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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~Q.A.XX.No.~~

T.A. No.

102/86

198

DATE OF DECISION 6.11.1989

Shri K.A.Bagul & Ors.

Petitioner

Shri M.N.Desai (for applicant No.2)

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri Boni Bangare, Head Clerk

~~XXXXXXXXXXXX~~ Advocate for the Respondent(s)

## CORAM

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

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
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 ? *No*

*[Handwritten signature]*

(19)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.102/86.

Dated: 6.11.1989

Shri K.A.Bagul & Others.

... Applicants.

V/s.

Union of India.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,  
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.M.N.Desai, advocate  
for applicant No.2 and  
Mr.Boni Bangare, Head Clerk  
for the respondents.

Oral Judgment:-

{Per Shri M.B.Mujumdar, Member(J)} Dated: 6.11.1989

The petitioners Mr.K.A.Bagul, Mr.R.V.Dange and Mr.A.V.Chandrashekhar had filed Writ Petition No.3291 of 1984 in the High Court of Judicature at Bombay. After hearing the advocate for both the sides the High Court by its order dt. 20.9.1984 rejected the petition observing that the petitioners can approach the Railway Board itself for interpretation of its orders. Petitioner No.2 Mr.R.V.Dange alone preferred Civil Appeal No.5732/85 in the Supreme Court and the Supreme Court disposed of the appeal on 16.12.1985 by passing the following order:

"In the facts and circumstances of the case, we do feel that the writ petition which raised a question as to the interpretation of the various circulars of the Railway Board to have been decided by the High Court and the writ petition could not be directed to approach the Railway Board for interpretation of its circulars. The order passed by the High Court dismissing the writ petition in limine is accordingly set aside and the High Court is directed to decide the writ petition on merits as expeditiously as possible.

The appeal is accordingly allowed. There will be no order as to costs."

Thereafter by its order dt. 19.2.1986 the High Court has transferred the petition to this Tribunal under section 29 of the Administrative Tribunals Act, 1985.

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2. After the petition was received in this Tribunal, notices were issued to all the petitioners and the respondents. Petitioner No.1 Mr.K.A.Bagul has remained absent from the beginning. Petitioner No.2, Mr.R.V.Dange has appeared before us through Mr.M.N.Desai advocate. Petitioner No.3 Mr.A.V.Chandrashekhar was present on some dates, but he is not present today. We are told that he has retired about 6 months back.

3. We have heard Mr.M.N.Desai, learned advocate for petitioner No.2. Mr.Boni Bangare, Head Clerk is present for the respondents and he showed us the relevant file. However, we have not granted his request for an adjournment on the ground of absence of his advocate.

4. The grievance of all the petitioners in the petition is the same. We will explain their grievance by narrating the facts relating to Petitioner No.2 Mr.R.V.Dange. In 1965 he was appointed as Draughtsman which is a class III post. By order dt. 6.4.1981 he was appointed on ad hoc basis as Assistant Engineer which is a Class II post. In the written test held in August, 1982 for the post of Assistant Engineer, he passed, but unfortunately he failed in the viva voce. In the next written test held on 13.11.1983 he did not pass. It is his case that he was thereafter orally asked by superior officer to proceed on leave to avoid his reversion. Accordingly he went on leave. It is however, denied by the respondents that they had asked him to proceed on leave to avoid his reversion. By order passed on 16.11.1984 he was reverted to Class III post. He joined that Class III post on 26.11.1984 under protest. By order dt. 18th May, 1986 he was promoted as Assistant Engineer as he was selected on regular basis. He is holding that post since that date.

5. However, before his reversion to Class III post, he had filed the present petition in the High Court on 8.8.1984. After his promotion as Assistant Engineer on regular basis the petition is amended by him alone. His only prayer that ~~now~~ now survives is for a declaration that he was regularised as Assistant Engineer from 6.4.1981, i.e. the date on which he was promoted to that post on ad hoc basis.

6. Though the facts regarding petitioners No.1 and 3 after the petition was filed are not on record we assume that their grievance must be similar and hence we are disposing of the entire petition finally on merits.

7. In the petition itself the petitioners have relied on the instructions given in the Railway Board's letter dt. 21.5.1956. We may quote para 3 and 4 of that letter:

"The Board, therefore, desire that, with immediate effect, the performance of every Railway servant officiating in a higher grade should be adjudged by the competent officer before the expiry of 12 months of total officiating service, and if the performance is not satisfactory, either the Railway servant may be reverted on the grounds of unsuitability, or he may be warned that his work is not quite satisfactory, but that he is being permitted to draw his increment in the expectation that his performance will improve during the next six months for which he will continue to be under observation. At the end of the extended period of six months, i.e. of a total officiating service of 18 months, either the person should be declared suitable for retention in the grade or should be reverted because he is unsuitable. Any person who is permitted to continue to officiate beyond 18 months cannot in future be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules.

The final assessment of the performance of each Railway servant officiating in higher grades at present, for a total period of over 12 months should be made within the next six months, and action taken as indicated in the previous para, in respect of Railway servants officiating in higher grade for 18 months."

8. It is the case of the petitioners (vide para

7 of the petition) that on the basis of the letter dt. 21.5.1956 some High Courts have taken the view that even in the case of ad hoc appointments the employee cannot be reverted if he has worked for 18 months continuously, without following the Disciplinary and Appeal Procedure. According to them the Railway Board had challenged the said view by filing SLP in the Supreme Court of India, but the Supreme Court had rejected the SLP and confirmed the view taken by the High Court. In short it is the case of the petitioners that as they had worked for more than 18 months as Assistant Engineers, though on ad hoc basis, the respondents will not be entitled to revert them even though they might have failed in the test.

9. It is true that the above view was taken by some of the Benches of this Tribunal relying on some judgments of the High Courts. But a Full Bench of this Tribunal in Sh.Jetha Nand and others v. Union of India & Ors. [Full Bench Judgments of the Central Administrative Tribunals (1986-1989), at page 353] has settled the controversy. The judgment of the full Bench was delivered by Mr. Justice Amitav Banerji, Chairman of this Tribunal. The Full Bench presided over by him was constituted to hear the reference made by a Division Bench and the relevant part of the order is quoted in para 1 of the judgment, was as follows:

"In these circumstances, it is necessary to clarify the position of law with regard to employees working on ad hoc basis for more than 18 months, some of those may have passed the test later and some may not have passed the test but whose work is satisfactory, could their services be regularised even if they have not passed the test? Whether they have a right to be regularised merely because their work is satisfactory and a person of more than 18 months has elapsed? If not, in what circumstances, they acquire any right, if any, to be retained in service and entitled to any relief against their reversions. Could they not be required to appear for the test. If they appeared and failed, whether any further chance should be given to

them to appear and pass the test and until then whether they can be reverted or not? These and several other questions arise for consideration. These questions are arising in several cases and all too frequently. We, therefore, deem it necessary to refer the entire case to a larger Bench for decision on all the posts arising in this case and on all incidental points that may be relevant in this regard and for the final disposal of this case."

10. After considering the various decisions of the High Courts, Supreme Court and different Benches of this Tribunal the Full Bench has given its conclusions in para 59 of the Judgment. The Conclusions are as follows:

"We, therefore, conclude:

- (i) The right to hold the selection/promotional post accrues only to those employees who have undergone a Selection Test and empanelled for the promotion/selection post and continue as such for 18 months or more. An ad hoc employee will also get the right if he has passed the Selection Test.
- (ii) We hold that a test is mandatory before a Class IV employee can be promoted permanently to Class III post.
- (iii) The mere recording of satisfaction or even good entries in CR of the employee is not enough to entitle the employee holding a promotional post in an ad hoc capacity to claim that his services be regularised in the Class III post.
- (iv) If the employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post. But he will be entitled to be given further opportunity to appear in the selection test.
- (v) A Railway employee holding a promotional post in ad hoc capacity can be reverted to his original post at any time before the expiry of 18 months. Secondly, if he has not qualified in the selection test, he is liable to be reverted even after 18 months.

Further, we are of the view that all Class IV employees who are holding ad hoc posts in Class III are to be given several opportunities to qualify and are to be reverted if they do not qualify even after repeated opportunities."

11. In our view applying these conclusions to the facts of this case we find that petitioner No.2 was given two opportunities. In the written test held in 1982 he

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had passed, but he failed in viva voce. In the written test held in November, 1983 he was not successful. Hence respondents had no other alternative except to revert him. That is what they did in November, 1984. However, thereafter when he passed in 1986 he was promoted on regular basis as Assistant Engineer by order dt.18.5.1986. In view of the conclusions arrived at by the Full Bench, we do not think that the reversion of Petitioner No.2 by order dt. 16.11.1984 was bad in law. As already stated he had filed a Writ Petition in the High Court before that date and it was rejected on 20.9.1984 i.e. before the reversion order was passed. We are unable to find any fault in the reversion order. After his reversion petitioner No.2 was working in a class III post till he was regularly promoted as Assistant Engineer on 18.5.1986. Hence we cannot direct the respondents to hold that he was promoted on regular basis from the date of his initial appointment as Assistant Engineer on ad hoc basis i.e. from 6.4.1981.

12. It was urged by Mr.Desai learned advocate for petitioner No.2 that Petitioner No.2 is a Scheduled Caste candidate. But in our view this makes no difference, because as stated by the respondents in the affidavit of Mr.G.R.Madan the post of Assistant Engineer is a Safety Category post and no concessions are available to SC/ST candidates for promotion to such posts.

13. In result, we dismiss Tr. Application No.102/86 (i.e. Writ Petition No.3291/84), with no order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER (A)

  
(M.B. MULUMDAR)  
MEMBER (J).