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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 449/2002

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 5th day of September, 2002

Neeraj Bala Grover
Hindi Assistant Gr.II
Office of the C.A.O.
COFMOW, Tilak Bridge
New Delhi. ... Applicant

(By Advocate: Shri G.D.Bhandari)

Vs.

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Administrative Officer
COFMOW, Tilak Bridge
New Delhi.
3. Sh. Parimal Singh
RPF Constable, RPF Post
Railway Station
NEW DELHI. ... Respondents

(By Advocate: Sh. V.S.R.Krishna for official
respondents.

Shri B.S.Mainee, for private
Respondent No.3)

O R D E R

By Shri Shanker Raju, Member(J):

In this OA, applicant has challenged
respondents' memo dated 6.2.2002 whereby a
proposal has been made to revert the applicant
to her substantive post of Typist from the
post of Hindi Assistant. Applicant has sought
quashment of this order with all consequential
benefits.

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2. Brief relevant facts are summarised as under:

2.1 Applicant was appointed as Hindi Typist and was promoted as Sr. Typist in the Grade of Rs.4500-7000. A selection was notified for the post of Hindi Assistant Gr.II in the scale of Rs.1400-2300 (pre-revised) on 2.2.1995, and issued a list of eligible candidates where the name of the applicant appeared at Sl. No.7. Applicant, in pursuance, appeared in the written test and was declared successful, subjected him to a viva-voce test which the applicant had successfully passed and was placed in the panel of 7 successful employees/candidates.

2.2 In pursuance of empanelment of the applicant, he was promoted by an order dated 19.4.95 and was posted in Railway Printing Press, Shakur Basti, New Delhi as Hindi Assistant Gr.II. Since then the applicant has been shouldering the job responsibility without any adverse material against her. Applicant subsequently transferred to Central Organisation for Modernisation of Workshops (in short as 'COFMOW').

2.3. In purported compliance of the directions of the Tribunal in Shri Parimal Singh v. Union of India, OA 552/96 the impugned memo. has been issued with a proposal

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revert the applicant to her substantive post of Typist which was received in the COFMOW on 11.2.2002. In the aforesaid decision, one Parimal Singh, an RPF Constable, one of the candidates in the selection, and was not empanelled had assailed the panel, directions have been issued to reconsider the selection of the applicant therein without considering the marks for seniority, giving rise to the present OA.

3. Shri G.D.Bhandari, learned counsel appearing for the applicant, though he has taken several contentions, at the outset, stated that the impugned memorandum at Annexure-A1 is not a proper show cause notice in so far as they have taken a decision to revert the applicant to her substantive post of Typist and the proposal taken in the impugned memorandum is a farce and amounts to post decisional hearing. As the applicant had been working after duly selected as Hindi Assistant Gr.II and in view of the decision of the Tribunal in Parimal Singh's case supra where no directions have been issued to reconsider the entire panel/selection. The directions have been issued only in respect of one Parimal Singh and the entire selection has not been set-aside and the decision is in personam, the action of the respondents to done away with the entire selection and disturbing the promotion of the applicant

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is contrary to the law lay down, by the Apex Court, in a Constitutional Bench decision, in Padma S. Rao v. State of Tamil Nadu, AIR 2002 SC 1334.

4. Shri Bhandari also contended that the decision in Parimal's case supra was on the basis of a decision of the Apex Court in M. Rama Jayaram v. General Manager, South Central Railway & Others, 1996 (1) SLJ Vol.22 Page 536 where on account of seniority of different units, the weightage of seniority marks has been done away, the same would have only prospective application, and the selection already held in 1995 whereas the decision had given in 1996 would not affect the selection and in that event it was incumbent upon the respondents to have only considered the case of Parimal Singh alone without disturbing the promotion of others.

5. It is also stated that the impugned order is not a show cause notice and the decision in Parimal Singh's case supra as well as the decision of the Apex Court in M.Rama Jayaram supra directions have been issued to reconsider the selection in accordance with law and as per para 320 of the IREM Vol.I is neither amended and the provisions of seniority marks is still exists, the promotion of the applicant cannot be found fault with. He places reliance on a decision

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of the Apex Court in Vinod Sharma & Others vs. Union of India, SLJ 1998(3) SC 198 to substantiate his plea and stated that there exists two vacancies, against which the applicant can be considered.

6. The stress of the arguments is that in show cause notice, it is incumbent upon the respondents to tentatively proposed the purported action and the finality of the decision should not be indicated as the respondents have, in the memo. already took a decision that the name of the applicant is not falling within the number of persons to be empanelled, reversion proposed, the show cause notice is only an empty formality.

7. On the other hand, Shri V.S.R.Krishna, learned counsel appearing on behalf of the official respondents, denied the contentions of the applicant and stated that in compliance of the decision in Parimal Singh's case supra the respondents have re-assigned/re-drew the final position by excluding the seniority marks and prepared the panel where the name of the applicant figures at Sl. No.8, ~~XXXXXX~~ as such having failed to make up the grade, applicant cannot be promoted.

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8. It is further stated that the decision in Parimal Singh's case supra as well as CP 68/2001 has already been upheld by the High Court as such no fault can be found with the action of the respondents which is incompliance of the orders passed by the Tribunal. It is further stated that necessary formalities of show cause notice to the affected parties have been adopted and the applicant has come to this Court prematurely without waiting for a final decision to be taken by the respondents and has also not responded to the show cause notice issued.

9. It is stated that in compliance of directions of excluding the seniority marks, it was found that the applicant is not falling within the ~~number~~ of persons to be empanelled.

10. Shri B.S.Mainee, learned counsel appearing on behalf of private respondent, contended that the respondents despite having succeeded in OA ^{his} and after the contempt and affirmation of these orders by the High Court of Delhi has not been accorded the benefit and as the decision of the Court has attained finality, the same is to be implemented.

11. Shri G.D.Bhandari, learned counsel for applicant further stated that he has challenged only the impact of Judgement but

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not the Judgement as such the OA is maintainable before this Court.

12. We have carefully considered the rival contentions of the parties and perused the material on record. Without going into other merits of the case, from the perusal of the show cause notice, purportedly issued in compliance of the directions issued in OA 512/96, we find that the same is not a proper show cause notice served upon the applicant. Without dealing with the contentions of the applicant, the respondents have ^{come} to the conclusion that ^{she} is not ^{falling} within the number of persons to be empanelled while excluding the seniority marks.

13. The purpose of a show cause notice is to apprise the affected party about the proposed action to be taken, and to give him an opportunity in hearing and explicit terms to have ^{his} ~~done~~ say before a final decision is taken. In nutshell, a fair hearing and a reasonable opportunity is the valid compliance before any government servant is visited ^w with civil consequences. According to us, the respondents without dealing with the contentions of the applicant have already taken a decision to revert her and this shows that the memorandum is an empty formality and would amount to post decisional hearing which cannot be countenanced.

14. The other grounds taken by the applicant shall be considered by the respondents if the applicant prefers a representation to the respondents to the show cause notice and the proposed action taken by the respondents.

15. In the result, and having regard to the reasons recorded above, OA is partly allowed. Impugned memo. dated 6.2.2002 is quashed and set-aside. Respondents are directed to issue a fresh show cause notice to the applicant having regard to the observations made above, within two weeks from the date of receipt of a copy of this order, indicating the proposed action and an opportunity to represent with a stipulated time limit. Applicant is at liberty to prefer her representation to such a proposal taking all her contentions which shall be considered by the respondents by passing a detailed and speaking order within one month from the date of receipt of the representation of the applicant. During this interregnum, applicant shall be allowed to work as Hindi Assistant Gr.II. However, if the applicant is still aggrieved by the final decision of the respondents, she shall be at liberty to redress her grievance in accordance with law. No costs.

S. Raju
(SHANKER RAJU)

MEMBER(J)

M.P.Singh
(M.P.SINGH)

MEMBER(A)

/rao/