

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

D.A. No.
RECD.

373 of 90 1990

DATE OF DECISION _____

Sri S. M. Mosharrullah Petitioner

Sri S. M. Shukla Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Sri A. R. Gupte Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D. K. Agarwal, I.M.

The Hon'ble Mr.

V. Oberoi, A.M.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Benches ?

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Ghanshyam/

Rubric

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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH ALLAHABAD

D. A. No. ... 373/90.

S. M. Mazharullah ... Applicant.

v.

Union of India & Ors. ... Respondents.

Hon'ble Mr D.K. Agrawal, JM
Hon'ble Mr K. Obayya, A.M.

(By Hon'ble K. Obayya, A.M.)

This application under Section '19' of the Administrative Tribunals Act, 1985 has been filed for quashing the order of reversion of the applicant contained in Annexure-I and for a direction to the Respondents to treat the applicant to be continuing in the post of Assistant Superintendent (A.S. in short) in the grade of Rs.1600-2660 w.e.f. 01.01.86.

2. The facts of the case in brief are that the applicant entered service in Northern Railway in the year 1955 in Clerical Cadre in the grade of Rs.110-180; and after receiving promotions to higher grades from time to time, stood promoted to the post of A.S. in 1986 in the grade of Rs.1600-2600 on ad-hoc basis; thereafter in 1990, he was reverted to his substantive post of Head-Clerk (H.C. in short) in the grade of Rs.1400-2300. It is this reversion which is under challenge before us.

3. It is contended by the applicant that his service in the post of A.S. was for more than 4 years, and under

the rules, after completion of 18 months of service in ad-hoc capacity, he has acquired a right for regularisation in the post; he represented to the authorities seeking regularisation, but no orders were passed thereon. He also appeared for the Selection-test held in 1988, for promotion to the post of A.S. on regular basis; the results of which were declared in 1989 and his name did not figure in the list of Qualified Candidates. It is alleged by the applicant that his reversion after more than 4 years of ad-hoc service without notice or opportunity is arbitrary and illegal.

4. The case is contested by the Respondents. In their counter, they have stated that the promotion of the applicant was on 'ad-hoc' basis. The post of A.S. is a Selection post, and for regular promotion, a candidate has to go through 'Selection Process' which consists of a Written Test, Viva-voce and Empanelment. The applicant was allowed to appear at the Selection-Test in 1988, but he failed to qualify even in the Written Test; consequently he was reverted immediately after the results were announced in 1989; he was again promoted on ad-hoc basis in a Sick Leave Vacancy (Annexures II, III to the Counter). It is further stated that the applicant had to be reverted, as a consequence of a policy decision taken by the Railway Board in 1989, not to continue ad-hoc promotees, which was implemented by orders dt. 29.01.90, 16.04.90 - Annexs. IV&V. The reversion of an unqualified person is not a punishment hence, no notice or opportunity is necessary.

It is denied by the Respondents that the applicant has acquired any right for regularisation in the adhoc promotion.

5. We have heard the counsel of the parties and perused the record. The learned counsel for the applicant Sri S.N. Shukla argued at length on the prescriptive rights of the applicant. His main thrust of the argument was that in terms of Railway Board's Circular - an adhoc employee, on completion of 18 months of service acquires a right for regularisation and he cannot be removed, unless by way of punishment which should be after observing the Disciplinary and Appeal Rules. He also relied on the decision of the Principal Bench of the Tribunal in Jethanand v. Union of India (T.A. 844/86) (Full Bench Judgement of CAT 1986-89 p353).

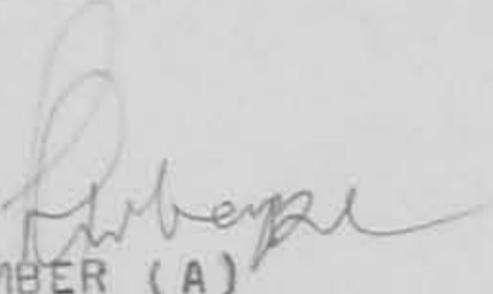
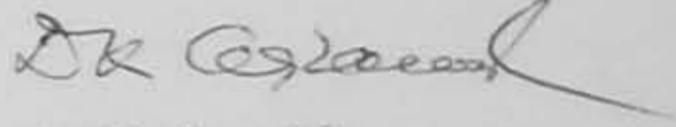
6. The Learned Counsel for the Respondents Sri A.K. Gaur reiterated the stand taken in the Counter. His submission was that the reversion was due to the fact that the applicant has failed to qualify in the Selection Test, and that the ad-hoc services rendered by the applicant will not entitle him for regularisation as A.S. In support of his contention, he also relied on the case of Jethanand v. U.O.I. referred to above.

7. We have gone through the decisions of the Principal Bench, relied upon by both the counsels. The Bench held that the right to hold Selection/Promotional post accrues only to those employees, who have undergone a 'Selection Test' empanelled for Promotion/Selection post and continuing as such for 18 months or more. It was also held that

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if an employee has appeared in the Selection Test and has failed, his services cannot be regularised in the Promotional post and that an employee holding a Promotional post in adhoc capacity, can be reverted to his original post at any time, if he has not qualified in the Selection Test. It is not the case of the applicant that he has passed the Selection Test. In our opinion, the issue regarding regularisation of Ad-hoc appointees/promotees, is settled in this decision, and we are of the view that the applicant has no right for regularisation in the post of A.S., as he has failed in the Qualifying Test. In the circumstances, the application is liable to be dismissed and accordingly it is dismissed with no order as to costs.


MEMBER (A)
MEMBER (J)November 28, 1990.Allahabad.Karn/