

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
CIRCUIT BENCH: LUCKNOW.

TA 1138-02(T)
up 1677-03

T.S.Pawai (Deceased)	Applicant
Through Smt.Bimla Pawaia & Others	Vs.	
Union of India & Others	Respondents

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

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. A.B. Gorthi, A.M.)

Writ Petition No. 1677 filed by Shri T.S. Pawaia in the Lucknow Bench of the Allahabad High Court, having been transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985, is listed before us as a Transferred Application as cited above. The petitioner's prayers in the writ petition was for a direction in the nature of mandamus commanding the respondents to promote him as Permanent Ways Inspector (P.W.I. in short) Grade I and Assistant Engineer (AE for short) from a date when juniors to him were so promoted and to revert the petitioner from the post of AEN Class II.

2. The petitioner joined Northern Railway as an Apprentice PWI on 24.2.1958 and was made regular on 17.2.1961. He was promoted as PWI Grade III on 23.11.67 and to Grade II on 20.4.72. In the seniority list dated 23.8.75 (Annexure-I) his name was at serial no. 142 at PWI Grade II. Since he was holding the degree of A.M.I.E., he was eligible for promotion direct as AEN (a class II post). In 1974 he was duly selected and empanelled for promotion to the post of AEN and was actually promoted as AEN, though purely on ad-hoc basis w.e.f. 11.10.74. He was sent to Zambia on deputation as AEN which appointment he held throughout his period of deputation from 20.6.75 to 19.6.80. On his return to India he was posted to Lucknow as AEN, Northern Rly.

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Having passed the test, he was allowed to cross the Efficiency Bar on 10.7.81. The smooth upward ² raise in his career stopped there, it seems. While he was away in Zambia, several of his juniors were empanelled as PWI Grade I where~~as~~ as he remained on the ^{panel} ~~post~~ of PWI Grade II only as his appointment as ² AEN continued to be ad-hoc in nature.

3. When the writ petition was pending, he was reverted to his regular grade of PWI Grade II on 18.2.84 but soon thereafter he was promoted and posted as PWI Grade I on 5.3.84 as he had already qualified in a test for promotion to PWI Grade I. The respondents however, rejected all his requests and representations seeking regularisation as AEN, though several others juniors to him were regularly promoted in the meantime as AEN.

4. While most of the facts stated by the petitioner were admitted by the respondents, they took the view that since the petitioner did not appear for the appropriate test for promotion to AEN, he could not claim to be retained in that appointment to which he was originally promoted on purely ad-hoc basis.

5. The petitioner contended that he was selected and his name was kept in a 'Shadow Panel' for promotion as AEN after he had qualified at a supplementary selection for the year 1972-73 held in 1974. It was on that ^{count} ~~cannot~~ ² only he was promoted as AEN and was even sent abroad as AEN. With a view to rebut the respondent's contention that there was no ~~such~~ [↓] method of selection in vogue at that time except for the Limited Departmental Examination to fill up 25% ^{of} the promotional posts, the Petitioner annexed to his Rejoinder a copy of the counter affidavit filed by the respondents in the case

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of J.S.Jolly Vs. Union of India (W.P.NO. ^{2038 1975} ~~1677~~ of ~~1983~~) paras 5 and 6 of the said counter affidavit, relevant to the present case are reproduced below:-

5. That in reply to the contents of paragraph (4) of the Writ Petition, it is stated that prior to 1973, the recruitment rules provided for calling for selection for the posts of Civil Engineering Assistant Engineers (Class II) all those employees who were Engineering graduates holding permanent post in Class III service. However, in exercise of powers under Article 309 of the Constitution of India, President of India amended the Civil Engineering Assistant Engineers (Class II) Recruitment Rules, 1965, by Notification dated 31.7.73 whereby it was provided that 75% of the vacancies shall be filled by promotion through selection out of the staff in grade Rs. 335-425 (AS) and in higher Class III grades and the remaining 25% vacancies shall be filled through a limited departmental competitive examination of permanent class III staff, in the technical category in the equivalent grades of Rs. 205-280 and above and had put in at least 5 years service in the grade.

6. That the contents of paragraph 5 of the Writ Petition are not correct as alleged. There is only one list prepared comprising of the persons who are brought on the panel and after its approval by the Competent Authority, is called the panel and this consists of the number needed for promotion. This panel is duly declared for information of all concerned and is implemented. However, a separate list for departmental use is also prepared, of those who qualify themselves for the post of Assistant Engineer (Class II) but fail to find a place in the panel which consists of a given number, for making ad-hoc promotions in case of additional need to promote persons till another panel is formed. This type of list is neither declared nor is communicated to the staff concerned, and is meant only for administrative use. The names of employees born on the second type of list which is known as shadow list, does not confer any right on the employees concerned for promotion to the selection post of Assistant Engineer, Class II.

6. , From the above, it appears that the petitioner's contention that he qualified for promotion to the post of

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AEN and that his name was kept in the shadow list and that he was accordingly promoted as an ad-hoc AEN cannot be rejected as *fallacious*. His promotion from Class III post of PWI Grade II to the class II post of AEN, overtaking those in the Grade of PWI Grade I was thus neither fortuitous nor ^a stop gap arrangement. It was for the ^{same} reason that he was allowed to continue in the appointment of AEN for such a long period of about 9 years, including a tenure of 4 years abroad.

7. We are ~~therefore~~ of the considered opinion that the petitioner's prayer for continuation as AEN and regularisation in that said post from the due date is well founded. In this context we may refer to the judgment of a full Bench of the Tribunal in *Tethanand Vs. Union of India* 1989(2) SLJ(CAT) 657. Paras 46 & 47 thereof relevant to the present case are reproduced below:-

It is true that the Railway Administration laid down a policy by a Circular dated 9.6.65 that an employee who had officiated in a promotional post more than 18 months is not liable to be reverted without following the Discipline and Appeal Rules. This Policy decision was, however, amended by a subsequent Circular of the Railway Board dated 15.1.1966, to say that the above principle would apply to a Railway Servant who had been selected after a test and empanelled for appointment to the promotional post. The Railway's have also made it clear that this principle would not be applicable to an employee who was officiating merely as a stop-gap arrangement or on adhoc basis. Thus the criteria laid down by the Railway Board is that a Railway servant, in order to have the protection from being reverted after 18 months of adhoc officiation in a promotional post applies only in the case of those Railway servants who have been selected or empanelled for the said promotional post.

Reference may be made to the Railway Board's Circular dated 15.1.1966 and the two subsequent Circulars dated 5.12.84 and 20.4.85 wherein the

words are:

" 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."

This Rule laid down in Circular dated 15.1.66 has been reiterated in Circular letter dated 5.12.84 and Circular dated 20.4.85. The portion quoted above spell out the concept of right when a person is acting in an adhoc capacity in a promotional post. If he has not been duly selected or until found suitable and empanelled for promotion, he does not acquire a prescriptive right for the post provided also in these three Circulars. It will be seen that the prescriptive right to hold that post comes from the selection after a test. They are found suitable for ~~xx~~ being included in the panel of names for that post. The basic feature is that the Railway servant should first be qualified and found suitable by a test, to be empanelled for appointment to the promotional post. It is only then, he acquires a prescriptive right to hold the post. Such a person acquires a further right when he completes 18 months officiation in the promotional post and that is why he cannot be reverted without following the procedure under Discipline and Appeal Rules. In other words, such a person cannot be reverted except after drawing up charges against him and holding a regular disciplinary proceedings.

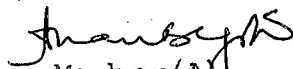
8. In the instant case, the appointment order merely states that it was purely ad-hoc. It cannot however, be said, under the circumstances of the case that it was made as a stop gap arrangement or was due to fortuitous circumstances. There is also enough indication that he was duly tested and selected and his name was kept in a shadow panel. His appointment on promotion as AEN was approved by the General Manager who was the competent authority.

19. During the pendency of the case, the petitioner expired, while in service on 20.3.88 and the case was pursued by his legal representatives. He had himself

10. We have heard at length Shri P. Mahapatra learned counsel for the legal representatives and Shri A.K. Bhargava learned counsel for the respondents.

11. In the result we quash the respondent's order R.No. 84/IRSE/79, dated 18.2.84, so far as it related to the reversion of the petitioner and direct that he be deemed to have continued as AEN. He shall also be deemed to have been regularised as AEN from the date on which his immediate junior was regularised. All consequential benefits, monetary or otherwise including revised family pension shall follow.

12. The petition is allowed in the above terms without any order as to costs.


Member (A)


Vice-Chairman.

8 November, 1991,

(sph)