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CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH LUCKNOW

....

Registration T.A. No.1045 of 1987(T)

(Writ Petition 2128 of 1982)

Hiralal and others Petitioners

versus

Union of India and others ... Respondents

Hon'ble Justice U.C. Srivastava, V.C.

Hon'ble Mr A.B. Gorthi, A.M.

(By Hon' Mr Justice U.C. Srivastava, VC)

The Writ petition No. 2128 of 1982 filed before the High Court of Judicature at Allahabad, Lucknow Bench was received on transfer to this Tribunal under Section 29 of the Administrative Tribunals Act No. XIII of 1985. The petitioner has sought relief against his reversion order dated 26-4-1982 (Annexure-4 to the writ petition). The writ petition was admitted and interim order staying the operation of reversion order was passed. Out of 3 petitioners, petitioners no. 2 and 3 have retired from service, out of whom petitioner no.2 is reported to have died. The petitioner no.1 is still in service.

2. Briefly, the facts are that the petitioner no.1 was initially appointed as Khallasi on 15-10-1958 and subsequently was promoted as Tele-Com Maintainer in the scale of Rs.260 - 400 and thereafter promoted to the post of Cable Jointer in the scale of Rs.380 - 560. He was put to officiate on the Grade III of Tele-com Inspector in the grade of Rs.425-700 on ad-hoc basis, in view of the fact that the posts were created

and no selection had taken place. It is said that he appeared in the prescribed test for the post of T.C.I. Grade III in the grade of Rs.425-700, but was declared unsuccessful consequently the petitioner was reverted and the person who got success in the test got appointed in place of the petitioner. The petitioner has placed reliance on the Railway Board circulars i.e. the persons who have worked on the higher posts for 18 months or more cannot be reverted and had to be treated as permanent for all practical purposes. Rather more reliance has been placed on the latest circular Annexure-R-2 dated 29-7-1985 in which it was specifically provided that all the 3 categories whether T.C.I, Head T.C., and Conductor in the grade of Rs.425-640 who were on ad-hoc basis against the regular vacancies during the period 1979 to 31st December, 1983 pending the finalisation of the selection/suitability/viva voce test may be regularised from the date of their completing ad-hoc service for 18 months and also may be considered for seniority and promotion in the next higher grade. Now the petitioner placed reliance on the said circular, but he was out of these categories as he was appointed on ad-hoc basis as T.C.I. Grade III which is not covered by that circular. It is strange that the persons of similar categories were included in that circular, but the T.C.I. Grade III was not considered. It may be that the union did not raise their

case or it was a case of mere omission, whatever it may be the persons of this category were not included and it is desirable that their cases for regularisation like the other three categories may be considered.

3. In view of the fact that the applicant has been working against the said post and he appeared in the said test, he should not have been reverted out right. In this connexion, we may refer the Full Bench Judgment of Jethanand's case , in which it was directed that the person concerned may be given two more opportunities to appear in the test, in case he even then fails, only then he may be reverted and till then he may be allowed to continue on the post held by him. The similar situation arises in this case. Accordingly , we direct that the applicant shall be given two opportunities to appear in the test and in case he fails in both, only then he may be reverted, otherwise he has to be allowed to continue to hold the post of T.C.I. Grade III. We also direct that the Railway Board should consider as to whether the T.C.I. Grade III in the scale of Rs.425 - 700 could also be included within the ambit of Circular dated 29-7-1985, copies of which are Annexure-RA-2 to the rejoinder affidavit. In case the Railway Board takes a decision that they may also be included within the ambit of that Circular, obviously, there is no necessity of asking the petitioner to appear in the test. With the above directions and orders, the application is disposed of finally.

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4. Parties to bear their own costs.


MEMBER (A)


VICE CHAIRMAN

(sns)

May 8, 1991.

Lucknow.