

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 474/99

DATE OF DECISION: 12/10/2000

Shri S.Nambi

Applicant.

Shri G.S.Walia

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri V.S.Masurkar

Advocate for
Respondents.

CORAM:

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Smt. Shanta Shastri, Member(A)

1. To be referred to the Reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No*
3. Library. *Yes*

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:474/99
DATED THE 12TH DAY OF OCT. 2000**

**CORAM; HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN.
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)**

S.Nambi,
Presently working as
Head Typist,
Under Dy.Chief Engineer(C-11)
Western Railway,
Head Quarters office
Churchgate,
Mumbai - 400 020.

... Applicant.

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Chief Administrative Officer, (Construction),
1st Floor, Station Bldg,
Western Railway,
Churchgate,
Mumbai - 400 020.

3. Divisional Railway Manager,
Mumbai Division,
DRM's Office,
Bombay Central,
Mumbai - 400 028.

... Respondents

By Advocate Shri V.S.Masurkar

(O R A L) (O R D E R)

Per Smt.Shanta Shastri, Member(A).

The applicant in this case is aggrieved by the Impugned orders dated 19/5/99 and 31/5/99 (Exhibit-A) vide which he has been reverted to his earlier post of Senior Typist from the post of Head Typist.

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2. The bare facts are that the applicant who was initially engaged as Casual Labour was regularised as Khalasi w.e.f. 1/11/80 vide letter dated 10/9/95. Thereafter, he was promoted as Junior Typist in the payscale of Rs.260-400 on adhoc basis in the Survey and Construction Unit of the Western Railway w.e.f. 1/4/80. He was further promoted as Senior Typist on 29/10/84 again on adhoc basis. He continued to work as a Senior Typist till 14/2/97 when he was regularised. Prior to that he was regularised as Junior Typist w.e.f. 16/1/96 vide order dated 22/1/96. Again the applicant was given a further promotion as Head Typist w.e.f. 10/7/98 on adhoc basis. Thereafter, the applicant was reverted to the post of Senior Typist on 31/1/99. The applicant being aggrieved by the said reversion filed OA-124/99 in this Tribunal and vide order dated 8/3/99, the Tribunal directed the respondents to consider the case of the applicant's promotion to the post of Head Typist and the question of reversion in the light of the observations made in para-3 of the said order. Relevant portion of Para-3 of the order is reproduced:-

Admittedly, the applicant was promoted on adhoc basis as Senior Typist on 29/10/84 and he has put in 13 years as adhoc Senior Typist. The question is whether adhoc promotion should be taken into consideration for the purpose of next promotion. The applicant has been promoted on adhoc basis as adhoc Head Typist on 10/7/98. We feel that statusquo should be maintained, namely the applicant should be allowed to continue in the above post and if the Department feels that his promotion as head Typist is wrong and contrary to rules, the department should issue a show cause notice mentioning the grounds on which he is sought to be reverted. It is open to the applicant to give representation in writing; then the applicant may be heard in person. Then, it is ...3.

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for the competent authority to pass a speaking order and if any adverse order is passed, it is open to the applicant to challenge the same according to law.

But in order to safeguard the interest of the applicant, we feel that in case any adverse order is passed, the respondents should not give effect to the same for a period of 3 weeks from the date of service of the order on the applicant. The Competent Authority shall give a personal hearing to applicant if requested by applicant and then pass a speaking order."

3. According to this it was left open to the applicant to give a representation in writing and applicant was to be given opportunity to be heard in person. Thereafter, it was for the Competent Authority to pass a speaking order and in case of an adverse order, the applicant can challenge the same according to law. The respondents issued a show cause notice to the applicant on 6/4/99 in which it was pointed out that the applicant had been given double adhoc promotions which was erroneous and therefore the benefit of the promotion extended to him between 29/10/1984, to 1/9/96 was proposed to be cancelled. It was further stated that he was not entitled to get adhoc promotion as Head Typist even on completion of two years continuous service in the lower grade as several of his seniors were still working as Senior Typist in the parent department. Therefore, it was proposed to set right the irregularity. The applicant gave his reply to the show cause notice. Thereafter the impugned orders were issued reverting the applicant to his earlier post of Senior Typist where he had been regularised in 1997. It is the contention of the applicant that he worked as Senior Typist though on adhoc basis from 1984. It is not his fault that he was regularised only in 1997. The Learned Counsel for the applicant argued that the double adhoc promotion was not prohibited when he was granted

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adhoc promotion as Senior Typist in 1984. The Rule regarding the ban on double adhoc promotion came into force only on 9/9/85. The Learned Counsel has drawn our attention to para 216 clause (iii) of the Indian Railway Establishment Manual, Volume-I wherein it has been laid down ^{that} in any case no second adhoc promotion can be allowed." This is dated 23/8/1985.

4. Para-216 of the Indian Railway Establishment Manual deals with adhoc promotions against selection and non selection posts. Several guidelines to be adhered to, have been laid down while ordering promotions and under these instructions which were issued vide various letters of the Railway Board dated 1/4/81, 17/10/71, 26/4/79, etc. However, vide Board's letter dated 23/8/85, a further clause was added cautioning that in any case no second adhoc promotion shall be allowed. The Learned Counsel for the Applicant has therefore pleaded that this letter of the Board dated 23/8/85 cannot apply to his promotion as Senior Typist in 1984. It can only have effect prospectively.

5. Coming to the second part regarding non completion of two years of service after regularisation as Senior Typist, the Learned Counsel states that the promotion to Head Typist is only on adhoc basis and is not a regular promotion.

6. The Learned Counsel has filed a copy of the notings by Deputy Chief Engineer (C)II/CCG as well as CE(C)/CCG which is at Exhibit-D at page-66. This shows the process whereby the applicant was promoted as Head Typist on adhoc basis. According to this noting, the applicant being the Senior most Senior Typist was considered for promotion because nobody was willing to work in the field office in the capacity of Head Typist as it required

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the concerned typist to work beyond office hours. It also states that wide publicity was given vide letter dated 10/6/88 regarding the requirement of a Head Typist in the Unit. Since no response was received, the applicant was promoted on adhoc basis. The Learned Counsel for the applicant has therefore prayed that the impugned orders should be quashed and set aside. He has further sought that he should be declared to be entitled to have his seniority fixed as Junior Typist w.e.f. 1/4/80 with all consequential benefits and retrospective regularisation. He has also sought that he should be continued as Head Typist.

7. The Learned Counsel for the Respondents contends that first of all the applicant had been regularised in Group 'D' for the first time in 1980 only. He belongs to the Construction division and promotions in the Construction Division do not entitle him for regularisation in the parent unit automatically, where regularisation and promotions are according to seniority. Also there would be other seniors who would be willing to go as Head Typist in the Construction Division. The Learned Counsel has also produced the original file to demonstrate that applicant's promotion as Head Typist was erroneous in fact the promotion orders have not been issued by Chief Administrative Officer (Construction), the Competent authority. The Chief Engineer (Construction) is not the competent authority to give such promotions. No approval of the Chief Administrative Officer seems to have been obtained either before promoting the applicant as Head Typist. A separate Seniority List is maintained in the parent office and the applicant is not the seniormost. Therefore

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an erroneous promotion cannot be continued and the respondents have rightly reverted the applicant to the post of Senior Typist.

8. We have given careful consideration to the arguments advanced by the Learned Counsel for both sides and have also perused the record made available. We find that the applicant has been promoted as Head Typist w.e.f. 10/7/98 and has now been reverted on 31/5/99. In our view, the applicant has been working as Senior Typist on adhoc basis since 1984. As pointed out by the Learned Counsel for the Respondents, the orders regarding not granting double adhoc promotions were issued in 1985. The Learned Counsel has stressed that the orders of 1985 were only by way of clarification and reiteration of the existing orders and therefore the ban on adhoc promotions would apply in the case of the applicant also who was promoted on adhoc basis as Senior Typist in 1984. Therefore applicant's adhoc promotion as Head Typist in 1998 is erroneous. We have gone through the Indian Railway Establishment Manual and the provisions in para-216 clause (iii) of the manual relating to making of adhoc promotions and selections. No doubt certain instructions about adhoc promotion and the guidelines to be followed have been laid down from time to time by Railway Board. We find that the clause regarding no double adhoc promotions should be made 'seems to have been inserted only in 1985 and therefore the applicant's adhoc promotion as senior typist in 1984 while he was already on adhoc promotion as junior typist cannot be affected by these instructions. Also if the respondents were really serious about it, they could have reverted him way back in 1985 or 1986 itself

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after the issue of the instructions, "that in any case no second adhoc promotion should be granted." This has not been done. The Respondents woke up only in 1998. Therefore we do not accept this ground for denying the promotion to the applicant as Head Typist. Coming to the question of completion of two years service, it does appear that applicant had not completed two years regular service in the post of Senior Typist when he was promoted as Head Typist. He had put in only one year and five months. At the same time it is to be noted that the promotion was only on adhoc basis and not on regular basis. Therefore his promotion on adhoc basis cannot be said to be ^{ir}regular. The Learned Counsel for the respondents urged that there are other seniors who would have liked to come as Head Typist in the Construction Division where the applicant is working. He has pointed out that the orders of adhoc promotion of the applicant have not been issued or approved by the Competent Authority i.e. the Chief Administrative Officer and no proper publicity was given for filling the post. In the light of this position, we feel that it would be appropriate if the post is notified through wide publicity as per the rules of the Railways and proper seniormost senior typist is considered for adhoc promotion as per rules. ^h ~~senior~~. The Learned Counsel for the applicant has averred ^{that} ~~that~~ the post from which he has been reverted is still lying vacant and no one has been appointed. Respondents have not denied it.

9. We therefore direct the respondents to follow the proper procedure for filling up the post of Head Typist as per their rules. This may be done within a period of three months. In the

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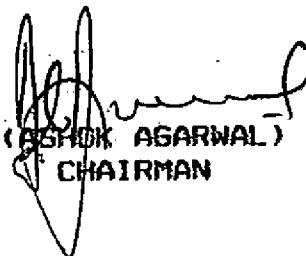
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meantime since the post is lying vacant, the applicant shall be continued in the post of Head Typist as before till the post gets fill^{ed} as per rules. The claim of the applicant for the said post should also be considered along with the others.

10. In the result, the impugned orders dated 19/5/99 and 31/5/99 are quashed and set aside. The prayers in terms of para 8(b) and (c) of the OA are left open and the applicant can take recourse as per law. Similarly, the respondents are also at liberty to resist the same according to law. The OA is disposed of accordingly. No costs.


(SHANTA SHASTRY)
MEMBER(A)

abp.


(ASHOK AGARWAL)
CHAIRMAN