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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 358 of 1996
Cuttack this the 6th day of February, 1997

K.C. SAHU

...

APPLICANT(S)

-VERSUS-

UNION OF INDIA & OTHERS

RESPONDENT(S)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Ys*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO*

Karasa...
(N. SAHU) 6/2/97
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.358 of 1996

Cuttack this the 6th day of February, 1997

C O R A M :

THE HONOURABLE MR.N. SAHU, MEMBER (ADMINISTRATIVE)

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Sri Kailash Chandra Sahu,
aged about 44 years,
S/o. Sri Purshottam Sahu
Working as Loco Foreman
Baripada Shed
South Eastern Railway
At/PO:Baripada
Dist :Mayurbhanj

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Applicant

By the Advocate:

M/s.S.K.Mohanty
S.P.Mohanty
P.K.Lenka

-VERSUS-

1. Union of India represented
through the Secretary to
Government of India,
Ministry of Railways
Rail Bhawan
NEW DELHI - 110 001
2. Divisional Railway Manager (P)
South Eastern Railway
At/PO:Kharagpur
Dist :Midnapore
West Bengal
3. Sr.Divisional Personnel Officer/KGP
South Eastern Railway
At/PO:Kharagpur
Dist :Midnapore
West Bengal
4. Sri A.K.Chakraborty
Pass Driver of Loco
Baripada Loco Shed, S.E.Railway
At/PO:Baripada
Dist: Mayurbhanj

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Respondents

By the Advocate:

Mr.Ashok Mohanty
Standing Counsel (Central)

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O R D E R

MR.N.SAHU, MEMBER (ADMN) : The grievance in this Original Application is for quashing the impugned order at Annexure-3 dated 15.4.1996. Under Annexure-3, Shri K.C.Sahu, the applicant, working as adhoc Loco Foreman, Baripada Shed, S.E.Railway, in the scale of Rs.2000-32000 is reverted to his substantive post of Goods Driver in the scale of Rs.1350-2200 and posted under Loco Foreman, Kharagpur, against the overall vacancy of a Goods Driver. In his place Shri A.K.Chakraborty, an adhoc Senior Passenger Driver, working in the scale of Rs.1640-2900 is ordered to take over the charge of Loco Foreman, Baripada Shed, as an additional duty till such time the post of Loco Foreman, Baripada is filled up. This order is under challenge as an arbitrary exercise of power violating the principles of natural justice. It is submitted that the applicant had continued to serve as a Foreman for a little more than three years. He is aggrieved because he is reverted without issuing a notice to him. It is stated that there were no adverse entries in his CRs. On the contrary, Respondent No.2, the Divisional Railway Manager (P), S.E.Railway, Kharagpur, on 18.4.1994 awarded the Certificate of Appreciation in recognition of his performance during the year 1993-94.

2. Misc.Application 719 of 1996 was filed on 12.11.1996, praying ^{for} the stay^{of} operation of Annexure-3 and also for a direction to allow the applicant to work in the said post pending disposal of this Application.

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Subsequently, the Original Application was also heard on merits at the admission stage after the receipt of the counter and the rejoinder. As the Original Application is disposed of in this order, there is no need to pass separate orders on Misc. Application 719/96.

3. It is submitted in the counter that the applicant was holding a substantive post of Goods Driver in the scale of Rs.1350-2200/-. A post of Loco Foreman B fell vacant at Baripada which is a Selection Post for which the mandatory requirement is to pass the Selection test. It is submitted that Mr. Chakraborty is a Passenger Driver in the scale of Rs.1640-2900 and is one grade senior to the applicant who is a Goods Driver. As no official senior to the applicant was interested to the adhoc promotion, therefore, "purely as an adhoc measure, in order to meet the exigencies of the situation, a stop-gap-arrangement was made by putting the applicant in charge as Loco Foreman B." During his tenure of three years, his conduct was found to be far from satisfactory and he was punished with stoppage of annual increment of one year which was subsequently reduced to six months by the appellate authority. The applicant admitted the fault and applied for reduction of punishment by a mercy petition. It is necessary to state that a minor penalty charge-sheet was also issued for mis-management of work. His methods of work were



resented by his colleagues. It is further stated that the applicant has no substantive right to the post of Loco Foreman B and his repatriation back to his substantive post is not illegal. It is contended that the petition deserves to be dismissed.

4. In the rejoinder filed by the applicant it is submitted that the petitioner's promotion was not made as a stop-gap-arrangement. His initial appointment made as Loco Foreman, Baripada since 29.4.1993 was no doubt a stop-gap-arrangement, but this was two months later regularised and he was promoted as Loco Foreman, B and posted at Baripada. It is mentioned that options were invited for change of cadre and the applicant requested the authority to consider his case as Loco Foreman B. As the applicant was allowed to change his cadre he could not be compared with Shri A.K.Chakraborty who is admittedly senior to him. It is submitted that there are judicial decisions to the effect that an adhoc appointee cannot be reverted without any rhyme or reason and without show-cause notice to him.

5. Learned Standing Counsel for the Railway Administration Shri Ashok Mohanty has brought to my notice a copy of the letter addressed to the applicant by the Senior Divisional Personnel Officer, S.E.Railway, Kharagpur dated 18.6.1996 which runs as under :

" You were promoted to the post of Loco Foreman in the scale of Rs.2000-3200 (RPS) with effect from 9.5.1993 purely as an adhoc measure.

Your performance in the capacity of Loco Foreman has been found to be unsatisfactory and consequently you have been repeatedly warned and finally punished with stoppage of increment for one year.

You have been lacking in devotion to your duty and you have failed to establish your absolute integrity on repeated instances.

Therefore you have been reverted to your substantive post by the competent authority."

Sd/-
Sr. Divl. Personnel Officer/KGP

6. Attention of the counsels was drawn by me to the instructions of the Railway Board bearing No. RB No. E (NG) -II/ 81/RC-1/1 dated 1.4.1981 and other instructions on the subject of adhoc promotions. At page 100-103 of K.P.Sharma's Book, specific guidelines were given governing the adhoc promotions. It has been made clear that adhoc promotions should be ordered only from amongst senior-most suitable staff. A junior should not be promoted ignoring the senior. As this is a Selection Post, this should be filled up as per the instructions by holding the selections regularly once in every year. In a Selection Post, adhoc promotion is ordered only in leave vacancy or short duration vacancy. Such adhoc promotion against regular promotion should be made only after obtaining the approval of the Chief Personnel Officer (CPO for short). Giving detailed reasons as to why regular selection could not be held, the CPO should keep a record of having accorded approval to such adhoc promotion and review the progress made in filling up the posts by selected persons every month.

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Any notification for adhoc promotion should contain a statement that the candidate has not been selected for promotion and that his temporary promotion does not give him any right for regular promotion. His pay should not be drawn for more than three months without previous sanction of the General Manager. The General Manager should issue provisional sanction for periods exceeding at a time six months. I have specifically ascertained from the Standing Counsel as to whether these instructions have been complied with in appointing the applicant to this post. The learned Standing Counsel after verification reported that these have not been complied with.

Para 10 of the Discipline & Appeal Rules reads under :

10. "Reversion pending Disciplinary Proceedings:

Where an appointment has been made purely on adhoc basis against a short term vacancy or a leave vacancy or if the Railway servant is appointed to officiate until further order in any other circumstances is held the appointment for a period less than one year, the Railway Servant shall be reverted to the post held by him substantively or of a regular post, when a disciplinary proceeding is initiated against him for imposition of major penalty. Where, however, the appointment was required to be made on adhoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Railway servant is held, the appointment for more than one year, if any disciplinary proceeding is initiated against him, he need not be reverted to the post held by him only on the ground that the disciplinary proceedings have been initiated against him. (R.N.'s No.E'A)RG 6-2 18.12.1987 N.R.S.N.9480)"

7. This is a case where by a letter dated 15.4.1996, the disciplinary proceedings have been initiated against

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the applicant by issuing minor penalty under D. & A. Rules 1968. It is the contention of the counsel for the applicant that where disciplinary proceedings have been pending, a reversion cannot be ordered.

8. The above instructions do not apply in this case. The minor penalty proceedings initiated is not the only proceeding. He was punished earlier. His performance was unsatisfactory. He was held to be lacking in devotion to duty and integrity. Even one of the several reasons mentioned in the letter of the S.D.P.O. mentioned above is enough to justify reversion. Besides disciplinary proceedings, several other grounds have been mentioned.

9. On the rights of an adhoc appointee to continue in a post and his rights or claims to seniority, the Apex Court has pronounced a number of judgments. In 1995 SCC (L&S) 643 (State of Orissa and another v. Dr. Pyari Mohan Misra) the Supreme Court had to decide a case of adhoc appointee who was directed to continue temporarily by a subsequent order until further orders. Such continuance was a long period of six years. The Supreme Court held that it could not be treated as regular service. His reversion without affording opportunity as a result of policy decision of the Government to appoint an I.A.S. officer in that post was held to be perfectly valid. The Supreme Court held that in the case of reversion of a temporary employee,

principles of natural justice are inapplicable.

In 1995 SCC (L&S) 1232 (Dr. Kashinath Nagayya Ibatte v. State of Maharashtra and others), the appellant, an adhoc appointee, had put in a long period of over 12 years of service. At that stage candidates selected by Public Service Commission were available. In view of the length of his service and availability of a number of unfilled posts, the adhoc appointee could be allowed in the discretion of the Government to continue in one of such posts. But the Supreme Court also held that temporary candidates working on adhoc basis have to give place to the candidates selected by the Public Service Commission and appointed by the Government in accordance with the Rules.

In 1995 SCC (L&S) 1134 (Ram Murti Singh v. District Inspector of Schools, Deoria and others), the Supreme Court had to interpret the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 and Rule 4 thereof. This is a provision enabling the adhoc appointment by promotion in the vacancy in the post of Head of the Institution till the making of regular appointment. Denial of such adhoc appointment to the seniormost teacher was on account of unsatisfactory relationship with teachers and other employees. Appointment of another person is held to be not violative of that provision.

In 1995 SCC (L&S) 685 (Food Corporation of India v. Thanewar Kalita and others), paragraph 3 sums up the



legal position as under :

" It is not in controversy that the respondents were appointed on adhoc basis dehors the rules. In view of the judgment of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Association v. State of Maharashtra and several decisions following that, it is settled law that if the appointments are made according to rules, though initially on adhoc basis, and are continued for a long time, on regularising the service, the entire period of temporary service would be counted for seniority. If such appointments are in excess of quota, the officiating period would not be treated for seniority, as the appointments then become fortuitous; and the persons appointed in excess of the quota are not entitled to count the entire period of service for seniority, the condition precedent being that the appointments are made within quota and are made in accordance with rules. In other words, if the appointments were not made in accordance with rules, though the appointees might have continued for a long time, the entire period of service would be fortuitous and so would not be counted towards seniority."

10. There are many seniors to the applicant. All the rules have been violated in promoting the applicant. It is strange that the administration says that no one else was willing to accept the adhoc promotion and therefore, a junior person was picked up for a Selection post. If nobody was willing, does it mean that administration has the liberty to make appointment to a Selection post of a junior person ? Does consent precede to appointment/posting ? This is a Selection post. None of the rules for filling up the selection post on an adhoc basis has been complied with.

The Standing Counsel says that the mistake is admitted and no selection was conducted when the applicant was appointed and even without moving the designated authorities and seeking their approval, the applicant was retained and continued. The retention of the applicant on adhoc basis for such a long time was not with approval. But the question is : does such a state of affairs advance the case of the applicant ? If the posting of the applicant is not in accordance with the rules, the reversion should be all the more justified. If the applicant had been retained for more than three months or six months and continued in that post for three years or more, that admittedly is illegal. The Standing Counsel states that the respondents admit their mistake. He says that the respondents have found the applicant to be deficient and they therefore, have reverted him. They have posted somebody who is senior to him although the replacement is also adhoc. The applicant being an adhoc/temporary employee who has not been selected in accordance with the selection criterion cannot claim any vested right in the promotional post. No doubt the practice of the Respondents is to be deprecated, but that does not justify the applicant's case for continuance or advance his case any further. Even if an adhoc appointment to a selection post has been done contravening all the rules on the subject, this confirms that the applicant

should not continue in that post even for a day. Since his very posting there is not in accordance with the rules, he cannot claim any vested right on the post. Therefore, this Application has to be dismissed and is accordingly dismissed. No costs.

Narasimhan
(N. SAHU) 6/2/97
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//