the staff who were called for appearing in the speed test on 18.3.1987. After the speed test on 23.7.1987 a viva voce test was held in which only 4 persons were called and the name of the applicant does not appear in this list.

3/

9. It appears that after having appeared in this speed test in typing when the name of the applicant did not appear in the list of those who were to be called for interview, he along with two others who were also called, made a representation to DRM on 9.7.1987. In this representation the representationist had pointed out certain irregularities made while holding the speed test. What they said in this representation was that the senior-most candidates, who were working on ad hoc basis for the last two years, have been found unfit in the speed test and their juniors have been declared as passed and on this ground alone they wanted the result of the speed test to be declared as null and void. The point regarding some of them having

already passed the speed test was also raised in this representation and it was said that that selection (evidently the selection held in 1984) has been treated as de novo without any proper reasons nor the approval of the next higher authority who constituted the Selection Board and a reference was made to a representation given to Sr.DPO on 23.2.1987. A mention has already been made in this representation that the representationist were assured by ^{3/}ADRM(T) and Sr.DPO that it was a mere formality and all the staff, who appeared in the test, had also complained about the Typewriters being not in good working condition and not fit for test purpose and that no other Division has held such a test and the staff have been promoted on the basis of seniority. This representation was rejected by an order dated 21.8.1987 (Annexure 'R-8' to the counter reply).

10. In another representation dated 3.7.1987 the applicant appears to have said that he appeared in the speed test on 9.5.1984 but thereafter viva voce test was not held and the ^{3/}test post was arbitrarily cancelled by Sr.DPO, Lucknow and no retest was held upto 9.2.1987. The representationist had further challenged the necessity of the speed test. These representations made by the applicant at various times definitely go to indicate that the applicant was working only in an ad hoc measure and the selection started in 1984 was not processed to finality.

11. Annexure 'R-10' to the counter reply is a letter dated 20.8.1987 from Sr.DPO, Lucknow to APO, Baroda House where in para 3 it has been said that the selection started in 1984 was cancelled on technical grounds by the competent authority and further processing was only done after the clarification was received from HQ Office. It was also said that the staff were not prevented from bringing their own Machines for the test that was held on 9.2.1987. There thus being ^{3/}ample evidence available to the fact that the applicant had not been regularly promoted as AS(T) he cannot have any right for being considered for regularisation against the said post. In Ashok Gulati v. B.S. Jain (1987 (1) SLJ 169) the Hon'ble Supreme Court have held

(9)

(A6)

that service rendered on ad hoc basis before substantive appointment in de horing of rules cannot be counted for eligibility for promotion to next higher grade. Since nothing has been shown to prove the contention of the applicant that he was regularly selected except for the promotion orders which have been filed by him as Annexures 'II' & 'III' to the application and the provisional seniority list placed as Annexure 'VI' to the application which do not specifically indicate the type of officiating promotion given to the applicant, ^{3/} There is nothing else to show that his promotion was not ad hoc pending selection. As a matter of fact his own admissions in his representation made to the respondents at various times go against his contention made in the application that he was regularly promoted after the selection in 1984. If the selection of 1984 had not been finalised and had to be cancelled on technical grounds his passing in the speed test in the 1984 selection does not give him any right to be considered for regular promotion. Speed test was only a part of test at that time. We are, however, constrained to note that the respondents continued the ad hoc arrangement from 1.11.1983 to 30.4.1986 during which period the applicant worked as AS(T) and thereafter they promoted him to the post of Superintendent in the regular grade of Rs.700-900 with effect from 1.5.1986 till the impugned order dated 23.9.1987 was issued. This had created ^{3/} hopes in the mind of the applicant that he will be continued and as he is now stating he appeared in the selection on some understanding given to him, of course such understandings can have no legal value. ^{3/} The fact remains that he failed in the speed test and after having appeared in the speed test without any protest he is now blaming the condition of the Typewriter for his failure. The respondents have said that there was no bar in the candidates bringing their own Typewriters. The applicant, ~~however~~, should have, therefore, satisfied himself before appearing in the test and if he had any grievance he should have raised it before he appeared in the selection.

12. In Dr. G. Sarana v. University of Lucknow & others (AIR 1976 S.C. 2428) the Hon'ble Supreme Court had in the case where a candidate appeared in the interview and thereafter challenged the constitution of the selection committee observed as follows :-

"he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee."

The dicta laid down in this case equally applies to the applicant's case. Having once appeared in the selection he cannot complain after his failure that the machine was not good or that he had already ~~ever passed~~ ~~opposed~~ and he should not have been made to appear again for the test. He took a chance of favourable results and having taken the same he cannot turn ~~wound~~ ~~down~~ and question the results of the speed test after his failure.

13. The respondents have said that the applicant has not moved any appeal against the impugned order of the administration dated 23.9.1987. He had represented against the type test and his representation was duly considered and rejected.

14. In the above view we find no merit in the applicant's prayer for setting aside the impugned order of 23.9.1987. However, since the respondents appeared to be willing to consider his representation against the results of the selection the applicant will be at liberty to put in a suitable representation, if he so desires and the respondents will dispose it of after considering it sympathetically. We make no order as to costs.

Sarana
MEMBER (J).

Sharma
MEMBER (A).

Dated: January 11/15, 1989.