Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 910 of 1993

Allahabad this the 22nd day of May, 2002

Hon'ble Mr.Justice R.R.K. Trivedi, V.C.
Hon'ble Mr.C.S. Chadha, Member (A)

1. B.P. Gaur S/o Sri Raghunath Prasad, Working as Head Draftsman in Chief Mechanical Engineer's Office, N.E. Railway, Gorakhpur.

2. S.N. Samaajdar, S/o Late Sri Surendra Nath Samaajdar, Working as Head Draftsman in Chief Mechanical Engineer's Office, N.E. Railway, Gorakhpur.

3. Zaheer Hussain, S/o Late Sri Mahboob Hussain, Working as Head Draftsman in Chief Mechanical Engineer's Office, N.E. Railway, Gorakhpur.

Applicants

By Advocate Shri Ashok Mohiley

Versus

1. Union of India through General Manager, N.E. Railway, Gorakhpur.

2. Chief Personnel Officer/(GM(P)), N.E. Railway Gorakhpur.

3. Chief Workshop Engineer, N.E. Railway, Gorakhpur.

Respondents

By Advocate Shri V.K. Goel

O R D E R

By Hon'ble Mr.C.S. Chadha, Member (A)

This application, under Section 19 of the

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Administrative Tribunals Act, 1985 has been filed jointly by three applicants because the cause of action, and the relief sought is the same. All of them were appointed as Trade Apprentices in the Mechanical Workshop, Gorakhpur on 01.04.1958. They were first promoted as Tracers on 4/5-1-62, and later as Assistant Draftsmen on 29.04.74. Vide annexure-6 they were further promoted, on ad-hoc basis, as Draftsmen w.e.f. 2.3.79 vide annexure-2 and later regularised with effect from 06.06.84 on the basis of a viva voce test held, on 16.5.84, for their selection. They represented to the higher authorities that since they had been continuously officiating as Draftsmen without any complaint against them, from 02.03.79, they should be granted seniority with effect from 02.03.79 and not from 06.06.84. Their application was recommended to the higher authorities and vide annexure-10, dated 20.11.85 their request was granted. However, in less than two months thereafter, on 17.1.86 vide annexure-11 the earlier order of 20.11.85 was rescinded and the applicants were informed that their seniority in the cadre of Draftsmen would be counted w.e.f. 6.6.84 only. Thereafter they filed representations against the said order on 03.10.91 and vide annexure-12, dated 09.12.91, the applicants were informed that the seniority granted vide letter of 17.1.86 was correct and no change therein was called for. The applicants again represented and they were advised vide annexure-13 that since they had been informed earlier on 09.12.91 that their request for higher seniority had been considered to be unjustified., they

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should not continue to represent on the same issue again and again. Therefore, the applicants filed this O.A. seeking to get the communications sent through Annexure-11, 12 and 13 quashed with a further claim to grant them seniority, as Draftsman, w.e.f. 2.3.1979, i.e, the date from which they continuously officiated as Draftsmen.

2. The first ground for challenging the said orders dated 17.1.86 rescinding the earlier orders granting them seniority as Draftsman w.e.f. 2.3.79, is that the orders granting them their due seniority were passed by the General Manager, Railways on 20.11.85 but the orders rescinding those orders were passed by a lower authority and therefore were illegal. It has been denied in the counter-affidavit that the order of 20.11.85 was approved by the General Manager, Railways and it has been averred that both the orders have been passed by the competent authority i.e. General Manager(Personnel), Gorakhpur. A perusal of annexures-10 and 11 clearly shows that the contentions of the respondents in this regard are correct. Not only both the orders have been passed by one and the same authority, the later order of 17.1.86, clearly specifies that rescinding of the earlier order was with the approval of the competent authority. We, therefore, feel that there is no force in the claim of the applicants that the impugned orders(annexure-11) were passed by an authority not competent to do so.

3. The main issue to be decided in this O.A.

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is whether seniority can be given to the applicants, as Draftsmen, with effect from the date of their ad-hoc promotions or from their date of regular selection. In this regard the respondents have made it abundantly clear that for the post of Draftsman 50% of the posts are to be filled up by direct recruitment and 50% by promotion , and since the 50% quota kept apart for direct recruitment had, for some time, not come about to be filled up, and since there was a requirement to fill up the said posts, ~~xxxxxxxxxxxxxxxx~~ the applicants were promoted vide annexure-2 on 02.03.79, purely on an ad-hoc basis. It has therefore been averred by the respondents that the applicants have no right to claim seniority from a date when no post was available to them in their own quota. It has also been stated that those direct recruits, who joined after the ad-hoc promotions of the applicants, but had posts available for them in their quota, automatically became senior to the applicants.

4. The contention of the respondents, in this regard is further fortified by annexure-6, dated 5.7.84 itself. That order clearly states that since the applicants were officiating as Draftsmen on an ad hoc basis from 2.3.79, and since no posts were available to them in the promotional quota, "as a one time exception", it had been decided to test their suitability and if found suitable they should be regularised. It had been further added that adjustment against the quota of direct recruits

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will be done later. The order further adds that the period spent on ad-hoc promotion shall not count for purposes of seniority and seniority as Draftsman shall count w.e.f. 6.6.84 only. Therefore, the said order itself proves:-

(i) that the promotions of the applicants were not against the promotional quota, but in the vacancies of direct recruitment quota, to be adjusted when direct recruitments are made;

(ii) that the promotions were a 'one time exception' only-as normally they would be promoted only against their own quota of promotional posts and that too after a full test, whereas they were subject to only a viva voce test; and

(iii) that the period spent on ad-hoc promotions will not count towards seniority, which would be effective only from 06.06.84.

5. In view of these clear deductions from the said order, it is highly improper for the applicants to claim that the respondents have clarified for the first time while filing the counter-affidavit, that the applicants had been posted against the vacancies in the direct recruitment quota. We are afraid that as early as on 5.7.84 vide annexure-6, presented by the applicant themselves, they were made fully aware that their promotions were being made against the direct recruitment quota as a 'one-time exception' and which will not entitle them to any claim of antedated seniority.

6. It is therefore very clear that the applicants were promoted against posts not available

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in the promotional quota but against the direct recruitment quota. When the direct recruits came in their turn to claim the posts in their quota, they became senior. Strictly speaking the benefit granted to the applicants as a 'one-time exception', w.e.f. their so called regularisation, i.e. 6.6.84 is also, in a way, fortituous. They should be entitled to seniority only from the date posts became available for them in their own promotional quota, which could have been later than 6.6.84 also. Therefore, we came to the conclusion that the applicants are not entitled to any relief.

7. The learned counsel for the applicants also claims relief on the ground that no show-cause notice was given before rescinding the order of 20.11.85. The lack of an opportunity to be heard can be the ground for getting an order quashed provided such lack of opportunity causes prejudice to the case of the applicants. In the present case the orders granting the applicants seniority as Draftsman w.e.f. 2.3.79 were ab-initio illegal and against the rules-Moreover they were set aside as soon as the mistake was noticed, and that too in less than two months from the improper order. Even if the applicants got an opportunity to defend their cause, the opportunity would be exactly similar, to the opportunity they got after they filed this O.A., but they could in no way explain how despite getting ad-hoc promotions against the direct recruitment quota, they were entitled to seniority w.e.f. 2.3.79 when no promotional quota post was available then. Therefore, we find that no prejudice has been caused to the interests of the applicant by

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withdrawing the orders passed on 20.11.85, on 17.1.86 without any show-cause notice as even if an opportunity came their way they could prove nothing in their favour.

8. The learned counsel for the applicants has cited several rulings of the Supreme Court to draw strength for this argument. In Gajanan Pernekar Vs. the State of Goa and another (2000 S.C.C.(L&S) 57) THE Hon'ble Supreme Court held that an order passed in the favour of a person cannot be recalled adversely affecting him, without giving him an opportunity to show-cause. The facts of that case were however totally different. The person concerned had apparently given consent to be appointed as a Head Master of a Middle School and was so appointed w.e.f. 13.6.74, but later he was made a Head Master of a High School with retrospective effect from 1.4.74 by an order dated 16.2.94 He filed a writ for grant of consequential benefits in which the High Court took a serious view of the fact during the hearing the petitioner claimed that his consent for being appointed as a Head Master of a Middle School was obtained under duress, but this fact was not disclosed in the Writ Petition. This was treated by the High Court as material supression and therefore his petition was not entertained. Taking a cue from the High Court's order the respondents in that case withdrew the benefit earlier granted on 16.2.94. The Supreme Court therefore felt that since certain facts were in dispute the petitioner should have been heard and given an opportunity to rebut

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what was said as a matter of fact, that too nearly five years after the grant of the benefit. In this case merely after less than sixty days a wrong policy decision was corrected and no facts were in dispute. If certain facts were in dispute certainly the applicants should have got an opportunity to rebut them. However, in the present case vide annexure-6 it is abundantly clear that due to lack of posts in promotional quota the applicants were made Draftsman against vacancies in the direct recruitment quota, to be adjusted later and further that this was a 'one-time exception' not entitling them to any antedate seniority. Therefore opportunity or no opportunity to be heard, facts are totally against the applicants.

9. The Judgment in AMS Sushanth & Others Vs. M. Siyatha and Others (2000 S.C.C. L&S 317) also does not apply in this case as in that case as well the facts concerning the order passed later, adversely affecting the applicants, were in dispute. In this case facts are not in dispute - only a wrong application of policy was corrected.

10. The Judgment in Rudra Kumar Sain and Others Vs. Union of India (2000 (2) S.C.Services Law Judgments 168), was cited by the learned counsel for the applicants in effort to show that ad-hoc appointments made with the approval and consultation of the appropriate authority, when the appointees possessed the requisite qualification, cannot be termed as stop-gap or fortituous or purely ad-hoc. However a close reading of the judgment shows that the Hon'ble Supreme Court in that very

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Judgment also stated "It is not possible to lay down any straight jacket formula nor give an exhaustive list of circumstances and situations in which such an appointment(adhoc, fortituous or stop-gap) can be made." The Apex Court also implied that whether the post is ad-hoc or not will depend upon the facts of each case However, circumstances such as the ones of this case have been commented upon by stating "If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as 'stop-gap' arrangement and appointment in the post as 'ad-hoc' appointment." In other words the Apex Court would also deem the appointments of the applicants as Draftsmen, in the facts and circumstances mentioned earlier, to be ad hoc. Therefore, the Judgment cited to support the case of the applicants, in fact goes against them.

11. In the Judgment of the Calcutta Bench of C.A.T. in O.A.No.557 of 1991 (Madan Mohan Lal Srivastava Vs. U.O.I. & Others), the reversion of the applicants after 13 years, was considered illegal on the ground that there was "nothing to show what was the quota and what was the number of vacancies or whether the promotees had occupied 6 posts in excess of their quota". This case cannot help the applicants because they have not been reverted and more over there is clear averment in the promotion

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order itself that there were no vacancies in the promotional quota and that adjustments against the direct recruitment quota will be done later when such people are available. We are afraid the circumstances are totally different and therefore do not help the applicants.

12. The learned counsel for the applicant has also cited the Judgment of the Supreme Court in 'T. Vijayan & Others Vs. D.R.M. & Others (2002 (2) S.C.Services Law Judgments 17) in effort to show that the Hon'ble Supreme Court also held that the period of ad-hoc service should also be counted for seniority. A close scrutiny of the case shows that the Hon'ble Supreme Court directed that such ad-hoc service would be counted for seniority if two other conditions were fulfilled, i.e., the promotions should be made in accordance with rules and the period should be on regular promotion. In the present case the promotion was not in accordance with rules - even the later promotion which gave them seniority from 6.6.84 was also a departure from rules as a one time exception. Further they were asked to appear only for a viva voce. Therefore, it also cannot be held the period spent by them after their earlier purely ad-hoc promotions w.e.f. 2.3.79 was on regular promotion. Therefore this judgment also does not help the applicants.

13. In yet another case cited by the counsel for the applicants((1992) 19 A.T.C. 315) the Hon'ble Supreme held that the "period of ad-hoc service on

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promotion in substantive vacancy subsequently regularised, must be counted for seniority." This Judgment also does not help the case of the applicants because they were not appointed on a substantive vacancy meant for their category or class of employees. The Vacancies were for direct recruits and not for promotees.

14. The case of U.O.I. & Others Vs. Pratap Narain & Others ((1992) 20 A.T.C.756) lays down that whether the service was against a cadre post or an ex-cadre post the entire period of service will count for seniority. This case also does not help the applicants because here there is no question of any cadre or non-cadre post. The applicants' promotion itself was against a vacancy meant for some other category of persons and therefore does not give any right to them. In the quoted case the promotion was regular but the officiation was on a 'disputed'place' whereas in this case the promotion itself was a departure from rules. In the Judgment itself the Hon'ble Supreme Court had further clarified it as "But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the rules prescribed for appointment to that post, he should be treated as a person regularly appointed. Such a person may be reverted from that post."

15. Yet another case cited by the counsel for the applicants A.T.R.1986 S.C. 49 lays down that ad-hoc promotees working for 15-20 years

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without reversion , were entitled to seniority as the government did not bother to fill up the direct recrutiment posts. This case is not such a case. Here the stop-gap arrangement was only a short time, and one-time exception- The government had soon after filled the vacancies by direct recruits, & and set the stop gap arrangement right by proper adjustment of the quotas. Therefore, this also does not help the case of the applicants.

16. The Judgment of (1991) 15 A.T.C. 434 also relates to the method of promotions. In that case there was no question of a post not being available in the promotional quota. In this case there was no post available for the applicants therefore the process of selection is not what is in dispute and therefore, this Judgment also does not help the applicants.

17. The principles laid down in all the above Judgments do not fit in the circumstances of this case as mainly the promotions in this case were made without proper vacancies being available in their quota and therefore, such ad-hoc appointments do not give the applicants any right to seniority.

18. In view of the circumstances discussed above, the O.A. has no merits and is therefore rejected.

19. There shall be no order as to costs.

Member (A) Vice Chairman

/M.M./