

OPEN COURT.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL BENCH,
ALLAHABAD.

DATED THIS The 30 th May, 1997.

CORAM: Hon'ble Mr. T.L.Verma, JM.,
Hon'ble Mr. S.Dayal, AM.,

ORIGINAL APPLICATION NO: 1758 OF 1992.

Radhey Mohan Tripathi aged about 43 years
★ Son of Late Shri Tirth Raj Tripathi, resident
of village and Post office Nunkhar, district:
Deoria. ... Applicant.

Versus:

1. The Union of India, through General Manager,
Northern Eastern Railway, Gorakhpur.
2. The General Manager(Personnel) N.E.Rly,
Gorakhpur/ Chief Personnel Officer, N.E.
Railway, Gorakhpur.
3. The Director of Official Languages, Railway
Board, New Delhi.
4. Mukhya Raj Bhasha Adhikari, N.E.Railway,
Gorakhpur.
5. The Financial Advisor & Chief Accounts
Officer, N.E.Railway, Gorakhpur.
6. The Dy.Chief Accounts officer(Genl), N.E.Rly,
Gorakhpur.
7. The Dy.Chief Controller of Stores Depot, N.E.
Rly, Gorakhpur.
8. The Chairman, Railway Service Commission,
Muzaffarpur.

... Respondents.

APPEARANCE OF COUNSELS:-

1. Counsel for Applicnt: S/Sri A.K.Sinha/Anand Kumar.
2. Counsel for Respnts: Sri Prashant Mathur.

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ORDER (ORAL).

(By Hon'ble Mr. T.L. Verma, JM.,)

This application Under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the Order dt. 4.11.1985 reverting the applicant from the post of Hindi Sahayak to his basic grade(Annexure-15) and for issuing a direction to the respondents to pay the entire arrears of salary and other emoluments due to the applicant since November, 1985 till date. Applicant has sought further direction to the respondents to pay salary to him for the period 1.9.1983 to 11.7.1984 which has been unduly withheld.

2. Brief facts of the case are that the applicant was initially appointed on group (D) post on 22.9.97 and was placed under the control of the Dy. Controller of Stores, N.E.Railway Gorakhpur. He applied for the post of Hindi Sahayak grade -III in response to the advertisement dt. 31.3.1981. The applicant, who was found eligible for being appointed on the said post was called for appearing at the written test held on 6.8.1981. The applicant claims to have appeared at the said test and qualified in the written test and Viva-Voce test held on 25.9.1981 and 3.3.1982 respectively were prepared. The name of the applicant was placed in the Select List on dt. 3.3.1982 at serial number 5 (annexures 1 and 2). A formal letter of appointment to the applicant on the post of Hindi Sahayak grade Rs330-560/- and Revised Scale Rs1400 - 2300/- was issued and he was directed to join as Hindi Sahayak in the office of the Chairman, Railway Service Commission,

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Muzaffarpur which joined on 5.3.1982. He was, therefore, transferred from the office of the Chairman, Railway Service Commission, Muzaffarpur to the Office of the Financial Advisor, Chief Controller North Eastern Section of the Railway Muzaffarpur in the same capacity.

3. It is alleged that the applicant was not relieved from his post in the office of the Chairman, Railway Service Commission as a result he could not join his new place of posting. He was, however, relieved ten month's after the date of his transfer. He, therefore, represented against such delayed relieving before the appropriate authority. The respondent No: 2, by his Order dt. 11.7.84 directed the applicant to join his duty at the place of his transfer. The claim of the applicant is that the intervening period from 1.9.1983 to 11.7.1984 was not decided. The applicant joined his new place of posting as Hindi Sahayak on 12.7.1984 in the North Eastern Railway, Gorakhpur.

4. From the averments made in the O.A. it transpires that the applicant had challenged his transfer from the office of the Chairman, Railway Service Commission to the Office of the Financial Advisor/ Chief Controller North Eastern Railway, Muzaffarpur by filing a Writ petition was, however, dismissed by Order dt. 25.3.1985. The court, however, directed the respondents that regular appointment should be within two months and the case of the petitioner should also be considered in accordance with law. After the aforesaid order of the High Court, the respondents, it is alleged, became

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prejudiced and by the impugned Order dt. 4.11.1985 reverted the applicant to his basic grade/post hence, this application for the reliefs mentioned above. The impugned order of reversion has been challenged mainly on the ground that the authority passing the order was not competent and also that the action of the respondents are highly arbitrary ad contrary to the rules.

5. The respondents have contested the claim of the applicant. In the Counter affidavit filed on behalf of the respondents it has been alleged that the applicant was initially appointed as a Khalasi and as he was a graduate and fulfilled all the other qualifications he was given an opportunity to appear at the Selection test held for the appointment on the post of Hindi Sahayak. He was, however, called for to appear in the selection test but he failed to clear the selection test so his name was not included in the list of selected candidates were not available then. Appointment letter was issued to the applicant in which it was clearly envisaged that the appointment of the applicant was purely on adhoc-basis was tenable until regularly selected candidates joins the post. The applicant was reverted to his basic grade post after regularly selected joined in terms of his appointment.

6. We heard the learned counsel for the respondents in the absence of learned Counsel for the applicant.

7. In view of the pleadings of the parties the only question that falls for our consideration is whether the applicant has acquired a right to hold the post of Hindi Sahayak Grade-III. It is not indispute that post of Hindi Sahayak is a selection post. This pre-supposes

that now the appointment on this post

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that for the appointment on this post clearing prescribed selection test is absolutely necessary. The respondents have very specifically averred in para 10 of the Counter affidavit that though the applicant had appeared at the selection test his name was not included in the panel of selected candidates. The applicant has denied this position but Annexure-2 to the O.A. the appointment letter fully supports respondents' contention in this regard. This order clearly states that the candidates including the applicant who failed to be included in the select list held on 6.9.1981 and 25.9.1981 are appointed as Hindi Sahayak Grade-III on adhoc basis. This order dated 3.3.1982 makes two things very clear -

- (i) that the applicant was not included in the select list persuant to the selection held on 6.9.1981 and 25.9.1981 and
- (ii) that applicant was appointed as Hindi Sahayak Grade-III on adhoc basis.

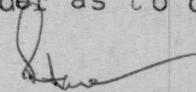
8. In the rejoinder affidavit, it has been averred that since the applicant had officiated for more than 18 months on the post of Hindi Sahayak interms of Railway Board's letter dated 9.6.1965 he could not be reverted without following the procedure prescribed in the Discipline and Appeal Rules. This circular has no relevance so far as the case before us/considered. The circular under reference provides that the persons who have been allowed to officiate beyond 18 months should not be reverted for unsatisfactory service except in accordance with the D.A. Rules. The applicant before us has not been ~~rebutted~~ ^{reverted} for unsatisfactory service. He has been reverted on regularly selected candidated being appointed. Therefore, the circular of the Railway Board relied upon by the learned counsel for the applicant has no application to the facts and circumstances of the present case.

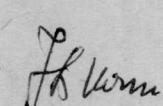
9. The learned counsel for the respondents submitted that the appointment of the applicant on adhoc basis on the post of Hindi Sahayak Grade III was tenable only till a regularly selected candidate ^{joined on the said post} ~~joining~~. The applicant, it was submitted, was reverted on Ram Prasad Singh's joining in his place after his selection on the said post. This contention of the learned counsel for the respondents finds support from Annexure-C.A.2. Annexure-C.A.2 is ^{the} order of posting of Hindi Sahayak pursuant to selection held for the said post. Serial no.2 of the list of persons who were promoted to the post of Hindi Sahayak Grade III on their clearing the selection test, indicates that Ram Prasad Singh Assistant Grade 260-400 was ~~been~~ promoted as ~~stenographer~~ as Hindi Sahayak Grade-III ^{after due selection} Rs.330-560 in place of the applicant. It would, thus, appear that the applicant has been replaced as Hindi Sahayak by a person who had cleared the selection test regularly held. That being so the applicant has to make room for regularly appointed ~~as~~ Hindi Sahayak. The adhoc appointment of the applicant ^{would confer} ~~on the~~ post of Hindi Sahayak ~~does not confer~~ any right on him to continue ~~to the~~ applicant ^{on the said post}.

10. The other prayer sought in the application is for a direction to the respondent to make payment of salary and other allowances to the applicant ~~for~~ the period 1.9.1983 to 11.7.1984. The applicant, it appears on being transferred from the office of Chairman Railway Service Commission, Muzaffarpur to the office of F.A. & C.O., Gorakhpur was relieved on 6.9.1983. He, however, reported for duty only on 9/12.7.1984. The respondents ^{alleg} ~~stated~~ that the applicant was absent without any authority during the aforesaid period, ^{therefore} is not entitled for any salary on the principle of no work no pay. The respondents, however, do not appear to have passed any order as to how the aforesaid period of absence of the applicant shall be treated. The applicant contends that he was not unauthorisedly absent ^{and that he was on medical leave}.

In view of the rival contention ~~on~~ enquiry for determining the nature and absence of the applicant was necessary. The respondents would have been justified in withholding the salary, had they held enquiry in that regard and come to a conclusion that the absence of the applicant during the aforesaid period was unauthorised. Be that as it may, this being a question of fact, it is the duty of the respondents to hold a further enquiry and then pass an appropriate order whether the absence of the applicant was unauthorised or not.

11. In view of the discussions made above, we are satisfied that the applicant has failed to make out a case for issuing a direction to regularise ~~out of~~ ^{the Services} ~~selection~~ of the applicant on the post of Hindi Sahayak Grade III. This application, therefore, to that extent has no merit and the prayer is accordingly rejected. The respondents are, however, directed to hold a confronted enquiry to determine whether the absence of the applicant from 1.9.1983 to 11.7.1984 was unauthorised or not and thereafter pass an appropriate order as to how the absence of the applicant during the aforesaid period, shall be treated, ~~if~~ not already done, ~~within~~ within the period of three months from the date of communication of this order. There will be no order as to cost.


MEMBER (A)


MEMBER (J)

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