

Reserved

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated 17<sup>th</sup> day of November 1995

Original Application No.1261 of 1992

QUORUM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Smt. Nirmala Saxena, Lecturer  
Northern Railway Inter College,  
Tundla District-Firozabad.

(By Shri S.C. Mandhyan, Advocate)

. . . . . Applicant  
Versus

1. Union of India through the  
Ministry of Railway,  
New Delhi.

2. General Manager, Northern Railway .  
Headquarters Office,  
Baroda House, New Delhi.

3. Divisional Railway Manager,  
Northern Railway,  
Allahabad.

4. Principal, Northern Railway  
Inter College, Tundla  
District-Firozabad.

(By Shri JN Singh, Advocate)

. . . . . Respondents

HL

O R D E R

By Hon'ble Mr. T.L. Verma, J.M.

This Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for issuing direction to the Respondents to count service of the Applicant in grade of Rs. 1640-2900 (RPS) w.e.f. 16-1978 on the date on which she was promoted as Lecturer on the post against permanent vacancy and to grant senior grade of Rs. 2000-3500 after counting the services of the Applicant in basic grade w.e.f. 1-6-1978.

2. The Applicant was initially appointed as Teacher in Northern Railway Inter College, Tundla on 14-2-1970. She was promoted as Lecturer in scale of Rs. 1640-2900 on 1-7-1970 on the <sup>post</sup> vacancy that fell vacant consequent upon retirement of Shri B.P. Pandey. The promotion, however, was temporary and on adhoc basis. She continued to work on the said post until she was regularised by the order dated 31-10-84 by (Annexure-A-2.) Although, she had been given all benefits of regular Lecturer with effect from the date she was promoted on adhoc basis; the Respondents have refused to count the period of adhoc officiation towards qualifying period for promotion to the selection grade. Hence, this Application.

3. The Respondents have contested the claim of the Applicant on the ground that as the Applicant did not qualify for selection as Lecturer Grade



Rs. 1640-2900, she was allowed adhoc promotion. She has been regularised on the said post only after she was declared fit by the duly constituted D.P.C. in 1984 by the order dated 31-10-1984. The further case of the Respondents is that according to Railway Board letter dated 11-4-1988, (Annexure-RA-1), those teachers who have completed 12 years of service in the pre-revised scale will be placed in senior grade subject to screening by the D.P.C. Since the Applicant was not promoted to the senior grade by the D.P.C. in 1976, she is not entitled to the benefit of the aforesaid period for being counted towards qualifying period for promotion to the selection grade.

4. In view of the pleadings of the parties, the only question that falls for our consideration is whether the Applicant is entitled to count the period of adhoc officiation towards qualifying period for promotion to the selection grade or whether such period shall be treated as non-fortuitous service as contended by the Respondents.

5. The Learned Counsel for the Applicant sought reliance on the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Ors, reported in (1990) 13 ATC 348f in support of his contention that the adhoc period of officiation followed by regularisation should be counted for qualifying

service.

6. In the aforesaid case, the Hon'ble Supreme Court had clearly laid down that if the initial appointment is in accordance with rules, then only the adhoc period of officiation followed by regularisation shall count towards seniority. We quote the relevant portion of this decision hereinbelow:-

"If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority."

7. It is clear from the above that the Applicant's adhoc officiation shall be counted towards period of qualifying service only for his initial appointment to the post of Lecturer in accordance with rule. The averments of the Applicant in the D.A. are singularly conspicuous by <sup>absence of</sup> any averments as to whether her initial appointment was in accordance with rules. She has only averred that in 1984 she was called for regular selection and on being found fit, she was regularly appointed and this fact is not in dispute. The Respondents on the other hand in Paragraph 7 of the



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counter affidavit have clearly averred that in 1978 she did not qualify for regular promotion as Lecturer. This fact has not been controverted in the rejoinder affidavit by the Applicant. We, therefore, cannot but come to the conclusion that the initial promotion of the Applicant to the post of Lecturer was not in accordance with rules and, therefore, she cannot get benefit of the decision of the Hon'ble Supreme Court in the abovementioned case.


8. The ratio of the above decision of the Hon'ble Supreme Court has been followed in number of subsequent cases one of which is a case Keshav Chandra Joshi Vs. Union of India, reported in <sup>112</sup>1991 S.C. 284. The Hon'ble Supreme Court inter alia held that if adhoc appointment is not according to rule and is made as stop-gap appointment, then the period of officiation in such post cannot be considered for computing seniority. If this period of officiation in the case of the present Applicant cannot be considered for the purpose of seniority by the same token, it cannot also count towards the qualifying period for promotion to the selection grade.

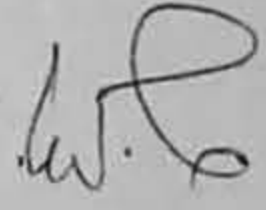
9. There is yet another aspect to be considered ~~to~~<sup>in</sup> this case. The Respondents have annexed a copy of the circular dated 22-6-1989 in which it has been clarified that for the purpose of counting the period of qualifying service for promotion to the selection grade, the period of adhoc service shall not be taken into account. This

circular has not been contested by the Applicant in the rejoinder affidavit.

10. In view of the foregoing, we find no merits in this case and the same is dismissed accordingly with the above direction. There shall be no order as to costs.

RBD/

  
Member (J)

  
Member (A)