

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCHXXXXXX
T.A. No. 387/87

198

DATE OF DECISION 30-8-1988

Syed Mohammed Baqar Rizvi Petitioner

Shri K.R.Jadhav Advocate for the Petitioner(s)

Versus

Union of India & 16 Ors. Respondent

Shri V.G.Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.Srinivasan, Member (A)

The Hon'ble Mr. M.B.Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes

2. To be referred to the Reporter or not? Yes

3. Whether their Lordships wish to see the fair copy of the Judgement? No

4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.387/87

Syed Mohammed Baqar Rizvi,
Room No.415, Ghadge Chawl,
Kurla Taksheela Nagar,
Kurla(East),
Bombay - 400 070.

.. Applicant

vs.

1. Union of India
2. The General Manager,
Central Railway,
Bombay V.T.
Bombay - 400 001.
3. Chief Mechanical
Engineer,
Central Railway,
Bombay V.T.
4. Shri Shivram Samanta,
D'Man at NKJ(D) Shed,
New Katni.
5. R.P.Bhatia,
D'Man,CME's Office,
Central Railway,
Bombay V.T.
6. S.B.Kalunke,
D'Man,C.Rly.CME'S office,
Bombay V.T.
7. S.C.Bimakya,
D'Man NKJ
New Katni DieselShed.
8. Shri D.S.Chowdhary,
D'Man,CME's office
2nd Floor,Central Rly.,
Bombay V.T.
9. Shri S.P.Kulkarni,
D'Man,
Central Railway CME's Office,
2nd Floor,Bombay V.T.
10. Shri L.G.Lokhande,
D'Man,Central Railway CME's Office,
2nd Floor,Bombay V.T.
11. Shri P.R.Mohale,
D'Man,
Central Rly.CME's office,
2nd Floor,Bombay V.T.
12. Shri S.C.Salunke,
D'Man,
Central Rly.,
PA Diesel Shed,
Poona.

P. S. K

.. 2/-

13. Shri G.R.Gimvanekar,
D'Man,
C.Rly.CME's office,
2nd Floor,
Bombay V.F.
14. Shri V.M.Rukha,
Tracer, Central Rly.,
Parel Workshop,
Drg. Office, Parel,
Bombay - 400 012.
15. Shri G.B.Gour,
Tracer,
Central Rly.,
Diesel Shed,
Jhansi,
16. Shri B.P.Walenkar,
Jr.D'Man,
C.Rly.CME's office,
2nd Floor,
Bombay V.I.
17. Shri V.T.Mane,
D'Man,
C.Rly.Loco Workshop,
Parel Drg.Office,
Parel,
Bombay - 400 012.

.. Respondents

Coram: Hon'ble Member(A) Shri P.Srinivasan
Hon'ble Member(J) Shri M.B.Mujumdar

Appearances:

1. Shri K.R.Jadhav
Advocate for the
applicants
2. Shri V.G.Rege,
Advocate for the
respondent

JUDGMENT

✓ M
Date: 29-8-1988

(Per P.Srinivasan, Member(A))

This is a transferred application which originated in the Bombay High Court as Writ Petition No.1405 of 1981.

2. The applicant joined the Loco General Drawing Office of the Mechanical Department of the Central Railway at Bombay in 1963 as Tracer. He was promoted as Assistant Draughtsman on 25-10-1971.

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He was promoted as Draughtsman from 6-9-1972: the respondents say this was an officiating promotion initially against a leave vacancy which continued upto 2-12-1972. On 11-12-1972 the applicant was promoted on adhoc basis as Draughtsman and continued to hold that post till he was given another adhoc promotion from 26-2-1980 as Head Draughtsman, again against a leave vacancy which lasted upto 15-3-1980. Similar adhoc promotions to the post of Head Draughtsman were given to him subsequently between 5-4-1980 and 21-5-1980, 26-8-1980 and 10-10-1980 and again from 1-12-1980 to 4-2-1982 against leave vacancies that arose during those periods. An examination was held for regular promotion to posts of Draughtsman in August, 1980 in which the applicant appeared. Persons working as Tracer and Assistant Draughtsman and those promoted as Draughtsman and Head Draughtsman on adhoc basis were asked to appear in that examination. The applicant was declared to have failed in the examination and as a result he was reverted to the post of **Assistant Draughtsman** by order dtd. 5-2-1982. In this application as amended in July, 1982 with the permission of the Court, the applicant challenges the selection test for the post of Draughtsman held in August, 1980, the resultant panel of selections announced on 12-8-1981 and the order dtd. 5-2-1982 by which he was reverted as Assistant Draughtsman. The High Court did not grant the interim prayer of the applicant to stay his reversion which therefore took effect in 1982 itself. After this application was filed, however, it appears that the applicant was again promoted on adhoc ^{basis} as Draughtsman subject to his passing the test. He passed the selection test held for the post of Draughtsman in 1987 and was duly placed on the select panel for regular promotion in that year.

3. Shri Jadhav, learned Counsel for the applicant submitted that the reversion of the applicant from the post of Head Draughtsman to the post of Assistant Draughtsman which was two grades below was illegal. He fairly admitted that the applicant was at the material time holding the post of Head Draughtsman only in a leave vacancy on an officiating basis and was therefore liable to reversion from that post when the vacancy ^{of Ceased to exist} expired. But he could have been reverted only as Draughtsman, a post which he had held continuously from 1972, although his promotion to that post was said to be on adhoc basis. By virtue of the long service without break rendered by him as Draughtsman he should have been regularised in that post with effect from 1972 itself and, on that basis, promoted to still higher posts. Merely because he did not pass a test held for regular promotion, nearly ^{10 (ten)} years of service rendered in that post by the applicant could not have been ignored by reverting him as Assistant Draughtsman.

4. Shri Jadhav contended that even an adhoc promotee to a post acquires a right to be regularised in that post if the adhoc promotion is continued for a long time. If passing a test was a condition for regular promotion to a post, persons promoted to that post on adhoc basis without passing the test should be given the opportunity to take the test and qualify ^{themselves} themselves immediately after adhoc promotion: if not, they should be regularised without having to pass the test. The Ministry of Railways had themselves stated in a letter dated 27-6-1983, that persons who had officiated for a period of 18 months after promotion can be referred only after holding a Departmental Inquiry and not otherwise. The letter stated further that Special Leave Petition against a decision of a

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Court to that effect in one case had not been admitted by the Supreme Court. Similar communications had been issued earlier by the Board deprecating the indiscriminate practice of adhoc promotions and continuing such promotions for long periods without holding tests for regular promotion. In the case of one S.R.Samanta who was reverted to a lower post after officiating in a higher post for seven years due to an audit objection that he was not qualified for the higher post, the Headquarters office had directed that he should be repromoted. Shri Samanta had been reverted from the post of Assistant Draughtsman in 1971. Similarly, a certain Ram Darsh who was promoted as Trains Clerk on 16-3-1976 had been allowed to continue in that post for over three years even though he had failed to qualify in the selection test for promotion to that post. The Railway Board decided that he should be allowed to continue in that post and regularised. There was no reason why, in the case of the applicant, he should not, on reversion from the post of Head Draughtsman on 5-2-1982, have been posted back as Draughtsman, a post he had held continuously from 1972, even if he had failed in the selection test for regular promotion to that post. Shri Jadhav further alleged that the respondents had made the applicant to fail in the test to favour others. He therefore submitted that the reversion of the applicant to the post of Assistant Draughtsman by order dtd. 5-2-1982 should be set aside and the respondents directed to treat him as having continued as Draughtsman after that date without any break and regularise him in that post taking into account his continuous officiation from 1972 onwards and to grant him further promotions on this basis.

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5. Shri V.G.Rege, learned counsel for the respondents resisted the contentions of Shri Jadhav. The various circulars of the Board relied on by Shri Jadhav talked only of persons officiating for long periods in a higher post after regular selection who could not be reverted to their earlier post except after Departmental Inquiry. The reference was not to adhoc promotion without passing the qualifying test for regular promotion as in the case of the applicant. In the exigencies of service, where for some reason or the other, it is not possible to hold qualifying tests for making regular promotion, unqualified persons had to be promoted merely on the basis of seniority to hold higher posts on adhoc basis even for long periods. But as soon as a qualifying test is held and a person earlier promoted adhoc fails in it, he had necessarily to be reverted. The passing of the qualifying test was a precondition for promotion as Draughtsman and the applicant having failed to so had to be reverted as Assistant Draughtsman on 5-2-1982 even though he had worked as Draughtsman by way of an adhoc arrangement from 1972 onwards. An adhoc appointment ^{on basis of} ~~erred~~ confined no right on the holder of the post to continue in that post or to automatic promotion to that post on regular basis without passing the qualifying test.

6. We have given the ^{most} anxious consideration to the contentions raised on both sides. On the first flush, the arguments advanced on behalf of the applicant appears attractive. Nobody, once promoted to a higher post, whether adhoc, temporary or regular, likes to be reverted back to his original post. If he has been allowed to hold the higher post continuously for a long period, the pain of reversion is even greater. On the other hand, after working

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in the post for some years, he begins to feel secure that he will not be reverted; that he is allowed to continue, though still on adhoc basis, gives him the feeling that he is doing his job well and is suitable to hold it on regular basis and this feeling increases with the passing of years. If after all this, he is reverted for not passing a qualifying test for promotion, it hurts and hurts more if his juniors in the lower post pass and get regular promotion. Rising hopes kindled by long years of officiation are shattered in one stroke. This is the human side of the problem.

7. Turning to the point of view of the organisation and the public interest, if we may say so, a huge set up like the Railways, with so many cadres and posts and thousands of employees, has necessarily to have rules setting out criteria for promotion from lower to higher posts, to avoid arbitrary promotions of unsuitable persons that could affect the efficiency of the service as a whole and demoralise its employees. Such rules have to be consistently followed in the general interest. Whereas as in the present case, the passing of a qualifying test is a condition for promotion, no promotion, even on adhoc basis, should be made unless that condition is fulfilled. The presumption is that, the authorities, who are aware of the duties of a post, having in their wisdom imposed that condition in the form of rules, passing of the qualifying test is a conclusive indication of suitability for promotion; if, in fact, it is not so, it is for the authorities to change the rule, but till then, the presumption holds. In this background it is undesirable that adhoc promotions should be made at all and that too of persons who have not passed the qualifying test. That such promotions are continued for long periods is a sad reflection on the inadequacies of the administration and as we have already

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observed, if suitability for promotion depends on passing the test, such adhoc promotions can, in their turn, lead to more and more inefficiency in the whole system. Strong pressures against reversion by those so promoted can perpetuate the situation. It is not enough that pious circulars are issued deprecating adhoc promotions, but these have to be enforced.

Having thus laid the ~~blame~~ ^M on the administration for making adhoc promotions in violation of the rules and continuing with them for years, can we legalise the practice by directing the respondents not to treat the applicant as having been reverted on 5-2-1982 and to regularise him even though he had failed in the promotion test in 1981? We do not think we should, ^M ~~merely~~ ^{hereby} encourage systematic violation of the rules and promote inefficiency. As pointed out by Shri Rege, the circulars issued by the Board protect only those who are given officiating promotion after regular selection. A person promoted without passing the qualifying test cannot be said to have been regularly selected. That he was promoted at all in the first instance and allowed to continue as Draughtsman for long stretches was an undue favour shown ^M ~~for~~ ^{to} him violating the rules of promotion. Should the enforcement of the rules and restoration of order in the conduct of ^M the administration which will promote the ^M general interests of all be upheld or should the inconvenience or discomfiture caused to an individual employee by depriving him of a promotion for which he was not qualified in the first instance weigh with us? On deep reflection, we choose the first alternative as the more desirable one and reject the claim of the applicant. If one sees the long line of judgments of the Supreme Court (Janardhana's case AIR 1983 SC 769, Lamba's case AIR 1985 SC 1019, Narendra Chedda's case AIR 1986 SC 638) upholding

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the right of adhoc promotees to count such adhoc service as regular service for seniority, it will be noticed that the persons promoted there were in all respects eligible and qualified for regular promotion right from the beginning and were sought to be kept down for other considerations. Here the applicant was not eligible for regular promotion ^{and} when promoted adhoc continued to be ineligible till his reversion on 5-2-1982, having failed to pass the qualifying test for such promotion when it was held in 1981. His claim is, therefore devoid of merit and as such, the case of Samanta and Ram Darsh cannot help him.

8. Before parting with this application, we may refer to a judgment of the Supreme Court relied on by counsel for the applicant, viz. Union of India vs. Shanti Swarup and Others, AIR 1979 SC 1548, We find that that judgment has no bearing on the issues raised in this application.

9. In the result, this application is dismissed. Parties to bear their own costs.

P. Srinivasan
(P. SRINIVASAN)
Member (A)

(M. B. MUJUMDAR)
Member (J)

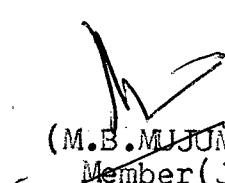
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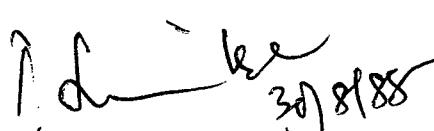
The arguments on both the sides were fully heard on 25-8-1988 when the applicant was present in Court throughout. Shri K.R.Jadhav presented the case for the applicant and Shri V.G.Rege replied for the

respondents. After the arguments were concluded on that day we posted the case for judgment on 29-8-88. The above order was ready on 29-8-1988 but could not be announced as one of us (Hon'ble Member Shri M.B. Mujumdar) was on leave on that day. The case was therefore adjourned today for pronouncement of the judgment.

When we were about to pronounce the judgment the applicant appeared in Court and submitted that his case has not been fully argued and there were two more points which needed to be argued. He therefore prayed that we should not sign the judgment and we shall adjourn the case to hear him again on all the points.

As we have stated above and as will be seen from the judgment above Shri Jadhav argued the matter for the applicant extensively and the reply on behalf of the respondents was also completed on 25-8-1988. We are not prepared at this stage to reopen the case and allow the applicant to argue the matter afresh all over again. We have, therefore, proceeded to pronounce the judgment as above.

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(M.B. MUJUMDAR)
Member (J)


30/8/88
(P. SRINIVASAN)
Member (A)