

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 17.8.2001

OA 469/2000

R.S.Dayma, Assistant Superintendent, Railway Mail Service,
Ajmer Railway Station, Ajmer.

... Applicant

Versus

1. Union of India through Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Post Master General, Rajasthan Southern Region, Ajmer.
4. Shri Babu Lal-B, Inspector (ST-I), Railway Mail Service, S.T. Division, Jodhpur.
5. Shri Kheta Ram, Office Supervisor, Divisional Office, S.T. Division, Jodhpur.

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.V.Calla

For the Respondents ... Mr.Vijay Singh, proxy
counsel for Mr.Bhanwar Bagri

O R D E R

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative Tribunals Act, 1985, applicant R.S.Dayma has prayed for declaring the impugned orders dated 19/20.9.2000 (Ann.A/1 and Ann.A/2) as illegal qua the applicant.

2. Applicant's case is that he was initially appointed as Sorting Assistant on 1.1.66 with the respondent

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department and he was promoted as Inspector, Railway Mail Service (IRM, for short) on 28.12.88 after passing the necessary competitive examination. The post of Assistant Superintendent, Railway Mail Service (ASRM, for short) is required to be filled through Departmental Promotion Committee as per rules, failing which on ad hoc basis from amongst the seniormost Inspectors who are otherwise suitable for promotion. The applicant was promoted on ad hoc basis as ASRM w.e.f. 27.7.98. Subsequently, a DPC was held and respondent No.4 (Shri Babu Lal-B) was promoted on regular basis as ASRM and respondent No.5 (Shri Kheta Ram) was promoted on ad hoc basis as ASRM, while the applicant was reverted to his substantive post of IRM. Contention of the applicant is that he was working as ASRM on ad hoc basis and on his reversion as IRM, another person (Respondent No.5) has been appointed as ASRM on ad hoc basis. Replacement of ad hoc or temporary arrangement by another ad hoc or temporary arrangement is not permitted by law. It has also been argued by the learned counsel for the applicant that once the applicant has been considered suitable for promotion on ad hoc basis, he cannot be declared unfit for promotion on regular basis. Hence this application.

3. In this connection, the learned counsel for the applicant has cited the case of Gurjit Singh Sahota v. State of Punjab and Another, AIR 1975 SC 1915, and J. & K. Public Service Commission, etc. v. Dr. Narinder Mohan and others etc. etc., AIR 1994 SC 1808, in support of his contention.

4. In the counter it has been stated by the learned counsel for the respondents that the DPC held for filling up regular promotion did not consider the applicant fit for promotion and, therefore, he was reverted to his substantive

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post of IRM and it has, therefore, been averred by the respondents that there is no illegality in the action of the respondents and, therefore, the OA does not call for interference by the Tribunal.

5. We have heard the learned counsel for the parties and perused the records of the case carefully.

6. In J. & K. Public Service Commission, etc. v. Dr. Narinder Mohan and others etc. etc., Hon'ble the Supreme Court has observed as under :-

"In State of Haryana v. Piara Singh, 1992 (4) SCC 118 at 152: (1992 AIR SCW 2315), this Court noted that the normal rule is recruitment through the prescribed agency but due to administrative exigencies, an ad hoc or temporary appointment may be made. In such a situation, this Court held that efforts should always be made to replace such ad hoc or temporary employees by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete along with others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc or temporary employee. Ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee. He must be replaced only by regularly selected employee. The ad hoc appointment should not be a device to circumvent the rule of reservation. If a temporary or ad hoc employee continued for a fairly long spell, the authorities must consider his case for

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regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

It is clear from the above that ad hoc or temporary arrangement cannot be replaced by another ad hoc or temporary arrangement. In the instant case, the applicant who was functioning on ad hoc basis was reverted and another person junior to him was given ad hoc promotion. In this connection, it has been pointed out by the respondents that the applicant had earned adverse Confidential Report for the year 1996-97 and, therefore, he could not be considered fit for promotion on regular basis to the post of ASRM. The applicant was holding the post at that point of time on ad hoc basis and in the light of the law laid down, as discussed above, he should not have been reverted to make room for another ad hoc appointment. In regard to his regular promotion as ASRM, the learned counsel for the applicant has cited the judgement of Hon'ble the Supreme Court in Gurjit Singh SAhota v. State of Punjab and another, AIR 1975 SC 1915. In that case, the appellant was promoted to Class-I post on ad hoc basis. He was later on reverted to Class-II as his service record in Class-II post did not justify promotion. It was held by Hon'ble the Supreme Court that his service record in Class-I post must be considered when his juniors are promoted to Class-I post on ad hoc basis. In this connection, we consider it appropriate to extract below the relevant portion of the judgement cited above :-

"7. We think that the grievance of the appellant to the extent that his record of service in the Class I post should have been considered when his juniors were promoted to Class I posts is legitimate. It is

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true that when the appellant was promoted to Class I on ad hoc basis his record of service in Class II post did not justify his promotion and that was the reason why he was ordered to be reverted. But that is no reason why, when his juniors were subsequently promoted to Class I posts, the case of the appellant for promotion to Class I post should not have been considered on the basis of his service in the Class I post, though his ad hoc promotion to that post was subsequently found to be not justified. If, on the basis of the subsequent record of his service, the appellant was entitled to be promoted to Class I post in preference to any one of his four juniors, there was no justification for the order reverting him to Class II service.

8. We would, therefore, direct the Public Service Commission to consider the record of service of the appellant in Class I post on the basis of his ad hoc promotion to that post and see whether he was eligible for promotion to that class of post in preference to any one of his four juniors who have been promoted to Class I posts and tender the proper advice to the Government."

In this judgement, the confidential reports of the appellant for the period he officiated on a Class-I post on ad hoc basis were not considered when his juniors were being considered for promotion to Class-I post. It has also been pointed out that on the basis of the confidential reports of the appellant on Class-II post he was not found fit for promotion to Class-I post on ad hoc basis and accordingly he was reverted. In these circumstances, Hon'ble the Supreme Court had held in the above mentioned judgement that while the juniors of the appellant were being considered for promotion

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to Class-I post, the confidential reports of the appellant for the period he worked on Class-I post on ad hoc basis should have been considered and his case should not have been ignored because of the confidential reports of the appellant for the period he held the Class-II post were not found upto the mark for promotion to the Class-I post. In the instant case, the DPC for regular promotion was held on 22.8.2000 and the case of the applicant was also considered by the DPC. However, he was not found fit for promotion on regular basis. It is not the case of the applicant that his confidential reports for the period he held the post of ASRM on ad hoc basis were not considered. As a matter of fact, the entire record of service including the confidential reports for the period the applicant served on the post of ASRM on ad hoc basis were considered. Thus, in our view, the judgement cited by the learned counsel for the applicant does not come to the rescue of the applicant. In the light of above discussion, we are of the view that this application can be partly allowed for reconsideration of the case of the applicant for promotion to the post of ASRM on ad hoc basis. Accordingly, we pass the order as under :-

The OA is partly allowed. The respondents are directed to reconsider the case of the applicant for promotion to the higher post of ASRM on ad hoc basis in the light of the judgements of Hon'ble the Supreme Court, discussed above, within a period of three months from the date of receipt of a copy of this order. No costs.

Gopal Singh
(GOPAL SINGH)

MEMBER (A)

B.S.RAIKOTE
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VICE CHAIRMAN