

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated : Allahabad this the 8th day of May, 1996.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. I. L. Verma, Member-J

Original Application No. 141 of 1992.

Prabhu Dayal aged about 34 years,
son of Shri Chunni Lal,
C/o. Shri Sunnoo Lal Rakwar,
246/68, Kasai Baba Mohalla,
Nainagarh, Jhansi.....petitioners.

(THROUGH ADVOCATE SHRI RAKESH VERMA)

V e r s u s

1. Union of India through General Manager, Central Railway, Bombay V.T.
2. The Divisional Railway Manager, Central Railway, Jhansi.
3. Assistant Personnel Officer (E) Office of the Divisional Railway Manager, Central Railway, Jhansi. Respondents.

(THROUGH ADVOCATE SHRI A. K. GAUR)

O R D E R (Oral)

(By Hon'ble Mr. S. Das Gupta, Member-A)

This application under Section 19 of the Administrative Tribunals Act, 1985 challenges the order dated 24.12.1991 by which the applicant alongwith four other were reverted from the post of Helper Khalasi to that of Khalasi. They have sought the relief of quashing of the aforesaid order with all consequential benefits as ^{if} no such order had been passed.

2. The applicant's case is that he was promoted

to the post of Helper Khalasi in the pay scale of Rs.800-1150/- after having passed the requisite trade test by an order dated 24.1.1990 (Annexure-A-2). Since then the applicant has been working as Helper Khalasi and it is claimed that during this period of service, his report has been unblemished and there has been nothing wrong on his part which might have any adverse effect on his career. However, although the applicant had completed more than 18 months on the post of Helper Khalasi, by the impugned order, he was reverted to the lower post. Thus, the applicant had already acquired a prescriptive right to hold the post and he could not be reverted to the lower post without following the procedure laid down in the Railway ~~Employees~~ Servants (Discipline & Appeal) Rules. It has been emphasized that he was promoted after having been duly empanelled on passing requisite trade test and therefore, even if the order of promotion stated that ~~it was~~ it was on adhoc basis, he could not have been reverted without following the Discipline and Appeal Rules procedure as the applicant had completed 18 months of service on the higher post.

3. The respondents have contested the case by filing written statement, in which it has been stated that the applicant was promoted purely on adhoc and temporary basis. However, on ~~completion~~ ^{closure} of T. R. S. cadre on 15.9.1990 interse seniority was prepared and employees who were found junior, were reverted by the impugned order. The applicant being a junior person was also reverted. The respondents have averred that as the promotion of the applicant was purely on adhoc basis and temporary, he did not acquire any prescriptive right to hold the post and he could have been posted on substantive post being the junior most.

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4. The applicant has filed a rejoinder-affidavit in which he has specifically denied that he was junior. He has further stated that no seniority list has been annexed by the respondents. He has reiterated that having completed more than 18 months, he could not have been reverted without following the procedure under Railway Servants(Discipline and Appeal) Rules.

5. We have heard the learned counsel for ^{both} the parties and carefully gone through the record.

6. It is clear from the order of promotion dated 24.1.1990 that all the persons who were promoted including the applicant were so promoted on purely adhoc and temporary basis in officiating capacity. It was also mentioned therein that such promotion shall not confer any prescriptive right to continue on the post in preference to their seniors. The question of following the procedure under Discipline and Appeal Rules on completion of 18 months could have arisen if the reversion was made for any misconduct. The respondents have clearly averred that the reversion is merely on the ground that the applicant was junior in the revised seniority list which was prepared on the closure of T.R.S.Cadre. It is therefore, clear that this reversion was not on the ground of misconduct and therefore, the question of following Discipline and Appeal Rules, whether or not the applicant completed 18 months of service, will arise.

7. However, there is a factual dispute as to whether the applicant was junior or not. The applicant was junior as averred by the respondents. This has been denied ^{by} the applicant. The circumstances in which all the promotions were made on adhoc basis, has not been made clear in the counter reply. It has also not been adequately explained as to how the seniority came to be revised and in what manner the

applicant was affected by such seniority. It has been merely stated that the applicant became junior on the closure of even T.R.S. cadre. It has not been explained what this T.R.S. cadre is and whether the applicant belongs to that cadre or not. The respondents have also not annexed the seniority list which would have indicated clearly that the applicant was junior and he had to be reverted as the number of higher posts was not enough to accommodate the applicant.

8. In the absence of specific averments in this regard, we are unable to come to a conclusion as to whether the applicant was actually junior and that this was a valid reason for his reversion.

9: In view of the foregoing we dispose of the application with a direction that the respondents shall carefully examine the seniority list which was prepared in September, 1990 and in case any person, junior to the applicant was retained as Helper Khalasi, while the applicant was reverted, the applicant shall be deemed to have continued in service as if no order of termination has been passed, until 12.4.93 when the applicant is stated to have been promoted again. In that case the applicant shall also be entitled to the arrears of salary for the period he remained reverted by the impugned order.

10. The application is disposed of with the above direction. No order as to costs.


Member-J


Member-A

Dated : Allahabad May 8, 1996.