

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

S.A. No. 36/90.

Date of order: 27-3-1991.

Between

1. Ramaswamy Mallaiah,
2. Niverty Lalla,
3. Heeraji Nagoorao,
4. Devrao Kishanrao,
5. Yousuf Ali,
6. Ram Patloba,
7. Gangaram Asharam,
8. Mond. Gulam Dastagiri,
9. Eknath Munaji,
10. Shankar Lingaiah,
11. Khaja Habibuddin,
12. K. Rajeshwar,
13. Siddarth Bhale Rao,
14. Bala Mallesh,
15. O. M. Sainath

.. Applicants

Vs.

1. Divisional Railway Manager (MG),
Hyderabad.
2. Divisional Railway Manager (P),
(M.G.) Hyderabad.
3. Sr. Divisional Mechanical Engineer,
(M.G.) Hyderabad.
4. Asst. Mechanical Engineer,
Purna, Maharashtra State.
5. Asst. Mechanical Engineer,
(Diesel), Moulali, Secunderabad.

.. Respondents

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Appearance

For the applicants : Mr. S. Lakshma Reddy, Advocate

For the respondents : Mr. N. R. Deva Raj, Standing
Counsel for Railways.

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THE HON'BLE SHRI B.N. JAYASIMHA, VICE CHAIRMAN

THE HON'BLE SHRI D. SURYA RAO, MEMBER (JUDICIAL)

*Mvs.

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(Judgement of the Bench delivered by Shri D. Surya Rao
Hon'ble Member (Jud.)

The applicants herein are employees of the South Central Railway. The applicants 1 to 10, 13 and 15 state that they have been working as Machinists under the A.M.E., Purna, South Central Railway while applicants 11, 12 and 14 had been working as Machinists in the office of the A.M.E. (Diesel), Moulali, Secunderabad. They seek to question the order No. YP/535/Mech.Cad/Machine Trade (SOO.No.8/Mech/90) dt. 16.1.1990 passed by the Divisional Railway Manager (P) M.G. Hyderabad reverting them from the posts of Machinists to that of Khalasis. The applicants state that they were recruited initially in the cadre of YKC/SKR during the years 1973 and 1981. They have been promoted on ad hoc basis as Machinists between the year 1978 and 1985. Though the promotions were described as ^{on ad hoc} basis, it is averred that appointments were made to clear and existing vacancies in the category of Machinists Gr. III and despite the promotions having been granted after conducting the requisite Trade Test in which the applicants qualified. Some of the applicants had completed 12 years of service while others have completed 5 to 9 years of service in the promotion category. It is alleged that the respondent No. 3 by the impugned letter dt. 16.1.1990 has reverted all the applicants to the post of Khalasis on the ground that the posts of Machinists had become surplus. This order proceeded on the assumption that the applicants promotion is on ad hoc basis and that they had no right to continue in the said promoted posts. It is contended that the Railway Board had issued several circulars clarifying

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that a person who is promoted to officiate beyond 18 months, cannot be reverted for unsatisfactory work without following the procedure prescribed. It is further contended that instructions were issued by the Railway Board in Serial Circular No.179/87 dt.28.9.87 stating that adhoc promotions should be sparingly resorted to only for a short duration of 3 to 4 months and ~~not such for~~ even adhoc promotions should be ordered only from among the seniormost suitable staff. It is therefore contended that the ad hoc promotions resorted to in the case of applicants was not a stop gap arrangement but as a regular measure ^{since it} they were promoted after having passed the requisite Trade Test. It is therefore contended that for all purposes the promotions were regular promotions. It is alleged that an opportunity should have been given to the applicants before passing the order of reversion. Further it is contended that there is no seniority list prepared either in the Adhoc Mechanist Gr.III category or in the YKC/SKR category and there are several other juniors who are not reverted though they are juniors to the applicants in the promoted category of Mechanist Gr.III. Three instances viz., that of Abdul Azia, Syed Pasha and Hasan Khan of Purna Division, Mr.Saleemiah, and Mr. Dastagiri are cited as cases of juniors not reverted whereas seniors were reverted. It is contended therefore that the reversions apart from being contrary to the Railway Board's instructions are discriminatory.

2. On behalf of the respondents a counter affidavit has been filed denying ^{it} various contentions raised by the applicant. It is contended that out of 17 persons those who are directed to be reverted ^{are} purusuant to the impugned

order, 12 employees are from Purna Loco Shed, 2 employees are from Akola and 3 employees are from Diesel Shed, Moulaali. It is stated that the respondents have maintained a combined seniority list of YKCs belonging to Steam Locosheds and Diesel Locosheds of Hyd., (M.G)Division. Due to the shrinkage of steam traction a review was conducted and it had become necessary to reduce the overall strength of machinists to the extent of 17 in number and maintain 56 machinists. This reduction is due to the modernisation of Railway working system. Therefore inevitably the 17 machinists who are juniormost, no matter whether they are working in the steam loco shed or diesel loco shed had to be reverted from the posts ^{as} based on the common combined seniority list. It is stated that even if the 17 were to be working in any place other than Purna, Akola and Moulali but within the Hyderabad (MG)Division, ^{and if they are the D} even then the last 17 from the seniority list, ^{then they are} ^{as} they were liable to be reverted. Out of the 17 persons reverted pursuant to the impugned order dt.16.1.'90, it is stated that two persons from Akola Loco Shed have not joined the present application. It is further contended that the Loco sheds at Purna and Akola are situated in Maharashtra State and staff working in Hyderabad division which is inclusive of Maharashtra, Madhya Pradesh and Andhra Pradesh are generally unwilling to move on transfer from one state to another state. This administrative difficulty was taken into consideration when making promotions. It is stated that the seniormost staff who were eligible for promotion were not willing to move and fill in the vacancies of Purna and Akola from time to time. As an example it is stated that 12 employees from the Loco Shed Lalaguda were ordered to proceed to Purna on promotion as Fitters Grade,I but all of them expressed their unwillingness to move to Purna. Similar situation arose in the year

1980 in regard to the filling up of the post of Boiler Maker. It is also stated that recently 4 regular Mechanist, Gr.III of Locoshed, Balaguda were promoted and posted to Purna and Diesel Shed, Moulali as Mechanist Gr. II, but all of them have refused to effect transfer on promotion to Purna and their refusals have been accepted. The staff who were opposed against above refusals have also submitted their unwillingness to move on transfer Lellaguda to Purna. The counter recitus that in regard to filling up two vacancies at Moulali also the Railway Administration was compelled to appoint Junior Kalasis on promotion since seniors refused to work at Moulali. The reason for refusal is that the atmosphere of Moulali, the Diesel fumes and also handling of diesel oil had resulted in development of skin diseases like contact dermatitis and other skin diseases resulting sometimes in serious diseases. It is therefore stated that since the seniors were unwilling to go on promotion, ad hoc promotions had to be resorted to ever since 1980. It is for these reasons the promotions of the applicants were made on adhoc basis and not on regular basis. Subsequently, as explained earlier, because of modernisation viz., conversion from Steam to Diesel, the strength of staff of Locoshed staff had to be reviewed and the latest review made on 1.5.89 and 17 posts of Mechanist Gr.III were deemed to be rendered surplus. It is contended that after review the juniormost staff who were working on adhoc basis were reverted to Kalasis posts. In so far as the 5 persons referred to in the application are concerned, it is stated that 3 of them are not juniors to the petitioners whereas the 2 others S/Sri Syed Pahla and Hasan Khan are not working as adhoc Mechanist Gr.III but they are working as adhoc Millwright Fitter Gr.III i.e. a different trade. For the reasons given above it is stated that the order dt. 16.1.90 reverting the applicants as Kalasis is not arbitrary but justified. It is stated that since

the provisions were made on ad hoc basis no notice is necessary and the applicants cannot impugn the order of reversion on the ground of lack of notice.

3. A reply affidavit has been filed on behalf of the applicants reiterating that all the 3 employees S/Sri Abdul Azeez, Syed Pasha, and Hasan Khan, even as on today are still working as Machinists and they are all juniors to the applicants in the Machinists Trade. It is further stated that the contention in the counter that the applicants were asked to officiate on ad hoc basis is not correct since they were regularly selected in regular vacancies. It is also stated that action of the respondents in seeking to revert on the ground that the applicants have become surplus is also contrary to the Railway Board's letter dt. 21.4.89 addressed to the General Manager (P) of all Zonal Railways, which was published by the Office of the Divisional Railway Manager (P) /BG/SC dt. 8.8.89 in Sl. Circular No. 179/87. It was ordered therein by the Railway Board that all the Railways should identify the areas in advance in which the staff are likely to be rendered surplus and plan for quick redeployment of staff in other areas where there is additional requirement of staff, that if it is not possible to redeploy them supernumerary posts in the same grade should be created to the extent of the surplus staff and continue the same arrangement till redeployment and absorption in other areas. It is stated that the Railway Board had directed the concerned Zonal Railways to consult the major trade unions by discussing the subject in the PNM meeting before surrendering of the steam / diesel posts. Since the respondents have not followed these guidelines the order of reversion is illegal.

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4. We have heard the learned counsel for the applicants Sri S. Lakshma Reddy, and Standing Counsel for Railways Shri N.R. Deva Raj. The first contention of Sri Lakshma Reddy is that though the initial order of promotion of the applicants is shown as ad hoc, for all purposes these promotions were made on regular basis. It is contended that on the date of promotions, the vacancies were clear vacancies, the appointments of the applicants were made after regular selection/holding of a regular trade test and also on the ground that the applicants were allowed to function in the promoted categories for inordinate wrong periods. It is further contended that it is not as though the applicants have been promoted in fortuous vacancies but in the clear vacancies. Since the respondents have admitted that the seniors have refused to accept the promotions and to go on transfer to places like Purna, Akola and Moulali and since the juniors were willing to and qualified for promotion it was not open to the respondents to treat the promotions of the juniors as ad hoc. The reason given for treating the promotions as ad hoc, according to Sri Lakshma Reddy is ^{illegal} untenable and illegal. He states that the use of expression "Promoted to officiate purely on ad hoc basis" has no significance in law since for all purposes the promotion was regular in clear vacancies after holding of test and since seniors refused to accept the promotions. It is further contended by Sri Lakshma Reddy that in terms of Railway Board's instructions there is no scope for making temporary or ad hoc promotions for inordinately wrong periods. This is confirmed by Railway Board's letter E(NG)/1/87/PM/5/2 dt.21.8.87 wherein reference has been given to earlier Railway Board's instruction including a letter dt.28.8.85. The relevant portion of the circular dt.28.9.87 reads as follows:

"As the Railway Administration etc., are aware the instructions issued by the Board from time to time and reiterated in their letter No.E/NG/1-85-MP5/3 dt.28.8.85 inter-alia required that ad hoc promotions should be discouraged and if ordering ad hoc promotions becomes inescapable they should be resorted to only sparingly and only for a short duration of three to four months. Instructions also required that ad hoc promotions should be ordered only from amongst the seniormost suitable staff."

Shri Lakshma Reddy contends that apart from these instructions, the said letter dt.21.8.87 makes it clear that juniors should not be promoted ignoring the seniormost and that promotions should as far as possible be made only from amongst the seniormost and suitable staff. For these reasons he contends that the promotions are on regular basis though illegally described as ad hoc and officiating."

5. The contention of Shri N.R. Deva Raj, on the other hand is that the applicants have been promoted purely on ad hoc basis that such promotion does not confer any legal right on them to continue in the higher category of Machinists Gr. III, that the reversion was inevitable consequent on the p of the Railways viz., Dieselisation and electrification and that the applicants being seniormost in the category of Kala-sis, who were working as Machinist Gr.III are liable to be reverted. The reversion was consequent on a cadre review rendering 17 posts of Gr.III surplus. He contends that neither notice nor an opportunity to represent against the reversion is necessary as the reversion was on administrative grounds for want of vacancies and not by way of disciplinary action.

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6. The first question is whether it is open to the respondents to treat the promotions of the applicants as temporary or ad hoc appointments and not as regular appointments. It is to be noted that the Railways do not deny that the vacancies to which the applicants were promoted between 1.12.78 and 13.1.81 were clear regular vacancies. It is also not denied that the applicants were duly trade tested, found qualified and thereafter promoted. The only reason given for treating the promotions as adhoc was that seniors in the category of Kalasis had for personal reasons not accepted the promotions on the dates when the applicants were promoted. The reasons have already been narrated supra viz., that the employees at Hyderabad and Secunderabad were unwilling to proceed to Maharashtra due to some other difficulties which they would face by leaving their place of choice viz., Hyderabad and Secunderabad. Again the reason for not joining the Moulali Workshop was that there will be strenuous work and ^{when} ~~2~~ vacancies arose none of the seniors were willing to work at that workshop at Moulali as it was likely that there will be health hazards giving raise to skinailments to such of the employees who were posted in the Moulali Diesel Workshop. Hence, the promotion was denied to the seniors wholly and solely because of their reluctance to accept the ^{new} ~~old~~ promotion and not because the promotions ~~for fortuous~~ or as a stop gap arrangement. It is also not denied by the respondents that it was absolutely necessary to fill up the vacancies so that the work shop at Purna, Akola and Moulali should go on. Hence, for all purposes though the appointment of the applicants were described as ad hoc, it is clear that the said appointments were sought to be made to fill up regular vacancies and the procedure prescribed for making regular appointments, was followed. Mere description of an appointment as an ad hoc would not render it adhoc. In support of this proposition there are following decisions:-

1) C.B. Dubey & Ors. Vs. Union of India & Ors., (1975 (1) SLR Page 580) wherein the Division Bench of the Delhi High Court held as follows:

"1. The expression adhoc in its true meaning would mean 'Stop gap' i.e., to say without considering all the persons eligible for promotion.

2. It is only those persons who are not considered though they were eligible to be considered who could challenge the ad hoc appointments.

3. From the above angle "There is no difference between the adhoc or stop gap appointment and regular appointment, both these kinds of appointment if made after considering the eligibility of all candidates in the field of choice are governed by some considerations i.e., to say initially the appointments would be officiating in the posts to which they were promoted till the post becomes the clear vacancy in which promotee can be confirmed. The post would become clear for confirmation only when previous incumbent of the posts having a lien on it has left the lien or when the post originally in the quota for direct recruits is now available in the quota to the promotees."

2) In Mohd. Jamalulilah & Ors., Vs. Registrar, General Census Operations, India, New Delhi & Ors., (1978 (2)SLR 623) It was held as follows:

"Assuming that a distinction is permissible between the purely ad hoc appointments and promotions which are made entirely for administrative reasons due to exigencies of service and temporary promotions made in the ordinary course after due selection against the existing or expected regular vacancies, the promotions made in the present case cannot be styled as adhoc promotions. The 4 petitioners were promoted after they were selected by the Departmental Promotion Committee duly constituted according to existing administrative instructions."

3) In Smt. Savitri Devi Vs. Municipal Corporation of Delhi and others (1979 (2) SLR 540) it was held as follows:

"The expression adhoc used in respect of promotions is capable of being understood for two different ways. In its true meaning expression means 'Stopgap' i.e., without considering all the persons eligible for promotion. The other is that the posts to which they are promoted are not just then available for substantive permanent promotion. In the latter event the appointments could more aptly be called officiating rather than adhoc. In the present case it is not in the latter sense in which expression has not been used. It is in the formal sense that this expression has been used, but with substantial difference. Normally in such a case the person is given promotion as stopgap arrangement, pending steps being taken to select or appoint the proper person to the post. But here all the persons eligible for promotion have been taken into account but since the seniors among them are unwilling to accept the post the junior people in the cadre are promoted and though in this sense the promotions can be described as adhoc, but as already discussed it was not an intention that it was put a purely temporary arrangement which would require promotions to be reconsidered as and when willing seniors were available, that is why it seems to me that the use of the word 'ad hoc' in the order of appointment was the misdescription and there was really nothing ad hoc about the promotions under the circular."

4) In D.R. Nim Vs. Union of India (1967 SC(2)1301) it is not doubt a case relating to seniority and the question therein was whether appointment on adhoc basis would count for seniority. The facts may not be similar but the dicta laid down therein in so far as to a question whether it is open to the Govt. to deny benefits to adhoc employees despite regular selections having taken place and despite seniors have not been duly considered was the subject matter of the decision by the Supreme Court. It was held therein as follows:

"We had earlier left open the point raised by the Govt. of India that the appellant's continuous officiation was a temporary or local arrangement within Explanation I to R.3. This is sought to be sustained by the following statement in the affidavit, dated March 15, 1966.

When vacancies could not be filled up even by this method, recruitment from the open market was resorted to. All officers thus recruited to the service were initially appointed in the Junior scale of the I.P.S. The result was that there were some senior posts that had to be filled and some State Police Service Officers who had not been selected to the Service through any of the above recruitment methods were in view of the existing paucity of officers, allowed to officiate on Senior posts as a stop-gap arrangement. I say that all such State Police Service Officers who were officiating on Senior posts due to shortage of officers were primarily those who had been considered for absorption in the I.P.S. under the Promotion quota or under the Emergency recruitment but had not been found fit for such absorption. This statement is denied by the appellant. We agree with him that such a stopgap arrangement cannot last for 8 years and it has been shown that the Appellant was appointed temporarily in place of some persons as subsequently he has never been reverted. Further the fact that he was appointed to the post at the time when vacancies fell negative that it was merely a temporary arrangement."

7. It is clear from the decisions cited that merely because the respondents described an appointment as adhoc, it does not necessarily mean that the employees appointed as such would not have any rights and that they could at the will of the employer be reverted years later. This is particularly so in cases wherein the selection of the ~~was for~~ said adhoc employees or regular selections made in accordance with the. In such cases the appointments though styled ad hoc or temporary must for all purposes be deemed ~~not~~ ^{not} regular and the mere use of ad hoc does not

determine the nature of the promotions. Added to this there are clear Railway Board's instructions and circulars that ad hoc appointments should not continue indefinitely for long periods. There are also specific instructions viz., Serial Circular No.179/87 which draws attention to earlier circulars of 1982, 1983 and 1985 and which lays down that ad hoc promotion should be sparingly resorted to and should be ordered only among the seniormost suitable staff. The idea behind the said circular being that even if the appointments are to be terminated for any reason, the juniormost of the seniors who have been promoted would stand reverted. In the instant case before us it is clear that by following the seniority list of YKC/SKRs, persons who have been promoted earlier as Machinists are sought to be reverted as against persons promoted later. This is confirmed in view of the fact that the respondents admit that no seniority list of Machinists Gr.III Divisionwise has been maintained. The applicants are being treated as juniors not because there were promoted later but because they are juniors in the category of YKC/SKRs which is not a relevant criteria. The promotions of the applicants being a consequence to the seniors having been considered and refused the same due to certain difficulties that they would have had to face, it follows that the applicants cannot be denied the benefit of the said promotions. Hence, on the ground that the promotions of the applicants though described as stopgap were in fact a regular promotions it would follow that they would be entitled to be considered as seniors in the category of Machinists Gr.III, and that they should not be reverted.

8. The learned counsel for the applicants has also pleaded that the procedure followed as prescribed by the Railway Board for abolishing posts has not been followed, that there was no

consultation with the Trade Unions as required, that supernumerary posts ought to have been created and there should have been advanced planning before the posts were declared surplus and a step should have been taken to fit in the applicants into other posts, before ordering the reversion. It is not necessary for us to go into these aspects since we ~~had~~ held that the order of reversion of the applicants is ~~per se~~ illegal in that they would be seniors if their ad hoc service is taken into consideration as regular appointments.

4. For the reasons given by us in the preceding paragraphs it would follow that the impugned reversion order passed by the Divisional Railway Manager (P) M.G., Hyderabad in his order No. YP/535/Mech.Cad/Machine Trade (SOO.8/Mech/90) dt. 16.1.1990, reverting the applicants from the posts of Machinists to that of Khalasis, is illegal and it is accordingly quashed. The respondents are directed to treat the applicants as regular promotees from the date of initial ad hoc appointment and to give them all consequential benefits including seniority. The applicants would be entitled to difference of pay between the post of Machinist and the pay of Y.K.C., consequent upon implementation of the order of reversion dt. 16.1.1990 till the date of their reappointment as Machinists Gr.III. The application is allowed. Parties may bear their own costs.

CERTIFIED TO BE TRUE COPY

.....N.S. Ramulu.....

Date ... 3/4/91

Court Officer

Central Administrative Tribunal

Hyderabad Bench

Hyderabad.