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CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 571/88 WITH O.A. NO. 277/88

~~MAX NOX~~

DATE OF DECISION 23-2-1995

Shri I.R. Shukla **Petitioner**

Shri P.H. Pathak **Advocate for the Petitioner (s)**

Versus

Union of India & Another **Respondent**

Shri R.M. Vin **Advocate for the Respondent (s)**

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

Shri I.R. Shukla,
Clerk, Railway Station,
Morbi.

..... Applicant

(Advocate : Mr. P.H. Pathak)

Versus

1. Union of India & Others,
Through the General Manager,
Western Railway,
Churchgate,
Bombay.

2. Works Manager (W.R.),
Bhavnagarpara,
Bhavnagar.

..... Respondents

(Advocate : Mr.R.M. Vin)

JUDGMENT

O.A. No.571/88 WITH O.A. No.277/88

Date : 23-2-1995

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

These two O.A.s. are being taken up together as both concern the same individual and issues raised are related as the cause of action has arisen from the same executive action. The O.A. No.571/88 challenges the order of reversion of the applicant from the post of Record Clerk in the scale of Rs.825-1200 to the post of Daftari in the scale of Rs.775-1025 while the O.A. No.277/88 challenges the order of reversion of the applicant from the post of Clerk in the scale of Rs.950-1500 to the post of Record Clerk in the scale of Rs.825-1200.

2. The point that the applicant was working as Daftary since 1971 and that he has acquired permanent status on

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that post is not disputed. The point that he was promoted as Record Clerk in the scale of Rs.825-1200 in the year 1977 and thereafter as Clerk in the scale of Rs.950-1500 is also not disputed. In 1987, he was reverted to the post of Record Clerk and in 1988, the applicant was further reverted as Daftary from which post he finally retired.

3. It is the contention of the applicant that having continuously officiated in higher posts for a considerable period - in this case nearly 11 years - he was not liable for reversion ~~as~~ and hence the impugned orders have been challenged.

4. The respondents, on the other hand, have stated that the promotions were purely ad-hoc and made on a temporary basis and was subject to clearance of the selection test. The applicant having failed in two selection tests and on another person becoming available on the selection panel who had a better claim to the post, the applicant had to be reverted. Thus, there was no legal ground for challenging the impugned order in question.

5. The counsel for the applicant, on the other hand, based his arguments on the provision in Establishment Manual reproduced as under in the petition itself:

"Normally the empanelled employees should be appointed against the selection posts, but in case where no empanelled employee is available and it becomes inevitable to make local arrangement it should be made for as short a period as possible, but not more than three months".

According to the counsel for the applicant, a 3 month period thus provided a limit beyond which the applicant had a right to be continued. In addition to this, the

counsel for the applicant also took cover under Railway Board's circular No.E(D & A) 65/RG6-24 dated 15-1-1966 which also prescribed a 18 month period as time limit beyond which the officiating employees cannot be reverted. As an additional argument, counsel for the applicant stated that the Railways had also restructured their establishment and the additional posts which became available by way of restructure were to be filled in without any selection procedures in the light of the Railway Board circular No.PC/III-84-UPG9 dated 16-11-1984.

6. It is an admitted fact that for promotion of Class IV staff to clerical cadre, e.g. as Record Clerk in this ~~case~~ case, it has to be by way of a selection process. Annexure R/4 in O.A. No.571/88 lays down the selection procedure for filling in this post. It is also an admitted position that the applicant had thrice applied for this post, once in 1981 where the petitioner had appeared in the written test but he was not called for to appear before the Selection Board. In 1986 also, the applicant had applied for the post but since the application was not received within the prescribed time limit, he was not called for appearing in the test. In 1987 also, he was called to appear in the test but had failed to qualify in the written test. In view of the fact that since a regular appointment can be by way of a selection only and the applicant had failed in the selection process, the applicant cannot claim any right to hold the post. As regards the time limit referred to by the applicant, as could be seen from the wording in the para of the Establishment Manual itself, this time limit has

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been prescribed to impress on the appointing authorities the need for making regular appointments within the shortest possible time so that ad-hoc appointments do not continue indefinitely. It would not be right to turn this argument the other way round to establish the locus for such ad-hoc appointees getting a right to hold the post merely because of passage of time. As regards the Railway Board's circular prescribing 18 month time limit, the circular itself very clearly stipulates that it applies to only those employees "who have acquired prescriptive right to the officiating post by virtue of their empanelment or having been declared suitable by the competent authorities. It does not apply to those officiating on promotion as a stop-gap measure". The passage of time theory, therefore, cannot be held in this case to validate the appointment. The counsel for the applicant has not been able to show any authority whereby the Record Clerk post can be stated to be a post which had become available because of restructuring. On the other hand, the respondents have in their written statement to the petitioner's petition of O.A. No.571/88 has specifically averred as under:

"..... the post of Record Clerk in question has not been restructured by upgradation and as such, applying modified selection based on scrutiny of service record is not applicable to the post of Record Clerk".

Thus this argument for continuing the applicant on the post without holding selection procedure is not also valid.

7. As a final argument, the counsel for the applicant stated that the respondents had in O.A. No.277/88 infringed the order passed by CAT on 5-9-88 whereby the Tribunal had thought it fit to issue interim relief for 2 weeks. In spite of this stay order, the respondents had reverted the applicant and hence this reversion order would be also non est. The respondents in their reply filed on 11-10-88 have stated in para 10 that the question of any such infringement of stay order did not arise as the applicant had already been relieved on 26-8-88. The averment is reproduced below:

"The petitioner since 26-8-88 has gone on sick leave and has deliberately not reported for duty to his new post continuing on sick leave. In terms of order passed by this Tribunal, the interim relief is inoperative as per Shop Superintendent (Workshop) Morvi's O.O. dated 26-8-88 (copy annexed as Ann. R-10). This will show that the said office order took effect immediately and in pursuance of which he has already occupied the post of Record Clerk as regular employee and appointee having been selected at the selection pos.".

Apart from this reply and the fact that the interim order itself stated that the stay order would come into operation only if the impugned order "has not already been effected", any relief in terms of such an infringement could have been sought only by way of a contempt application. The counsel for the applicant admitted that the applicant had not preferred any such contempt application in time or so far.

8. In view of the above reasoning, the applications fail and both the applications are dismissed. No order as to costs.

Prepared by:

Compared by:

Sd/-
True Copy K.Ramamoorthy)
Member (A)

Sd/-
(N.B.Patel)
Vice Chairman