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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH.

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T.A. No. 1900 of 1987

(W.P. No. 3160 of 1985)

D.K. Bonerjee ... Applicant.

Versus

Union of India and others ... Respondents.

...

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon'ble K. Obayya, A.M.)

This application has been received from Lucknow Bench of the High Court of Judicature at Allahabad on transfer under section 29 of the Administrative Tribunals Act, 1985. The petitioner, who is working as Typist in the Northern Railway, Lucknow, has prayed for a direction to the Opposite Parties to dispose of his representations (Annexures - 11 & 12) seeking promotion to the post of Senior Typist assigning due seniority over one M. Abbas and to quash the memorandum dated 19.6.1985 (Annexure- 10) informing the petitioner to appear for typing test fixed on 12.7.1985 for selection to the post of typist.

2. The petitioner was engaged as 'Casual Khalasi' in the Northern Railway in 1970, he was appointed as 'Substitute Khalasi' in 1972 and as 'Temporary Khalasi' in 1973 in the same Railway on scale Rs. 70-85. Later in 1975, he was appointed as Typist on adhoc basis. He is continuing on same post as on date. His case is that he has been working in the post of Typist for the last

more than 10 years, as such, he is entitled for regularisation in terms of Board's circular dated 14.4.1980 (Annexure A 7) and that by virtue of seniority he is eligible to be promoted to the post of Senior Typist. His representations in this regard have been rejected and he has been informed vide Annexure-9 that his promotion cannot be regularised unless he passess proper selection test against $33\frac{1}{3}\%$ class IV quota.

3. The stand taken by the opposite parties in their reply is that the petitioner was a Casual Khalasi on daily wages from 30.5.1970 to 31.12.1971. The posts of typists are filled up by selection $66\frac{2}{3}\%$ by direct recruitment through Railway Service Commission and $33\frac{1}{3}\%$ by promotion from amongst class IV serving employee with three years of service with typing knowledge through a departmental selection. It is stated that the post of Typist grade Rs. 260-400 is a selection post. The petitioner was eligible to appear for the typing test in the departmental promotion quota from amongst class IV employees. The petitioner appeared for the typing test held in 1976 but failed to qualify in English typing test. He exercised his option to appear in the Hindi Typing test and was allowed to appear in the Hindi typing^{test}/in 1978. He passed the Hindi typing test but failed in the written test and consequently he was not selected for promotion to the post of typist. Again in 1980 applications for the post of typists^{were} recalled from the departmental employees. The petitioner applied for the same and the test was held on 5.11.1980 but the petitioner did not appear in the test. Another test was fixed in 1985 and the petitioner has applied for the same, however, he moved the High Court and obtained stay for conducting the test. Consequently, the test could^{not} be held. Regarding the promotion of M. Abbasi and others it is contended that they were successful in selection and were duly promoted. It is further stated that

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there is only
one vacancy for promotion to the post of typist from
the departmental quota and against which there are ^{ad hoc} employees. The petitioner has no right to be regularly
appointed unless he is successful in the selection test.

4. In the rejoinder, the stand taken in the claim
petition is reiterated. The petitioner has also stated
that his appointment as typist was after due selection,
as such, he was entitled for regularisation in the past
and he cannot be reverted to a lower post.

5. We have heard the learned counsel of the parties
and perused the record. We have also given anxious
consideration to the rival contentions and the pleadings.
So far as the facts of the case are concerned, there is
no dispute. The petitioner was initially engaged as a
'Casual Khalasi' and 'Temporary Khalasi' and became
'Regular Khalasi' in due course. His appointment to the
post of typist in 1975 was on ad hoc basis and he continues
to be so as on date.

6. The question is whether he is entitled for
regularisation as a typist and promotion thereafter, to
the post of senior typist without subjecting himself to
the selection test and being declared successful thereon,
merely on the strength of his continued ad hoc service. The
learned counsel for the petitioner urged before us that the
petitioner has already been selected before appointment
order was issued and therefore, he should not be asked to
appear for 'Selection' once again. The learned counsel for
the Opposite Parties countered this by saying that the
applicant was tested in typing before he was appointed

and this can not be deemed to be 'Selection' under the rules. We have examined the memo asking the candidate to appear for the test (Annexure - 4) as also the appointment order that followed the 'Selection' which is (Annexure-5). The order requiring him to appear in the test is as follows

" NORTHERN RAILWAY.

No. 831-E/DCME/20/III

dt. 1.3.1975

From

The Dy. C.M.E.(W),
C&W Shops, Alambagh,
Lucknow.

To,

Shri D.K. Banerjee,
Khalasi,
T. No. 353 G, Through
SS Shop 'G'.

Sub:- Filling up the post of Typist, Gr. Rs. 260-400 (Rs).
Your speed test and written test will be held at
10.30 hours on 17.3.1975. Please attend accordingly.

Sd/- For Dy. C.M.E.(W)
C&W Shops, Alambagh, LI

The appointment order which is contained in Annexure -5
reads as under:

" NORTHERN RAILWAY

Office of the Dy. C.M.E.(W), C&W Shops, Alambagh,
Lucknow.

S.O.N. 221

dated 25.3.1975

Shri Dilip Kumar Banerjee, Khalasi, Shop 'G'
T. No. 355G, is temporarily appointed to officiate as a
Typist on pay Rs. 260/-p.m. in Gr. 260-400 (Rs) against
an existing vacancy in this office.

The above arrangement is purely on an adhoc
basis till such time a regular Typist is available.

Shri Dilip Kumar Banerjee, must clearly understand
that this is purely a temporary and adhoc arrangement
till such time a regular Typist is available and it will
not confer upon him any right to claim similar promotion

as Typist in future.

He is also warned that offtg. Allowance would be admissible to him only when the period will exceed the 45 days.

Sd/- for Dy. C.M.E.(W),
C & W Shops Amv/ Lko."

These two above referendes clearly indicate, that the petitioner was called for a speed test and written test, which were not part of regular process of selection. His suitability was not assessed by selection committee/D.P.C. as laid down in the rules. The order of appointment that followed mentions in unambiguous terms that the appointment of the petitioner was a temporary one till a regular typist is available. We are of the view that where rules provide for selection to a post by duly constituted selection committee/D.P.C. selections made otherwise, even if, by an appointing authority can not be deemed to be proper or regular selection. It is not the case of the petitioner that he appeared for selection before a selection committee/ D.P.C. In these circumstances, we consider that there is no force in the contention of the learned counsel that the petitioner's appointment was after due selection in the regular test.

7. The next point urged was that the petitioner has been continuously holding the post of typist for the last more than 10 years and, as such, he is entitled for regularisation in terms of Railway Board's circular dated 14.4.1990 (Annexure- 7). The learned counsel for the Opposite Parties contended that this circular is not applicable to the petitioner. According to him, the circular relates only to appointments within the cadre and not for

promotion to a higher post. The petitioner being Class-employee is given the benefit of regularisation in that category under the above instructions but not a right for promotion to a higher post. We have carefully examined the Railway Board's circular referred to above. The circular is extracted below;

" GOVERNMENT OF INDIA (BHARAT SARKAR)

MINISTRY OF RAILWAYS (RAIL MANTRALAYA)

No. E (NG) III 79 -RCI/30

New Delhi, dt. 14.4.80.

Subject: Regularisation of Adhoc Appointments.

A reference is invited to para 4.1 of Board's letter No. NG-III-77/LGS01 dt. 23.7.1977 in which it was inter alia stated that appointment made :-

- (i) In excess of the 20% quota for sons and daughters of loyal staff.
- (ii) In excess of sports quota.
- (iii) Persons who did not satisfy the standard laid down by RCSB on current on the date of appointment and
- (iv) Others appointed as per Ministry of Railways orders be treated as adhoc appointments. A list indicating the approximate number of such appointments in Class- III as advised by the Railway is en closed.

2. The matter has been reconsidered by the Ministry of Railway carefully and it has been decided that all such appointments made during 1974 to 1977 may be treated as regular with effect from the dates on which they were originally appointed. Similar appointments made in Class-IV, if any, may also ^{be} regularised. Necessary

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action may now be taken accordingly.

3. Please acknowledge receipt.

4. Hindi version will follow.

Sd/- D.D. Agrawal
Joint Director Estt. (N)
Railway Board".

The contention on behalf of the petitioner is that paras i(iv) and 2 of the above circular are applicable to him and he is entitled for regularisation in accordance with these instructions. We have considered this, but we are not convinced of the applicability of the circular, for the reason that the petitioner was not appointed under the orders of the Railway Ministry and that his name was not in the list enclosed to the circular.

8. The further submission of the learned counsel for the petitioner was that in terms of Railway Board's letter dated 9.7.1982, the petitioner is entitled for favourable consideration for selection and empanelment, but these instructions were not followed by the Railway Administration resulting in the ^{non}selection of the petitioner. We have carefully examined the circular, a copy of which is annexed to the petition (Annexure-A8). The circular reads as follows;

" Copy of Railway Board's letter No. E (NG)I-82-PMI-132 dated 9.7.1982 addressed to General Manager, All India Railways & others from D.D. Agrawal, Joint Director Estt. Rly. NDLS.

Sub:- Selection for promotion of Class- III staff adhoc promotees.

An extract of the record note of a meeting held

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by the then Deputy Minister for Railway Board with the Heads of the Personnel Departments of the Railway Admins. on 27th and RDSO vide Board's letter No. E(NG) I-75-MNI-264 dated 25.1.1976. It was also stated in this letter that instructions should be issued to all concerned for strict compliance of the decision as contained in the extract of the minutes referred to above particularly in regard to persons belonging to Scheduled Castes and Scheduled Tribes. The extract of the record note is reproduced below for ready reference:

"2.2 panels should be formed for selection posts in time to avoid adhoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment."

2. It would appear that the instructions referred to above have led to the normal rules and procedure of selection as contained in the Indian Railway Establishment Manual and other cognate orders issued from time to time not being followed in some cases. With a view to enquiring that such departures do not take place, it is hereby clarified that the intention of the instructions conveyed in the Board's letter dt. 25.1.1976 referred to above was not to by pass or supersede in any manner, the normal rules of selection as contained in the Indian Railway Establishment Manual and other orders issued from time to time but only to serve as a broad guideline for the

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Departmental promotion committee and the authorities who are required to consider and approve employees for promotion. In any case, there was no intention to confer any right on employees officiating on adhoc basis in higher posts to be selected and included in the panels for these posts. You are requested to issue instructions to all concerned accordingly.

3. The instructions contained here in will also apply to all selections which are pending finalisation as on the date of issue of this letter and also to the selections to be held in the future
....."

The above circular speaks in unequivocal terms that the rules of selection should not be by-passed, in considering cases of adhoc employees, and one holding adhoc appointment has no right to claim selection/inclusion in the panel merely on the strength of adhoc service. We find that the circular instructions relied upon do not support the case of the petitioner.

9. Taking the facts and circumstances of the case, we are of the view that the appointment of the typist is by selection, either through direct recruitment or by promotion from serving and eligible class-IV employees. The petitioner being eligible for departmental selection from amongst class-IV employee was called for the selection tests but he failed to qualify in the selection therefore he acquired no right for regularisation in the post of typist. Since he is yet, to become a regular typist, the question of promotion to the post of senior typist does not arise .

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The petition is devoid of any merit and accordingly
it is dismissed, with no order as to costs.


Member (A)


Vice-Chairman

Lucknow.

Dated/-18th February, 1991.

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