

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
Circuit Bench at Lucknow
Registration T.A. No.1105 of 1987

(AH)

(Writ Petition No.10 of 1982 of the)
(High Court of Judicature at Allahabad,)
(Lucknow Bench)

Dinesh Chandra Misra Applicant

Versus

Union of India & Others Opposite Parties.

Hon.Justice K.Nath, V.C.

Hon.K.Chayya, A.M.

(By Hon.Justice K.Nath, V.C.)

The writ petition described above has been received by transfer under Section 29 of the Administrative Tribunals Act XIII of 1985 for disposal by this Bench. The prayer is to quash a suitability test examination held on 20.7.82 and an order of reversion of the applicant passed on 23.12.82, Annexure-9 in consequence of the test from the post of Head Ticket Collector to the post of Ticket Collector.

2. In para 4 of the application and corresponding para 4 of the Counter Affidavit, it is admitted by both the parties that the applicant, while working as a Ticket Collector in a substantive capacity, was promoted on ad hoc basis with effect from 1.1.80 to the post of Head Ticket Collector. Similarly, it is admitted in para 8 of the affidavit of both the parties that an order dated 24.11.80 was passed by the D.P.O. promoting the applicant on ad hoc basis with immediate effect, alongwith some other persons, to the post of Head Ticket Collector against an upgraded existing vacancy.

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3. However in course of time the applicant, alongwith others, was called upon to appear at a test for regular selection to the post of Head Ticket Collector. The applicant appeared at the test on 20th July, 1982 under protest. He was declared unsuccessful hence by the impugned order dated 23.12.82, Annexure-9 he was reverted to the post of Ticket Collector.

4. The applicant's case is that according to the decision of the Railway Board contained in Annexure-5 and a scheme for upgradation of various selection posts with instructions contained in Annexure-1, it was not permissible to hold a written test for regularization of promotions on upgraded posts. The test, therefore, was without jurisdiction and the order of applicant's reversion was illegal. It is further contended that, according to those instructions, the applicant was entitled to be regularised on the basis of his having completed more than 18 months of service of Head Ticket Collector since after 1.1.1980.

5. According to the opposite parties, however, the benefit of automatic regularization after 18 months of service did not apply to cases of employees working on ad hoc basis on selection posts. It is said that the applicable orders are contained in Annexure-C1 dated 15.1.66 and not Annexure-5 dated 3.3.72.

6. We have heard the learned counsel for both the parties and have gone through the materials on record. According to Annexure-C1 dated 15.1.66, persons who were officiating for more than 18 months could be reverted for unsatisfactory work only after following the procedure prescribed

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for taking disciplinary action. The circular went on to say that that protection was available only to those persons who had been empanelled (in selection posts) or who had passed the suitability test (in non selection posts). Admittedly, the applicant had not been empanelled and therefore he could not get benefit of Annexure-Cl. Annexure-5 dated 3.3.72 mentions that cases of staff promoted on regular basis should be reviewed after one year of continuous officiation with a view to determine their suitability for retention in the grade. It was further directed that the review of decision ought to be taken during the first eighteen months of officiating service and that on that procedure being followed there would be no question of denying confirmation on completion of two years of officiating service in clear permanent vacancy for reason of unfitness for confirmation. On the face of it, this decision applies to persons who are promoted on regular basis. Admittedly, the applicant was promoted not on regular basis but on adhoc basis. Annexure-5 therefore could not bring any benefit to him.

7. However, Annexure-1 is a later letter of the Railway Board conveying its decision in respect of upgradation of various selection posts. The letter would show that a decision had been taken for upgradation of various selection posts with effect from 1.1.79 and for expeditious implementation thereof had directed that written test be dispensed with for filling up the upgraded posts. It is noticeable that while the letter went on to say that selection test would continue to be

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held in respect of regular posts, it was decided in unmistakable terms to dispense with the written test for filling up the upgraded posts with the specific object of avoiding delay in implementation of the upgradation scheme. The decision went on to say that it would not be cited as a precedent, signifying that that was a one time relaxation. The closing paragraph of Annexure-1 re-emphasized to make special efforts to fill up the upgraded posts on 'top priority basis'.

8. As already mentioned, it is the admitted case of both the parties in para 8 of their affidavits that the applicant had been given ad hoc promotion in the upgraded post of Head Ticket Collector on 1.1.80. By the time when the impugned reversion order dated 23.12.82 was passed he had already put in more than two years and 11 months of service. It was not expected, therefore, in the light of Annexure-1, that the applicant should have been required to appear at a written test for filling up the post held by him.

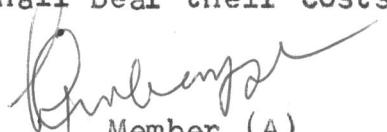
9. If there was any doubt in this regard, it appears to have been dispelled by a circular dated 29.7.85, Annexure-S1 setting out that, among others, Head Ticket Collectors who had worked on ad hoc basis between 1979 and 31.12.83 pending finalization of selection/suitability test may be regularised from the date of their completing 18 months ad hoc service against regular posts for the purpose of their seniority for promotion to the next higher grade.

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10. On a consideration of these decisions of the Railway Board and the facts of the present case, there is no manner of doubt that the applicant could not be called upon to appear at a written test for the purposes of regularization to the upgraded post of Head Ticket Collector and that since he had already completed 18 months of ad hoc service on that post prior to the holding of the examination, he ought to have been regularised without being called to appear at the test. The order of reversion dated 23.12.82 contained in Annexure-9 therefore must be quashed.

11. The application is allowed and the order dated 23.12.82, Annexure-9 of the reversion of the applicant is quashed. The opposite parties are directed to regularise ~~forwards~~ the services of the applicant as Head Ticket Collector in accordance with law. They shall also grant to him such consequential benefits as may be admissible to the applicant. Opposite parties will comply with this directions within three months from the date of receipt of the copy of this order. Parties shall bear their costs.


Member (A)


Vice Chairman

Dated the 24 October, 1989.

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