

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

578
ORIGINAL APPLICATION NO.: ~~144~~ of 1993..
Rege

Dated this _____, the 15th day of December, 1999.

N. C. Chaturvedi _____ Applicant.

Shri G. S. Walia, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. G. Rege, _____ Advocate for
Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman,

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library. *Yes*

Re main point
(R. G. VAIDYANATHA
VICE-CHAIRMAN)

OS*

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Dated this 15th day of December, 1999.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri B.N. Bahadur, Member (A).

N.C. Chaturvedi,
Head Master,
Central Railway High School,
Kurduwadi,
Dist. Sholapur.

... Applicant.

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India through
The Secretary,
Railway Board, Rail Bhavan,
New Delhi - 110 001.
2. General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
3. Divisional Railway Manager,
Sholapur Division,
Central Railway,
Sholapur.
4. Shri Ghanshyam Pathak,
Post Graduate Teacher,
Central Railway,
Bombay V.T., Bombay.
5. Smt. T. Almuida.
6. Smt. P. Bhushan.
7. Shri V. R. Dhumale (SC).
8. Smt. Chandra Chakravarthy.

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9. Ramesh Kumar
10. Sunderlal Yadav. Respondents.
(By Advocate Shri V.G. Rege).

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

The applicant is challenging the order of reversion. The respondents have filed reply. We have heard Shri G.S. Walia for the applicant and Shri S.C. Dhawan, the Learned Counsel for the respondents.

2. The applicant joined the service of respondents as a Trained Graduate Teacher in 1973. He came to be promoted as a Post Graduate Teacher on 02.03.1983. Subsequently he was reverted from that post on 30.07.1985. Then the applicant made representation. The administration subsequently promoted the applicant as Head Master (Middle School) with effect from 27.01.1986. Subsequently, there was selection for the post of Head Master Group 'B'. Number of candidates, including the applicant and Respondent No. 4 were considered for that post. Then, after selection process, the applicant was promoted as Head Master Group 'B' with effect from 07.05.1992. It appears, the fourth respondent, Ghanshyam Pathak raised a dispute and sent a representation stating that he is senior to the applicant and he should have been promoted as Head Master Group 'B'. Then the department issued a Show Cause Notice to the applicant dated 03.07.1992 mentioning the facts of the applicant and showing that

Mr. G. Pathak is senior to the applicant and, therefore, why the applicant should not be reverted. The applicant sent a reply to the Show Cause Notice. Then after considering the entire facts, the department issued the impugned order dated 21.05.1993 under which the Respondent No. 4, Ghanshyam Pathak is promoted as Head Master (Class-II) and ^{subsequently} ~~subsequently~~, the applicant has been reverted to the post of Head Master (Middle School). Being aggrieved by this order, the applicant has approached this Tribunal with the present O.A. His contention is that he was the senior most Trained Graduate Teacher. Even as Post Graduate Teacher, he was senior to Mr. Pathak and, therefore, his reversion is bad. Hence, he wants that the orders of reversion should be set aside and his promotion as Head Master Class-II should be restored.

3. The defence of the respondents is that the applicant's earlier promotion as Post Graduate Teacher on 02.03.1983 was purely an adhoc, officiating and temporary promotion. It does not give any seniority to the applicant in that post. After a regular candidate, namely - Mr. G. Pathak was appointed as Post Graduate Teacher on 30.07.1985, the applicant came to be reverted. Subsequently, in his own turn, the applicant was again promoted in January, 1986 as Head Master (Middle School). It is, therefore, stated that Mr. Ghanshyam Pathak (Respondent No. 4), was always senior to the applicant in the post of Post Graduate Teacher, but by mistake the applicant had been promoted and that

mistake has been now rectified by reverting the applicant and promoting Respondent No. 4. Hence, it is stated that the applicant is not entitled to any of the reliefs.

4. Though there are lengthy pleadings, we have mentioned the bare facts above, which are necessary for the disposal of the case. The applicant has produced number of documents and number of allegations are made about his seniority position in the post of Trained Graduate Teacher, with which we are wholly unconcerned. The applicant's seniority in the post of Trained Graduate Teacher or his seniority viz-a-viz Shri R. K. Mittal and Shri R.N. Sharma are wholly irrelevant for our present purpose. The only point of dispute for the present purpose is whether applicant is senior to Respondent No. 4. If in the post of Post Graduate Teacher the applicant is held to be senior than Respondent No. 4, then there is no doubt that his promotion as Head Master (Class-II) must be confirmed and the order of reversion must be quashed. If however, he is found to be junior to Respondent No. 4, no relief can be given to the applicant since Respondent No. 4 being senior would be entitled to the promotion of Head Master (Class-II). Hence, we have confined our attention only on the question of seniority in the grade of Post Graduate Teacher and not in respect of the lower post of Trained Graduate Teacher. Hence, those documents pertaining to the post of Trained Graduate Teacher and the pleadings about seniority in respect of that post are wholly irrelevant for our present

purpose. Hence, we are confining our attention only to find out the seniority of the applicant and Respondent No. 4 in the post of Post Graduate Teacher.

5. The applicant's first promotion as Post Graduate Teacher (for short P.G.T.) was on 02.03.1983. If it was a regular promotion, then there is no doubt that applicant's seniority would count from 02.03.1983. If it is a case of pure adhoc promotion as a stop-gap arrangement, then it will not confer seniority on the applicant. There may be some cases where officers are promoted on adhoc basis but after following usual procedure and against clear vacancy and in such cases, even if the order is termed as 'adhoc' it can be deemed as regular and seniority can be given. If promotion is dehors the rules or if the promotion is given without following the recruitment rules or if it is a promotion in excess of quota or the promotion is against the post for which there is no vacancy, then in such cases, the adhoc promotion is purely a stop-gap arrangement and it will not confer seniority. Only in case of regular promotion which is given after following the required procedure and recruitment rules, it will confer seniority. In this case, the respondents have given clear reasons as to why the applicant's first promotion in 1983 as P.G.T. was purely an adhoc and stop-gap arrangement. In para 7 and 8 of the first written statement filed by Mr. P. Balan, the Senior Personnel Officer, dated 09.07.1993, detailed reasons are given as to why the

applicant's promotion was adhoc and the two paras read as follows:

"7. I say and submit that there are 3 posts of Post Graduate Teachers at the New Yard Itarsi Higher Secondary School (subsequently the School got upgraded to Higher Secondary from Middle School), where the applicant was at the relevant time working as Trained Graduate Teacher. The said 3 posts of Post Graduate Teachers carry a pay scale of Rs. 550-900 (RS) and are thus in promotional channel for Trained Graduate Teachers. The said posts were in existence for imparting training in the subjects viz. (1) English Literature (2) Physics and (3) Mathematics and the concerned persons aspiring appointment to the said post were required to possess the qualification viz. M.A. with English Literature, M.Sc. with Physics and M.Sc. with Mathematics.

8. I say and submit that the post of Post Graduate Teachers meant for imparting training in Mathematics was vacant at the beginning of 1983 for want of availability of duly selected candidate possessing requisite educational qualification. However, considering the fact that the applicant was the senior most teacher, even though, he did not possess the requisite educational qualification M.Sc. (Mathematics), it was decided to promote him to the post of Post Graduate Teacher Pay Scale of Rs. 550-900 (RS)/1640-2900 (RPS) as a local stop gap arrangement and purely provisionally as an adhoc basis pending availability of a duly selected candidate possessing the required educational qualifications pursuant to the said decision, the applicant was appointed on an adhoc basis provisionally and as and by way of local stop gap arrangement to the post of Post Graduate Teacher, Pay scale of Rs. 550-900 (RS)/1640-2900 (RPS) under order No. HPB/786-W/Selection/HM dated 14.01.1983, a copy whereof is annexed hereto and marked exhibit R-I."

From the above reasoning it is clear that P.G.T. posts are subject wise. During the relevant time, there were three

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P.G.T. Posts against the three subjects, namely - English (Literature), Physics and Mathematics. Admittedly, the applicant does not have any specialisation in any of these three subjects. The applicant's subject is Political Science. In 1983 there was no post of P.G.T. for Political Science. Therefore, the applicant's promotion in 1983 was not in respect of his subject but it was against the vacancy of P.G.T. for Mathematics. It is clearly stated in para 8 that since there was no candidate available for the post of P.G.T. Mathematics, the applicant being the senior most teacher, was given adhoc promotion as a stop-gap arrangement and provisional, pending selection of duly selected candidate having the requisite educational qualification in mathematics.

The applicant has filed a detailed rejoinder to this reply and he has not contraverted this fact. He also admits in his rejoinder in para 4 that his promotion was adhoc. If it is a case of pure adhoc, provisional and stop-gap arrangement, the said adhoc promotion cannot and will not confer seniority on the applicant in the post of P.G.T. from 1983.

6. There are two types of posts called as - Trained Graduate Teacher (for short T.G.T.) and Post Graduate Teacher (for short P.G.T.) in the schools run by the Central Railway administration. We are not concerned with other posts for the present. As per the recruitment rules, both these posts are selection posts. We

have gone through the relevant files produced by the Learned Counsel for the respondents. From the files it is seen that for these selection posts, certain criteria is mentioned as to how the posts are to be filled up. The first criteria is the zone of consideration, namely - three times the number of posts. If there is one post, then three candidates are called in the order of seniority for the purpose of selection. A selection committee is constituted by the competent authority. The committee conducts the viva-voce and then confidential reports are perused. On the basis of the performance in the viva-voce and on perusal of the confidential reports, the selection committee prepares the panel of candidates for the concerned selection posts. Then on the basis of the panel, the competent authority issues the order of promotion. This is the procedure followed in all ^{cases} places of selection posts pertaining to T.G.T. and P.G.T., which we could gather from the three big office files produced by the Learned Counsel for the respondents. Now the question is, whether the applicant was duly promoted by a Screening Committee after subjecting him to the selection method of holding a viva-voce by the Screening Committee, etc. We will presently show, on perusal of the record, that it is not a case of promotion of the applicant in 1983 after due selection by a Selection Committee but it was a case of adhoc promotion, pure and simple.

7. From the perusal of the file we find that in respect of applicant's promotion, the heading of office note in many of the letters and in many of the office notings is as under :

"G.M.'s interview case - N.C. Chaturvedi...."

In most of these letters and office notings we find this title. It appears, the applicant had complained to the General Manager stating that he is the senior-most teacher and he has not been given promotion as T.G.T. Then there was correspondence between two different departments to find out applicant's seniority, eligibility for promotion and in all such letters we find the above heading. In one of the files there is an Office Order dated 15.10.1982 at page 131 pertaining to applicant's promotion. In this order it is stated that the applicant, N.C. Chaturvedi, is promoted to officiate as Post Graduate Teacher. Then the following sentence is very relevant for our present purpose.

"The above posting is purely on adhoc basis pending selection and he has no prescriptive right for promotion or retention in higher grade in preference to his seniors."
(Underlining is ours).

Therefore, it is very clear that it is a purely adhoc promotion pending selection. That means, the regular selection procedure contemplated in the rules have not been gone into but in view of the applicant's representation to the General Manager, he has been promoted on adhoc basis. This is further clarified in other documents also.

In the same file at page PP.5 there is a Office Note dated 08.10.1982 which is hand written. In this note it is

stated that there is a vacancy of P.G.T. That applicant is the senior-most T.G.T. Then the officer proposed that applicant can be considered for promotion as P.G.T. Then the following observations in the note is very material for our present purpose and it reads as follows :

"If this is approved, Shri Chaturdevi will be promoted as Post Graduate Teacher/Lecturer Gr. Rs. 550-900(RS) at New Yard, Itarsi on Adhoc basis pending selection."

(Underlining is ours).

Therefore, the Office Note is very clear that the promotion is going to be a pure adhoc promotion pending selection. That means, the applicant has not been promoted after observing the selection procedure. We have already pointed out that the selection procedure is to call candidates three times than the number of vacancies and they should be subjected to a viva-voce test by a Screening Committee to be appointed by the competent authority and then a panel should be prepared. In this case, just purely on the basis of Office Note, an appointment order is issued and, therefore, it is not a case of applicant undergoing the prescribed selection procedure before promotion. That is why his appointment is adhoc.

Then we have another Office Note dated 07.01.1983 at page PP.6 in the same file. There also there are names of three officers and we are concerned about applicant's name who is ordered to be promoted to officiate as P.G.T. Then again a note

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in the order at the end is very material, which clearly says that the promotions and postings are purely provisional and on adhoc basis. Even the appointment order issued to the applicant, copy of which is placed on record by respondents at exhibit R-1 to the first written statement, where also it is made clear that applicant's promotion is provisional and it is in officiating capacity and on adhoc basis.

In view of the above discussions, there is no difficulty to hold that applicant's promotion was purely adhoc and stop gap arrangement pending selection of regular candidates for promotion in the usual course.

8. The above reasoning itself is sufficient to hold that applicant's promotion was purely adhoc and stop gap and not according to rules, namely - selection by a Screening Committee after viva-voce test, etc. In addition to this reasoning, it is also the respondents' case that there was no vacancy at all for applicant to be promoted as P.G.T. and even on this ground, his promotion must be a stop-gap arrangement. From the files produced by the respondents, we can easily gather that appointment of P.G.T. was always subjectwise. The Learned Counsel for the ^{Respondent} ~~applicant~~ drew our attention to number of letters and correspondences in the file to show that the Headmaster of the School was asking for filling up the post of P.G.T. meant for English (literature), Physics and Mathematics. Admittedly, the

applicant's subject is Political Science. Hence, by any stretch of imagination, the applicant cannot be promoted against the vacancy of mathematics or any other subject. There are number of letters in the file which clearly shows that the appointment of P.G.T. was subjectwise.

For example, there is a Office Note dated 16.01.1985 at page 57 in the office file. It says that the Principal of the Itarsi School has requested for filling up the post of P.G.T. in respect of three subjects, namely - Mathematics, Physics and English. Then it is stated that now selection has been held for the post of P.G.T. (Mathematics) and a Committee has been selected. This candidate who is selected is no other than Respondent No. 4, Ghanshyam Pathak, who is appointed as P.G.T. for mathematics by that recruitment.

Then we have a Office Note dated 29.10.1984 which says that there are three posts of P.G.T. in the school at Itarsi which are manned by three officials, including the applicant. Then the names of three candidates, including the applicant's name, and their respective subjects are shown. The applicant's name is shown against Political Science and other two candidates are shown against History and Sociology. The note further says that the Principal is requesting to fill up these posts which are meant for P.G.T. English (Literature), P.G.T. Physics,

and P.G.T. Mathematics. Then steps are taken to fill up the posts by direct recruitment through open advertisement.

In another file pertaining to the period from 1993 to 1998 for appointment of P.G.T. Teachers, we find that there are many orders which shows that appointments are made subject-wise. For instance, in 1988 Mrs. Hemalatha has been appointed as P.G.T. in respect of the subject 'Hindi'.

The selection procedure can also be gathered from page 57 of this file which shows about 1988 Selection where there was a Committee of three Senior Officers who conducted the viva-voce test and then selected Mrs. Hemalatha for the post of P.G.T. for that particular subject.

Then at page 55 we have a letter dated 27.03.1996 which shows selection of candidates by Railway Recruitment Board for the post of P.G.T. where again it is subjectwise. In that letter, Shri A. K. Saxena is appointed as P.G.T. (Mathematics), Sanjay Deshmukh as P.G.T. {English (Literature)} and again Mrs. Sulbha H. Aure as P.G.T. for English (literature). At page 47 of the said file we find one order dated 29.11.1995 which shows the appointment of Ms. Saroj Mishra as P.G.T. (Sociology). The Selection proceedings are at page 46 of the said file. The very reading shows that a selection was conducted to fill up the posts of P.G.T. History, P.G.T. English (Literature) and P.G.T.

(Sociology). Then a Screening Committee conducted viva-voce test and selected the candidates subject wise.

At page 43 we have one order dated 06.01.1994 showing the appointment of two candidates, Smt. Sita Patidar as P.G.T. Hindi and Shri L. P. Sahu as P.G.T. for Political Science.

9. Then we go to another important document which is at page 11. It is the selection proceedings for the formation of panel for the post of P.G.T. The Selection Board consisted of three senior officers, including Mr. V. D. Vadhavkar, who was then Deputy Personnel Officer and who has now retired from service and his an advocate appearing in this Tribunal. Para 2 of the proceedings of the Committee shows that there are 10 posts of P.G.T. and their break-up subjectwise is given. Then the Committee notes that as per the zone of consideration, three times of the number of assessed vacancies the officials are called for selection and viva-voce was held. Then in para 5 the names of selected candidates ^{are} shown subject wise.

We are only attempting to show that throughout in the file we get similar letters and office notings to show that P.G.T. posts are filled up subjectwise. In the case of the applicant, he has been given adhoc promotion against the vacancy of P.G.T. Mathematics.

10. When Mr. Ghanshyam Pathak (Respondent No. 4) was appointed as P.G.T. (Mathematics), on the same day and at the same time the applicant was reverted. The order is exhibit R-2 attached to the first written statement dated 30.07.1985. It says that consequent upon Ghanshyam Pathak reporting from duty on 30.07.1985 as P.G.T.. the applicant, N.C. Chaturvedi, who is officiating in that post, stands reverted. Since the applicant had been posted as a stop-gap arrangement against P.G.T. (Mathematics), as soon as the Respondent No. 4 was appointed as P.G.T. (Mathematics), the applicant was reverted. This also clearly shows that applicant's promotion was purely adhoc and it was against a vacancy of P.G.T. (Mathematics) for which the applicant had no qualification.

It is not necessary to refer to other documents, since all of them shows only the procedure adopted by the Selection Committee in case of selection post and about appointment of P.G.T. only subjectwise.

11. From the above discussions we find that applicant's adhoc promotion was not after due selection as per rules. The Office Note itself makes it clear that the applicant may be promoted on adhoc basis pending selection. He has not undergone the process of selection. There was no Screening Committee appointed and there was no procedure of calling number of candidates as required under the rules for viva-voce and then Screening

Committee preparing the panel for appointment of P.G.T. The applicant's promotion was, therefore, not after due selection as per rules but it was a case of adhoc and stop gap arrangement, pure and simple.

Further, we find that applicant's promotion was not against the vacancy of P.G.T. (Political Science) for which he was qualified. His promotion was against P.G.T. (Mathematics) for which he had no qualifications. As soon as the P.G.T. (Mathematics) candidate was appointed by the Screening Committee, namely -Respondent No. 4, and he reported for duty, on the same day and time the applicant was reverted. In view of both the grounds, one is that - applicant had no vacancy at all in his subject as P.G.T. but he was promoted against a different subject as a stop-gap arrangement and other is that his promotion was not as per selection procedure rules. Hence, in either way, the applicant's promotion was purely adhoc, temporary and stop gap and hence he cannot get any seniority on the basis of promotion as P.G.T. in 1983.

12. It may be by mistake or oversight the applicant was selected for promotion as Head Master (Class-II) in 1992. Immediately within a week or two, Respondent No. 4 filed an appeal or representation challenging the appointment of applicant on the ground that he was junior. The administration considered this question in detail and observed the principles of natural

justice by issuing notice to the applicant and considered his representation and held that Respondent No. 4 was senior to the applicant and therefore, passed the impugned order of reversion. We do not find any illegality or irregularity in passing the order of reversion.

13. The Learned Counsel for the applicant referred to some authorities on the point that seniority list cannot be disturbed or modified after a long lapse of time. In our view, this argument has no merit. We have already pointed out that we are not concerned with applicant's seniority as T.G.T. The seniority list of 1984 or 1988 regarding T.G.T. has no relevance for our present purpose. We are concerned about seniority of P.G.T. As far as P.G.T. is concerned, the appointment of Respondent No. 4 was only on 30.07.1985. Thereafter the applicant was reverted. The applicant was never promoted as P.G.T. but however, on 27.01.1986 the applicant was promoted as a Head Master (Middle School) and not as a P.G.T. The said Head Master's post is a non-selection post. Therefore, ~~considering~~ ^{holding} a selection test was not necessary. As per seniority, as a senior most T.G.T., the applicant got promotion as Head Master (Middle School) when the vacancy arose, namely - voluntary ^{retirement} ~~retirement~~ of the present incumbent of that post. Afterwards there is no seniority list prepared as between P.G.T. and Head Masters (Middle School). As soon as the applicant was promoted as Head Master (Class-II) in May 1992, within a week or two, Respondent No. 4 has objected to

it and the department issued a Show Cause Notice to the applicant to decide the matter in a short time and held that Respondent No. 4 is senior to the applicant and therefore, he was reverted. Hence, there is no question of any undue delay so far as deciding the question of seniority in the case of P.G.T. is concerned. Therefore, the decisions cited regarding delay in questioning the seniority list are not applicable to the present case.

Now as far as the feeder cadre for the post of Head Master Group 'B' or Class-II is both Post Graduate Teacher and Head Master (Middle School). Respondent No. 4 is a P.G.T. since 30.07.1985. The applicant is also in the feeder cadre as Head Master (Middle School) since 27.01.1986. Hence, he is junior to Respondent No. 4. For the reasons already stated, the applicant cannot get any benefit of his adhoc promotion from 1983 to 30.07.1985, since it was purely on adhoc and stop gap arrangement and that too without following the regular procedure and further, it was a promotion against a post for which there was no vacancy. We, therefore, hold that applicant's reversion is fully justified and hence, no case is made out for interference.

14. In the result, the application fails and is dismissed.
No order as to costs.

B. N. Bahadur
(B. N. BAHADUR) 157/12
MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA) 157/12
VICE-CHAIRMAN.