

A. K. Sharma

Vs

Union of India

Civil Appeal No. 53 of 1997

(Sujata V. Manohar, S. Rajendra Babu JJ)

21.01.1999

JUDGMENT

S. Rajendra Babu J

1. This appeal has been filed against the order of the Central Administrative Tribunal, Guwahati Bench (hereinafter referred to as 'the Tribunal') dated August 3, 1995 in Original Application No. 54 of 1991. The brief facts leading to this appeal are as follows :

2. The first appellant was recruited as an Office Clerk in the year 1979 and posted under Chief Personnel Officer, North Frontier Railway. He was promoted as Senior Clerk in 1981. The second appellant was recruited as Clerk Grade-II and was posted to work under the Financial Advisor and Chief Accounts Officer, North Frontier Railway, Maligaon, Guwahati. He was promoted as Accounts Assistant on April 1, 1988. A notification was issued on August 12, 1984 to fill the post of Law Assistant and applications were invited from the serving railway employees possessing a Degree in Law and having rendered five years service. The appellants offered themselves as candidates and participated in the written test in which they were declared to have been successfully. They also took *viva voce* examination. Out of nine candidates three candidates were promoted as Law Assistants and two more candidates were promoted on *ad hoc* basis. On January 30, 1987 a provisional seniority list of Law Assistants in grade Rs. 1600-2660/- was published and the names of the Law Assistants as stated above were shown. That position was repeated and the appellants claimed that they were also promoted to the post of Law Assistant on regular basis. This was reflected in the second seniority list published on February 22, 1989. The order promoting the appellants on August 2, 1988 was clarified to have been *ad hoc* promotion by the proceedings issued on July 23, 1990. The appellants represented against the modification of their promotions on *ad hoc* basis. The appellants were informed that their names were not included in the panel and, therefore, they could not be regularly promoted as Law Assistants and their representations made therefor were rejected. Thereafter in 1991 three Law Assistants were recruited from open market and a fresh notification was issued on March 7, 1991 for holding selection for the post of Law Assistant. At this stage the appellants approached the Tribunal.

3. In the Original Application before the Tribunal their claim for regularisation having been rejected, it was contended that the modification made by the proceedings dated July 30, 1990 modifying the promotion order dated August 2, 1988 was arbitrary and against the principles of natural justice. It is contended by the appellants that the original order could not be modified after about two years; that they must be treated to have been regularly appointed Law Assistants; that

they could not be deprived of the benefits thereof and that they cannot also be compelled to participate in the selection to be held subsequently. On behalf of the respondents it was submitted that the appellants were not selected for promotion which is a requirement under the relevant rules and were also not empanelled for regular promotion. Thus their promotion was purely on *ad hoc* basis given in the exigencies of service and, therefore, rectification of the mistake by inclusion of the words *ad hoc* cannot be treated as improper nor the earlier order could confer any right upon them to be treated as regular promotees.

4. The Tribunal first adverted to the question of the violation of the principles of natural justice in not affording any opportunity to the appellants to put forth their say before the modification made by the department in regard to the nature of their promotion to the post of Law Assistant. The Tribunal noticed that against the orders made for *ad hoc* promotion representations were filed by the appellants and those representations were considered and rejected and, therefore, even if the original orders modifying the nature of their promotion were to be set aside on account of violation of the principles of natural justice, it would only mean that another opportunity had to be given to the appellants and, therefore, if such an opportunity had been given, all that they could have done is to disclose the facts which had already been disclosed in the course of their representations. On that basis the Tribunal held that non-issue of a notice before the orders impugned in the proceedings could not vitiate the same.

5. The Tribunal further noticed that their promotion was based on selection under the recruitment rules and the appellants had applied for the post of Law Assistant in pursuance of the circular issued by the Chief Commercial Superintendent on November 12, 1984. Unless they were selected in such process, they could not be appointed on regular basis. Even after being selected they could be appointed only if vacancies were available and under the relevant rules the panel prepared gets exhausted after two years.

6. The Tribunal further noticed that the mistake committed by the respondents could not confer any right contrary to the recruitment rules and, therefore, such a mistake would be rectified. The Tribunal also perused the original record of selection to examine the question whether the appellants could be appointed on regular basis or could only be appointed on *ad hoc* basis. The Tribunal noticed that the arrangement of *ad hoc* promotion against three reserved posts became necessary and in those circumstances the appellants were intended to be appointed only on *ad hoc* basis and not on regular basis. Existing vacancies were six and three persons were appointed on regular basis and three on *ad hoc* basis. Thereafter, the appellants were appointed in the exigencies of service and there was no material to show that there were vacant posts which were to be filled on regular basis.

7. The Tribunal also considered the action taken by the respondents to correct the mistake after a lapse of two years and found that they continued such posts for quite a long time and, therefore, great injustice had been done to the appellants. The Tribunal found that these factors could not amount to estoppel in so far as the respondents were concerned inasmuch as recruitment had been done in accordance with the rules and there could not be estoppel against the law. On that basis the Tribunal held that the appellants are not entitled to promotion as Law Assistants substantially on regular basis.

8. The arguments which were advanced before the Tribunal are reiterated before us in this appeal. The facts narrated by us above clearly disclose that the appellants were not selected as Law Assistants nor empanelled. Therefore, they could not have been promoted on regular basis as Law Assistants. The view taken by the Tribunal that their promotion as Law Assistants was only on *ad*

*hoc* basis which was made clear subsequently though not originally is justified. Though the appellants pointed out that they continued to work as Law Assistants and thus they were under the impression that they were likely to be regularised in those posts. This grievance, to some extent, is justified. But vacancies not being available when they were appointed as Law Assistants it must be held that it is only on *ad hoc* basis and it is not as though the appellants would not be aware of the same and that is why they made representations to regularise their appointments subsequently and did not challenge the alteration of their promotions on *ad hoc* basis. Thus the appellants cannot make a grievance now when they are entitled to be regularly appointed as Law Assistants. On this basis we must uphold the order made by the Tribunal and dismiss the appeal.

9. However, it is made clear that this order will not preclude the respondents from considering the case of the appellants appropriately and assort them as Law Assistants on such conditions as they may deem appropriate. Subject to what is stated above the appeal stands dismissed with no order as to costs.