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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH

Registration T.A. No. 1106 of 1987 (L)

Madan Kumar Lal & Others Applicants
versus

Union of India & Others Respondents

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B. Gorathi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava)

This application which was initially filed Writ Petition before the Lucknow Bench of the Allahabad High Court has been transferred to this Tribunal for adjudication. The applicants (three in numbers) ^{have} challenged the orders of reversion passed on different dates from ~~as~~ post to their original post of Peon, Store Mazdoor and Khalasi respectively. The applicant Nos 1 & 2 were appointed as Khalasi in class IV category under the Deputy Controller of Stores, Northern Railway, Alambagh, Lucknow with effect from 1.5.58 and 6.10.56 respectively. The applicant No. 3 was originally appointed as Khalasi on 3.9.58 but was transferred to the Stores Department in the year 1961 in the same capacity. The next promotional post for the applicants was Clerk-typist which was in class III category. According to the applicants, 33.3% of posts of class 'C' category were reserved from class IV by way of promotion and the applicants were eligible for the same and that is why they were appointed as such. The applicant No. 1 was appointed as typist

in the year 1976, and in the year 1977 he worked on some other post but in 1978 he was promoted temporarily to the post of typist and since then he continued to hold the post till the order of reversion. The applicant No.2 also was promoted to the post of typist with effect from 20.9.1978 and continued to hold the post till the order of his reversion. Applicant No.3 was tested for the post of typist in December, 1970 but he could get his promotion only in the year 1971. He was tested again for the said post and was appointed on 15.12.1980 and since then he continued to ^{work against} the said post. The applicants were reverted on 20.1.78, 24.12.82 and 20.11.82 respectively. According to the applicants they also appeared for the test to the post of Clerk and passed the same in 1977 but the litigation in respect of the same is still pending in the Hon'ble High Court. According to the respondents they could not succeed in the said examination. The applicants have challenged the order of reversion mainly on the ground that in view of the facts that they have worked for 18 months continuously, ^{and} they cannot be reverted. According to applicant No.3, in order to accommodate the direct recruits, he has been reverted. The circular on which they rely i.e. the benefit of 18 months has been appended alongwith the affidavit filed by the respondents in reply to the rejoinder affidavit. The Circular of the Railway Board dated 15.1.66 on

which reliance has been placed by the applicants regarding "reversion on grounds of general unsuitability of staff officiating in a higher grade or post". Now the relevant portion of the same reads as under :-

" A question has been raised whether this safeguard applies to persons who are officiating on promotion as a stop gap measures and not after empanelment (in the case of Selection posts) and after passing the suitability test (in the case of non-selection posts). It is clarified that the safeguard applied to only those employees who have acquired a prescriptive right to the officiating posts 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 and also to those cases where an employee duly selected, has to be reverted after a lapse of 18 months because of cancellation of Selection Board proceedings or due to a change in the panel position consequent to rectification of mistakes in seniority etc."

The procedure for holding selection and rules regulating promotion to selection and non-selection post against 33.3% vacancies reserved referred to earlier which has also been filed with the said Affidavit provides that for a "written examination referred to above will be treated as corresponding to "Professional ability test" for the purpose of selection and, therefore, the qualifying marks, will be 60%. Staff who qualify in the written examination, irrespective of their being more or less than four times the number, should be examined by a Selection

Board comprising of three Senior Scale Officers following the same procedure as prescribed for selection posts in the higher grades except that the names of staff who qualify in the selection should be placed on the panel in the order of seniority without giving any weightage to those securing over 80% marks in the aggregate."

2. In the Counter Affidavit filed by the respondents, it is apparent that the applicants did not undergo the process of selection as is provided but they were only tested, ^{and the} tests undergone by them is not analogous to the selection as provided. It is also apparent that their promotion was only adhoc in nature as may be awaiting the regular examination which is pre-requisite for such appointments. The position of the applicants was thus that they were holding the post of typist as a step gap arrangement though the arrangement continued for more than one year, but the arrangement will not confer any rights on them. The adhoc appointment which was not in accordance with the rules provides ^{ing for} the manner in which regular appointment was to be made could not confer upon them any rights to claim the post. The respondents reduction of a post ~~are~~ the reason why this reversion has been made after giving an opportunity to the applicants as has been explained in the Counter Affidavit. There is no mala fide in the reversion order which has been passed in the normal course. The benefit of the Railway Board's circular is not available to the applicant in view

of the fact that they have not yet undergone the process of selection, that is, the promotional test in which they appeared cannot be equated with the selection contemplated under the Rules referred to above. As such the applicants have no right to the post as their reversion in no manner is against any Rules. We are ~~justified~~
^{fully} in our decision by a Full Bench Judge of Central Administrative Tribunal (Shri Jethanand and Others Versus Union of India & Others T.A. No.849 of 1986) decided on 5.5.89. This application is bound to fail and the application is accordingly dismissed with the direction that two opportunities will be granted to clear the selection test and in case they succeed they will be promoted. In case any other applicant is still working against the post from which he was reverted under any order, he will not be reverted till then. In the circumstances of the case parties will bear their own costs.

Amulya K
Member (A)

L
Vice Chairman.

Dated the 8 March, 1991.