

CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit Bench at LUCKNOW

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Gandhi Bhawan, Lucknow

May , 1989

Registration O.A. No. 562 of 1987

L.K. Banger ..... Applicant

vs.

Director General, RDSO

Lucknow ..... Respondent

Hon' Mr. G.S. Sharma, J.M.

Hon' Mr. K.J. Raman, A.M.

( By Hon' Mr. K.J. Raman, A.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri L.K. Banger on 29-6-1987, when he was working as Senior Design Assistant, Motive Power Directorate, R.D.S.O., Lucknow, mainly seeking to be regularised on the post of Design Assistant 'A' (D.A. 'A') with effect from 01-7-1985. The applicant states that he has been promoted as Senior Design Assistant against a reserved point in the reservation roster on an ad-hoc basis pending selection against an existing vacancy. According to the applicant, the selection for the said post ought to have been held within a maximum of six months from the date of occurrence of the vacancy, but the respondent failed to hold the selection within a reasonable period. The applicant refers to certain letters from the

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Railway Board (Annexures- A-1 to A-3), according to which all those who have officiated for 12 months continuously are required to be confirmed. The applicant even claims that in case the appointees continuously officiate for more than 18 months, they will be deemed to be automatically confirmed. According to the applicant, the Railway Board's letter dated 27-6-83, annexed to the application, confirms the above position. The applicant also refers to certain orders regarding ad-hoc appointments (Annexure- A.4), and argues that ad-hoc promotees who have proved themselves successful in the trial over a period of 18 months, are deemed to be successful and also deemed confirmed on that post. The applicant claims that having been allowed to continue beyond 18 months on the particular post, the applicant ought to have been confirmed on that post against the permanent vacancy. The applicant also states that because he was promoted against the reserve point in the roster, he should <sup>be</sup> deemed to be senior to all who have been promoted, whether the applicant was promoted on ad-hoc basis or otherwise. The applicant also refers to the Railway Board's letter dated 3-7-1985 (Annexure-A.5), sanctioning a Cadre Restructuring Scheme in Group 'C' <sup>with</sup> the ratio of 60: 40 between the Chief Design Assistant and Senior Design Assistant of the R.D.S.O. and states that in terms of para 6 thereof, all the existing rules and orders in regard to reservation for the scheduled castes/ schedule tribes would apply while filling up additional vacancies in the higher grade, arising as a result of restructuring. He refers to

paras 5.1 and 5.2 of the Board's letter referred to above and states that the orders dated 4-12-86 passed in the Railway Board regarding the manner of filling of higher post, as a result of restructuring, may be declared as illegal. According to the applicant, he has represented against the denial of promotion to the Grade of Chief Design Assistant to the Respondent to which the latter have not replied. The applicant claims that in the light of the facts brought out by him in the application, briefly summarised above, he is entitled to his regularisation as D.A. 'A' w.e.f. 01-07-1985 for the purpose of his promotion to the post of C.D.A. under the Restructuring Scheme. The applicant states that <sup>the</sup> All India Scheduled Caste and Scheduled Tribes Railway Employees' Association, has also espoused his cause in this matter before the respondent. The said Association is the second applicant in this case.

2. The applicant was actually reverted as D'Man 'A' w.e.f. 22-8-1987.

3. In the reply filed on behalf of the respondent, it is stated that the applicant was originally appointed as Tracer in 1963; later he was promoted as D'Man 'B' in 1970 and D'Man 'A' in 1974. He was subsequently promoted as D.A. 'A' purely on an ad-hoc basis, subject to replacement by a duly selected candidate, w.e.f. 5/7/1982. The respondent aversthat on availability of a suitable selected candidate, the applicant was reverted as D'Man 'A' w.e.f. 22-8-1987. It is

stated that the applicant did not appear in the selection for the post of D.A. 'A' (Senior D.A. - Provisional) held on 24/28-1-1987 and 25/28-4-1987, and as such, could not find place in the select panel for the post of D.A. 'A' and consequently reverted to the post of D'Man 'A' as aforesaid. In para 6 of the reply, the respondent averst that there is no hard and fast rule to conduct departmental selection within a period of six months from the date of the occurrence of the vacancy. It is submitted that action for filling up the vacancies were started by placing a requisition to the Recruitment Section of R.D.S.O. in 1984. On a representation from 9 employees, the selection was postponed to 28-2-1986. The applicant in this case alongwith other employees had requested for postponement of the selection vide representation dated 4-2-1986 (Annexure R-4) and consequently the selection was postponed to May, 1986. In the meantime the vacancy position changed and a fresh requisition was sent, and the selection was fixed for 20-12-1986. This was postponed to 24-1-1987 due to administrative reasons. Since a number of candidates including the applicant did not appear in the selection, a supplementary selection was held on 25-4-1987 / 28-4-1987 and the result was declared on 19-5-1987. Since the applicant did not appear either in the main selection or in the supplementary selection, he could not find a place in the select panel. The respondent states that from the above it is evident that there was no deliberate attempt or malafide intention on the part of the administration to avoid holding of selection. The respondent states that the orders of the Railway Board (Annex.A-1 to A-3)



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are applicable in respect of those employees who have acquired the right to the officiating post by virtue of their empanelment. The applicant who was officiating purely on an ad-hoc basis could not acquire such right to claim regularisation against the post of D.A. 'A'. The appointment of the applicant as D.A. 'A' was made initially for 3 months, but it was continued as no selection could be conducted due to various reasons stated earlier. As far as, regularisation/confirmation against the post which the applicant was holding is concerned, it is submitted that the Railway Board's orders on the subject are applicable to those staff who are working on regular basis after empanelment only (Copy <sup>at</sup> Annexure-A.3). Since the applicant was not selected and empanelled and was merely working on ad hoc basis, these orders are not applicable and he was liable to be reverted to the post of D'Man 'A' on the availability of the selected candidates. The respondent states in their reply that promotions in the category of Senior D.A. under Cadre Restructuring were made in accordance with the instructions as laid-down in paras 5.1 to 5.3 of Railway Board's letter dated 3-7-1985 (Annexure-A.5), but the matter was subjudice in the case of N.K. Saini in case No. 414/87. Since the applicant was holding the post of D'Man 'A' i.e. two grades below, normally, he was not to be considered against the post of Sr.D.A. It is stated that no post of D'MAN 'A' was upgraded as D.A. 'A' to consider his case under Cadre Restructuring and the vacancies in the category of D.A. 'A' ought to be filled strictly according to the R & P Rules for which selection was held



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and the applicant failed to appear in the selection. The respondent avers that the applicant was to be considered for promotion, first as D.A. 'A' and then as C.D. 'A' in terms of Board's letter dated 3-7-85 against the left over vacancies. However, due to stay granted in the case of N.K. Saini by the Hon'ble Tribunal, Allahabad, in case No. 414 / 1987, the case of the applicant could not be taken up. The respondent states that the appeal received from the applicant is being examined separately.

4. In the rejoinder filed, the applicant has and states reiterated his own earlier contention that the case of N.K. Saini has no application, in the instant case for continuance of the applicant on his promoted post.

5. During the oral arguments, the learned counsel for both the sides reiterated the contentions summarised above. We have carefully considered the various contentions advanced by both the parties. The case of the applicant rests mainly on two main contentions. The first contention is that having been allowed to officiate on the post of D.A. 'A' for a period of about 5 years, even though on an ad-hoc basis, the applicant should be deemed to be confirmed or regularised on that post. In this connection the applicant has referred to certain orders of Railway Authorities (Annexures -A.1 to A-4). On a scrutiny of these letters and instructions, we find no justification for drawing the conclusion which the applicant has done. Annexure-A.1 is a circular letter of the Railway Board dated 9-6-1965, which states that any person who is permitted to officiate beyond 18 months cannot

be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules. Annexure-A.2, is a letter signed for General Manager of N.E. Railway and contains a number of directives to the lower authorities for taking action expeditiously to confirm the staff officiating in higher grade in clear vacancies. In this connection, the period of 18 months is mentioned. This letter also does not contain anything to suggest that after 18 months of officiation, even an ad-hoc promotee should be automatically deemed as confirmed on that post, irrespective of the requirement for proper selection and empanelment. Paras 7 & 8 of this letter make it quite clear that the instructions in question apply only to those employee who have acquired prescriptive right to the officiating post by virtue of their empanelment or having been declared suitable by the competent authority, and not to those officiating on promotion as a stop-gap measure. The orders in Annexure-A.3, dated 27-6-83 make it quite clear that the safeguard in respect of promotees officiating for more than 18 months, apply only to those who have been promoted after a regular selection. In view of this position, the applicant's contention that because he officiated continuously for more than 18 months, he should be deemed as regularised or that he should be necessarily regularised with retrospective effect, cannot be accepted on the basis of the letters and instructions of the Railway Board referred to above by the applicant.

6. The applicant was initially promoted to officiate as Senior Design Assistant by Staff Posting Order No. 336 of 1982, dated 5-7-1982. It is clearly mentioned in the order that, he was being promoted on ad-hoc basis for the period not exceeding 3 months or till selected candidates become available whichever is earlier. It is mentioned that this promotion is purely on ad-hoc basis and will not confer any claim on the staff concerned for regular promotion in future. Admittedly, this short-term ad-hoc promotion was continued from time to time till the selection process was completed in 1987. It is obvious from the appointment order referred to above that the posting of the applicant and others by that order was a stop-gap arrangement, subject to and conditional on the selection of qualified candidates according to rules. The respondent have furnished the reasons for the delay in the selection. Though the delay may be deprecated, it cannot be held that because of the delay in the selection, the ad-hoc appointees should be automatically treated as having passed the test of selection. It is also well established that the applicant did not appear either in the main selection or in the supplementary selection which was held for the benefit of the applicant and a few others like him. It is observed that the applicant is not correct in claiming that the present application was pending at the time of <sup>the</sup> selection, because, the selection was held in January and April, 1987, whereas the application is dated 29-6-87. It is well established in a number of decisions

of various courts that an ad-hoc promotee has no right to the post and that he must conform to the rules regarding the qualification before he could be regularised (Ravish Gupta and others Vs. Secretary Ministry of Personnel and Training, ATR 1986 CAT (Delhi) 22). In this case the order of reversion has been passed in terms of the conditions of promotion and is without any stigma. It cannot be held as illegal merely because, there was some delay in holding the selection test.

7. The other ground on which the applicant is seeking relief is based on the instructions of the Railway Board issued on 3-7-85 in connection with the Cadre Restructuring of Group 'C' staff of RDSO (Annexure-A.5). In these instructions, it is mentioned that the ratio of posts of Chief Design Assistant and Senior Design Assistant shall be 60% and 40%. Paras 5.1 and 5.2 specify a modified selection procedure in the process of upgradation. The applicant does not say precisely under which provision he is claiming regularisation with retrospective effect. It may be mentioned here that the applicant was promoted on an ad-hoc basis in the year of 1982, long before the instructions dated 3-7-1985 were issued. The applicant's reversion arising directly in terms of his original order promotion has nothing to do with the Cadre Restructuring Scheme. At any rate, the applicant has not specified the ground on which the selection process has to be dispensed with in his case in terms of the restructuring instructions. It is not mentioned as



to how many vacancies have arisen at the higher levels and what the position of the applicant in the seniority list is; and when the applicant became entitled to be considered for promotion in accordance with the restructuring instructions. The restructuring instructions relate to the process of promotion and do not deal with the regularisation of ad-hoc promotions. The respondent in para 14 of their reply has stated that the case of the applicant for promotion in terms of the Cadre Restructuring Instructions could not be taken up earlier, because of a stay order in case No. 414 of 1987, and that his appeal is being examined separately. During the oral arguments, it was mentioned that the case in question has been finally decided. The respondent would no doubt consider the case of the applicant and others for promotion in terms of the restructuring instructions and any orders of the Court in the case referred to above. No case, however, has been made out by the applicant in the present application, for interfering with the reversion order already passed.

7. In the result, the application fails and is dismissed with no order as to cost.

*W.C. Calman*  
MEMBER (A)

*D. Bhattacharya*  
MEMBER (J)

(sns)

*69 Lucknow,  
July 13  
MAY 1989.*