

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the 02nd Day of November 2018)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)

Original Application No.1093 of 2010
(U/S 19, Administrative Tribunal Act, 1985)

Suraya Narayan Mishra, son of Late Bhagwan Mishra, Resident of House No. D-270, Near Ramgarh Tal, Ramnagar Mohaddipur, Gorakhpur City, District Gorakhpur.

..... Applicant

By Advocate: Shri M.K.Shukla/Shri I.R. Singh

Versus

1. Union of India through its Secretary, Ministry of Communication and I.T. Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110 001.
2. Chief Post Master General, U.P Circle, Lucknow.
3. Post Master General, Gorakhpur Region, Gorakhpur.
4. Senior Superintendent Post Offices, Gorakhpur Division, Gorakhpur.

..... Respondents

By Advocate: Shri Saurabh Srivastava

ORDER

By Hon'ble Mr. Rakesh Sagar Jain, Member (J)

1. Case of applicant Suraya Narayan Mishra is that he was appointed as Postal Assistant on 18.07.1979 against substantive vacancy and posted in Head Post Office, Gorakhpur. He applied and was appointed to the post of Hindi Translator Grade – III on 24.06.1986 on adhoc basis. Respondent No. 2 sought information and documents to consider his regularization, which he duly forwarded vide letter dated 03.04.1991. Pending his regularisation, respondent No. 2 passed order dated

12.10.1992 that applicant should not be reverted till further orders (Annexure- A 7). Respondent No. 3 passed order dated 06.01.1994 upgrading applicant to the post of Hindi Translator Grade – II which now is designated as Junior Hindi Translator.

2. Applicant has further averred that one S.P. Maurya appointed as Hindi Translator Grade – II was regularized on said post in February 1992 by respondent No. 2 and promoted as Senior Hindi Translator and then Assistant Director Official Language but the regularization and promotions of applicant are pending considerations. Copy of application is attached as annexure – A 9.
3. It is the further case of the applicant that the Assistant Director (Staff) of the office of respondent No. 3 vide impugned order dated 17.04.2009 removed the applicant from post of Junior Hindi Translator. And thereafter, respondents No. 2 and 3 vide impugned order dated 20.07.2009 and 12.05.2009 limited the appointment of applicant till regularization or for one year. And finally, respondent No. 2 and 3 vide order dated 19.7.2010 and 28.7.2010 reverted the applicant from the post of Junior Hindi Translator to the post of Postal Assistant after more than 24 years of service.
4. Applicant seeks the following reliefs:
 - i. To quash the order **Kki ukd&vkj i hth@LVkQ@ ,DI , -fgUhh jktHk'k@1 fnukd 17-04-2009** issued Assistant Director (Staff), office of Post Master General, Gorakhpur Region, Gorakhpur as (Annexure -1).
 - ii. To quash the order limiting continuance of the applicant on the post of 'Junior Hindi Translator'

only for one year **i = I ; k&LVkQ@449&vkj , I @09@3 fnukd 20-07-2009**

issued by the Assistant Post Master General (Staff), office of Chief Post Master General, U.P Circle Lucknow 226001 as (Annexure -2).

iii. To quash the order limiting continuance of the applicant on the post of 'Junior Hindi Translator' only for one year **Kki ukd&cy@39@dkj@2010**

xkj [ki j fnukd 172-05-2010 issued by the Senior Superintendent Post Offices, Gorakhpur Division, Gorakhpur as (Annexure -3).

iv. To issue an order commanding the respondent No.2 to consider regularization of the applicant on the post of 'Junior Hindi Translator' and also to consider promotions of the applicant to the next higher posts from due date alike Shri S.P. Maurya and also to give all service benefits including arrears of salary within one month from the command of the Hon'ble Tribunal.

v. Issue any other order or direction or grant reliefs which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case to meet the ends of justice.

vi. Award the cost to the applicant.

vii. To quash the order **i =kd , I Vh, @fglnh VKI yvj@87@mfn0 y[kum 19-7-10** issued by the Assistant Post Master General (Staff) for Chief Post Master General UP Circle Lucknow Annexure 3A

viii. To quash the order **i =kd vkj0 i h0 th0@LVkQ@,DI &, &fglnh jktHk'k fnukd 28-7-10 , I Vh, @fglnh VKI yvj@87@mfn0 y[kum 19-7-10** issued by Assistant Director (Staff) for Post Master

General Gorakhpur Region, Gorakhpur Annexure
A-3A

5. Applicant challenges the orders on the following grounds:-

- 1) The applicant has been discriminated without any fault since Shri S.P. Maurya was also appointed on the post of Hindi Translator Grade-II and he has been regularized on this post.
- 2) The applicant has not been given any notice or afforded any opportunity of hearing of any kind by the respondents before passing the impugned order.
- 3) Revision of applicant from the post of Junior Hindi Translator to the post of Postal Assistant is absolutely arbitrary, malafide, violative of Articles 14 and 16 of the Constitution of India as well as punitive in nature as applicant has rendered more than 24 years regular service on the said post.
- 4) The pay scale of Junior Hindi Translator is higher than the pay scale of Postal Assistant, therefore, the reversion will also cause serious financial loss to the applicant.
- 5) The impugned orders are absolutely illegal, arbitrary malafide violative of Articles 14 and 16 of the Constitution of India and suffers from manifest error of law apparent on the face of record as well as miscarriage of justice.

6. In the counter affidavit filed by respondents it has been averred that applicant was engaged as Hindi Translator Grade – III on adhoc basis in 1986 without observing the formalities of recruitment prescribed by Communication

of DG P&T No. 20-2/79-SPB-1 dated 11.01.1983 (Annexure-CA-3). The conditions mentioned in the aforesaid communication were not observed by the Senior Superintendent of Post Offices, Gorakhpur at the time of arranging the applicant as Hindi Translator Grade-III on 24.06.1986 and no action was taken for appointment as per the recruitment rules and instructions of ad-hoc arrangement were issued from time to time. The post of Hindi Translator Grade – I, II and III were merged and renamed as Junior Hindi Translator and Senior Hindi Translator vide memo dated 24.11.1993 (Annexure-CA-4). The process for recruitment was also changed vide OM No.20-1/94-SPB-1 dated 05.12.1996 (Annexure-CA-5).

7. Reference has also been made to OM No.28036/8/87 Estt (D) dated 30.03.1988, relevant portion of which is reproduced as under:-

“In such exceptional circumstances adhoc appointments may be resorted to subject to the following conditions :-

- (i) The total period for which the appointment/promotion may be made, on an adhoc basis, will be limited to one year only. The practice of giving a break periodically and appointing the same person on an adhoc basis may not be permitted. In case there are compulsions for extending any adhoc appointment/promotion beyond one year, the approval of the department of Personnel and Training may be sought at least two months in advance before the expiry of the one year period. If the approval of the Department of Personnel and Training to the continuance of the

adhoc arrangements beyond one year is not received before the expiry of the one year period of the adhoc appointment/promotion shall automatically cease on the expiry of one year term.

- (ii) If the appointment proposal to be made on an adhoc sic. involves the approval of the Appointments Committee of the Cabinet, this may be obtained prior to the appointment/promotion actually made.
- (iii) Where adhoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under :-
 - (a) Adhoc promotions may be made only after proper screening by the appointing authority of the records of the officer.
 - (b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for adhoc appointment. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.
 - (c) The claims of Scheduled Castes and Scheduled Tribes in adhoc promotions shall be considered in accordance with the guidelines contained in the department of Personnel and A.R. Office Memorandum No.36011/14/83-Estt (SCT) dated 20.04.1983 and 30.09.1983.
- (iv) Where adhoc appointment by direct recruitment (which as explained above should be very rare) is being done as a last resort, it would be ensured that the persons appointed are those nominated

by the employment exchange concerned and they also fulfil the stipulations as to the educational qualifications/experience and the upper age limit prescribed in the recruitment rules.

Where the normal procedure for recruitment to a post is through the employment exchange only, there is no justification for resorting to adhoc appointment.

- (v) Where the appointing authority is not the Ministry, the authorities competent to approve adhoc appointments may be decided by the Administrative Ministries themselves. The competent authority so authorized by the Ministry should be one level higher than the appointing authority prescribed for that post.

5. XX XX XX

- 6. All adhoc appointments including adhoc promotions shall be reviewed on the basis of the above guidelines. In exceptional circumstances, wherever such appointments are required to be continued beyond the present term, the decision thereon may be taken by the authority prescribed in para 4 (v). However, it may be noted that the continuance of such adhoc appointments including adhoc promotions will be subject to the overall restriction of one year from the date of issue of these instructions.

- 8. Respondents have also pleaded that it has been clarified by the Department of Expenditure as communicated vide Postal Directorate D.O. No. 44-6/2000-SPB-II (Pt.) dated 7.4.2000 (copy enclosed as Annexure CA-9) that "it is clarified that the post which are not filled on regular basis (as per the prescribed method as the recruitment rules) are vacant posts. That

is, the day the regular incumbent of any post relinquish the charge of the post, that post falls vacant and remained vacant till such time it is filled upon regular basis (filling up of the post on adhoc basis are given additional charge of the post to another officer in the meanwhile not withstanding). Thus, officiating arrangement cannot be treated as filling up of any vacant post. In these circumstances, the services of the applicant cannot be regularized".

9. It has further pleaded in the counter affidavit that applicant was working on an adhoc basis and which arrangements was terminated vide order dated 17.4.2009 and on the representation of the applicant, it was ordered to retain him for one year or till his regularization on the post of Junior Hindi Translator. That the regularization of the services of applicant was examined in the light of recruitment rules and it was found that his services cannot be regularized since in the recruitment rules there is no provision for promotion but there is 100% recruitment to this post on the basis of direct recruitment and, therefore, applicant was ordered to be reverted back to the original post of Postal Assistant vide letters dated 19.7.2010 and 28.7.2010.
10. It is also mentioned in the counter affidavit that applicant was appointed as Hindi Translator Grade III purely on adhoc basis and his services could be terminated at any time without giving him a show cause notice.
11. Regarding the appointment of S.P. Maurya as Hindi Translator Grade II, the stand of respondents is given in

para No. 16 and 22 of the counter which read as under:-

"16. That the contents of paragraph No. 4 (viii) of the original application are not admitted hence denied. The applicant has himself admitted that Shri S.P. Maurya was appointed as Hindi Translator Grade II whereas the applicant was working on Grade III on adhoc basis and his engagement in Grade III as without observing any formalities of recruitment as prescribed in recruitment rules. There is provision for filling the 50% post by promotion in Grade II but there is no provision for filling up the post by promotion in Grade III, therefore, the applicant should not compare his case with Shri S.P. Maurya.

22. That the contents of paragraph No. 4 (xiv) of the original application are not admitted hence denied. As stated in preceding paragraph 16 above because Shri S.P. Maurya was promoted in Grade II after observing the formalities prescribed under recruitment rules whereas applicant was working on Grade III on adhoc basis and his engagement in Grade III was without observing any formalities of recruitment as prescribed in recruitment rules".

12. In the rejoinder affidavit, besides reiterating the averments of O.A. has averred that "he has been working on the post of Hindi Translator Grade III since 24.6.1986 and like the applicant, one S.P. Maurya who was also appointed on the post of Hindi Translator Grade II was regularized on the said post in February 1992, by the respondent No.2 and further he was promoted on the post of Senior Hindi Translator and again promoted on the post of Assistant Director Official Language and posted in the office of Director

Postal Accounts Lucknow, but the applicant has been illegally discriminated by the respondent authorities without any fault on his part".

13. In the supplementary counter affidavit filed by respondent Nos. 1 to 4, they have denied the allegations of applicant and further stated that the plea put forth by the applicant by way of stating the name of S.P. Maurya is not correct.
14. We have heard and considered the arguments of the learned counsel for the parties and one through the material on record. During the arguments, the learned counsels for the parties have reiterated the pleas raised by them in their pleadings. Learned Counsel for applicant has relied upon U.P.State Electricity Board v/s Pooran Chandra Pandey, (2008) 1 UPLBEC 466 in support of his arguments.
15. Applicant has filed this petition to challenge the order of his reversion from the post of Hindi Translator Grade – III (Annexure A – (3B)). Further prayed for directing the respondents to promote the applicant as Junior Hindi Translator on regular basis. The facts of the case regarding his initial appointment and subsequent adhoc promotion to post of Hindi Translator Grade – III and subsequent reversion to the post of Postal Assistant is a admitted position.
16. As per the applicant, he had performed honestly. He made a request for promoting him as Junior Hindi Translator on regular basis the earlier promotion being on adhoc basis. He, however, was reverted to the post of Postal Assistant on the ground that (1) his case for promotion is not covered by the Recruitment Rules

(Annexure CA-3) which provides for recruitment by direct recruitment, (2) as per the O.M. No. 28036/8/87 Estt (D) dated 30.3.1988, the promotion on adhoc basis can be made for a limited period and after the expiry of period, if the adhoc promotion is not continued, the adhoc promotion shall automatically cease on the expiry of the term; (3) As per order 24.06.1986 (Annexure-A4), applicant was promoted on purely adhoc basis and could be reverted at any moment without notice. The applicant filed the present petition to impugn the order of reversion as well as to seek direction for his promotion to the post of Junior Hindi Translator.

17. The facts about the details of the service of the petitioner and promotion on adhoc basis are not in much dispute. Perusal of the reply would show that post of Junior Hindi Translator against direct recruitment became available in the year 1986. A decision was taken to fill up the post meant for direct recruitment by promoting the petitioners as a stop gap arrangement so that the work of the Department may not suffer. Consequently, the applicant was promoted on adhoc basis as Junior Hindi Translator (Hindi Translator Grade – III) on 24.06.1986. The promotion was with specific stipulation as under:- (1) The promotion is on adhoc basis; (2) He can be reverted without prior notice.
18. Thus the promotion of the applicant was adhoc subject to reversion at any moment. Respondents would thus plead that there is no legal right with the applicant to seek this promotion. It is also pointed out that the case of the applicant is not covered by the recruitment rules and the O.M./guidelines issued by DoPT as well as Communication of Department of Expenditure. The

approval for the adhoc promotion was denied on the ground that the RR do not provide for appointment by promotion but prescribe rules for recruitment to the direct quota post of Junior Hindi Translator.

19. From the very nature of the promotion orders, it becomes crystal clear that the promotion was only on adhoc basis as a stop-gap arrangement. The applicant cannot advance any valid justification to continue on the promoted post once his adhoc promotion was not approved.
20. In J. & K. Public Service Commission vs. Dr. Narinder Mohan [1994 AIR 1808], the Apex Court has held as under:- "Back door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The later are the product of order and regularity. Every eligible person need not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments."
21. It was also argued by the Learned counsel for applicant that since the applicant had been working for years, as such, he is entitled to a regular promotion. Whereas, LC for respondents submitted that under law no such right is available to the applicant.
22. It is settled law that no person illegally appointed or appointed without following the procedure prescribed under the law, is entitled to claim that he should be

continued in service. The appointees have no right to regularisation/promotion in the service because of the erroneous procedure adopted by the authority concerned in appointing such persons.

23. Looking to the facts and circumstances of the case as well as the rules governing the case, applicant has been unable to make out a good case for its acceptance. Before, parting, reference may be the averment in the O.A. that one S.P.Maurya was appointed to the post of Hindi Translator Grade -II and applicant be accorded like treatment in matter of promotion. The contention has been met and rightly so, by the respondents by averring that S.P.Maurya was appointed as Hindi Translator Grade II whereas applicant was working as Grade III on adhoc basis and his engagement in Grade III was without observing any formalities of recruitment as prescribed in recruitment rules. There is provision for filling the 50 % post by promotion in Grade II but there is no provision for filling up the post by promotion in Grade III, therefore, the applicant cannot compare his case with S.P.Maurya.
24. Applicant relied upon U.P.State Electricity Board v/s Pooran Chandra Pandey (Supra). However the facts of the said case are entirely different from the controversy involved in the present O.A. and has no applicability in the present case as the same pertained to regularisation of daily wage employees.
25. Keeping in the view, the facts of the present case as discussed above, We are of the view that no good case has been made out by the applicant for its

acceptance. The O.A. is, accordingly dismissed. No order as to costs.

(Mohd. Jamshed)

Member (A)

(Rakesh Sagar Jain)

Member (J)

Manish