

12 ✓

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.289 of 1989.

Date of Decision : January 30,1990.

Manmohan Rana Singh, son of Damodar Rana Singh,
working as Care Taker S.E. Railway Holiday Home,
At/P.O./Dist.Puri.

--- Applicant.

Versus

1. Union of India through the General Manager,
S.E. Railway, Garden Reach, Calcutta-43.
2. Divisional Personnel Officer,
S.E. Railway, At. Khurda Road,
P.O. Jatni, Dist. Puri.
3. Laxmidhar Naik, Caretaker,
C/o I.O.W., S.E. Railway, Puri.

... Respondents.

For the applicant ... M/s. G.A.R. Dora,
P. Mohapatra, Advocates.

For the respondents ... Mr. Ashok Mohanty,
Standing Counsel (Railways)

C O R A M:

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? No.
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

12
 N. SENGUPTA, MEMBER (J) The applicant was initially appointed as Choukidar in the scale of pay of Rs.196-232/- (RS) and he was promoted to officiate as Caretaker in the scale of pay of Rs.225-308/- (RS) on ad hoc basis and was posted in the South Eastern Railway Holiday Home, Puri as one R. Sitaraman was placed under suspension. The applicant's case is ^{that} he was promoted as Caretaker on 23.4.1980 vide Annexure-A/1 and he continued to officiate as such caretaker till 8.6.1989 when he was reverted to his former Class IV post and Respondent No.3 replaced him on promotion as Caretaker of the said Holiday Home. In his application the applicant has relied on the 18 months' rule and his further case is that though on 18.7.1988 applications from regular Class IV employees were invited to be filed on or before 1.8.1988 for filling up the post of Caretaker, Holiday Home, his case was not considered and infact he was not intimated of the requirement of filing of an application. After some of the Chowkidars and Class IV personnel came to know of the letter dated 18.7.1988, they made representations on 10.8.1988 against calling for such applications without regularising their services and the applicant and another made a representation on 22.6.1989 after the issuance of Annexure-A/2 i.e. the order of promotion of Respondent No.3. It is averred that the representations dated 10.8.1988 and 22.6.1989 not having yielded any result the present application had to be filed asking for the reliefs of quashing the reversion order (Annexure-A/3) and for a declaration that he (the

M. Sengupta
 30/7/90

applicant) shall be deemed to be continuing as Caretaker.

3. The respondents in their counter have not disputed the promotion of the applicant as alleged by him. But their case is that on 23.12.1988 a selection test to fill up the post of Caretaker, South Eastern Railway Holiday Home, Puri was held and several persons sat in that test but not the applicant who did not care to apply. They have challenged the contentions of the applicant that by mere continuance for a long period, no right accrues to the incumbent. Their case further is that as the applicant's promotion was merely on ad hoc basis against the fortuitous vacancy, he could not acquire any right by officiating in the promotional post.

4. We have heard Mr. G. A. R. Dora, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration. About the facts the parties are not much at variance with each other, the only question that arises for consideration is whether could the appointment of the applicant as Caretaker be classed as an ad hoc and stop gap measure. Mr. Dora, during the course of his arguments has submitted that for the present he would not very much rely on the 18 months' rule but the fact that the applicant continued to hold the post for about a decade would definitely give him a right to continue in the promotional post. Mr. Dora's contention further is, may be initially the vacancy was fortuitous but the respondents have not shown nor have alleged anything to show that the vacancy

Manoj Kumar
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continued due to suspension of an incumbent, ~~and~~ in ordinary course, if there would have been a departmental proceeding against a person suspended, that proceeding must have been finalised much prior to the date the applicant was reverted and there was no impediment, if the respondents so liked, to revert the applicant immediately after the reinstatement, if it so happened, of the person suspended or on the conclusion of the departmental proceeding, if there was any, against the suspended person. Mr. Dora has cited a decision of the Hon'ble Supreme Court reported in 1988(1) SLR 327 (Gainda Ram and others v. M.C.D. and others). He also relied on another decision, one of Punjab & Haryana High Court, reported at page 483 of that volume of S.L.R. (Shanti Devi and another v. The State of Haryana and others). From that full facts cannot be found but all that can be seen is that there were 43 posts of Clinic/Beldars which were sanctioned for the year and the petitioners before Their Lordships of the Supreme Court were found working as Clinic Beldars against the post for the full year on regular basis. The Hon'ble Supreme Court observed that in view of ^{the} ~~both~~ facts the petitioners before Their Lordships of the Supreme Court were entitled to regularisation. We are not able to agree with Mr. Dora that this case could be of much assistance in deciding the point arising in the one before us, there the appointments of the petitioners, though temporary were on regular basis. Here it was on ad hoc basis. However, the case of Shanti Devi v. State of Haryana may be of some assistance to the applicant. The petitioners, there, were

M. S. Singh
20/11

appointed on ad hoc basis in Class II of the Haryana Social Welfare Department and Relief Organisation, and they continued for long period. The Rules of that service provided for relaxation of certain requirements in deserving cases. His Lordship Sehgal relied on the decision of the Hon'ble Supreme Court reported in 1986(1) SIR 437 (Narender Chadha and others v. Union of India and others), and observed that as the petitioners before him officiated for longer periods, the Rules could be relaxed and their appointments regularised. In the instant case, as has been stated above, the applicant continued in the promotional post for more than 9 years and it is not the case of the respondents that his services as the Caretaker of Holiday Home at Puri were not satisfactory. Doubtless it has been mentioned in the counter that there was a selection test but before us no Rules have been produced to show that in fact any selection test has been prescribed for the post of Caretaker of Holiday Home. Mr. Dora has contended that assuming that there is such a rule, by applying the ratio in Narender Chadha's case, the applicant could be treated as a separate class by himself for the long officiation in the promotional post. This contention of Mr. Dora, learned counsel for the applicant cannot be brushed aside. However, as has been held by a Full Bench of this Tribunal in the case of Jetha Nanda and others v. Union of India and others, in T.A. 844 of 1986 of the Principal Bench, New Delhi, a person cannot be reverted from

Mr. Sehgal
30/1/90

12 6

promotional post if he has officiated in that post for sufficiently long time without being given opportunities to pass test if such a test is prescribed and this decision is binding on us. Doubtless in that case the Full Bench was dealing with the question of reversion having regard to the rule of 18 months but the observations made therein carry much force and are binding on us. On a combined reading of that Full Bench decision and the observations of the Hon'ble Supreme Court in Narender Chadha's case, particularly in paragraph 19 of that judgment, the net result would be that the reversion order of the applicant cannot be sustained unless there be rule of holding a selection test and the applicant is given chances to qualify in such selection test. We have considered the contention advanced on behalf of the respondents that the applicant did not make an application to sit at the test held in December, 1988 but as would be found from the representations made, copies of which are to be found at Annexures-A/6 and A/7 to the application, many of the persons who had been officiating as Caretakers did not know of the holding of a test. Therefore, it cannot be said that the applicant deliberately avoided to appear at the test.

5. For what has been stated above, we would quash the order of reversion and direct that if there be any rule enjoining the passing of a test to be appointed as a Caretaker of a Holiday Home, that be held and the applicant

*Res. Bench
30/1*

187

and his likes be afforded opportunity, at least three, to pass the test and if they pass, their services must be regularised. Till then there shall be no reversion.

6. This application is accordingly disposed of leaving the parties to bear their own costs.

B. Savary
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Member (Administrative)



K. Sen
30/1/90
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Member (Judicial)