

Central Administrative Tribunal  
Principal Bench

O.A. No. 1989 of 1999

New Delhi, dated this the 5 November, 1999.

(5)

Hon'ble Mr. S.R. Adige, Vice Chairman (A)  
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Ashok Kumar Singh,  
S/o Shri Bahadur Singh,  
Asst. Engineer (Inspection),  
Northern Railway, Baroda House,  
New Delhi. ... Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,  
Ministry of Railways,  
Rail Bhawan,  
New Delhi.

2. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi. ... Respondents

(By Advocate: Mrs. Meera Chhibber)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' order dated 23.8.99  
(Annexure A-2) and dated 6.9.99 (Annexure A-1).

2. Admittedly applicant who was working as Chief Bridge Inspector in Group C service was placed in the provisional panel for appointment as Asst. Engineer in Group 'B' Service vide respondents' letter dated 3.7.96 (Annexure A-3) as a result of a regular selection. By respondents' Notice dated 10.7.96 (Annexure R-1) the promotion order issued. This promotion order made it clear that promotion of applicant to Group B was subject to the condition that he was

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not undergoing any punishment in D&AR/Vigilance case. Pursuant to that order applicant joined duty on promoted post. Subsequently by letter dated 18.8.98 (Annexure A-4) it was stated that applicant's promotion was being treated as ad hoc since a prosecution case was pending against him at the time of his empanelment in Group B Service on 3.7.96, and his name in the panel dated 3.7.96 was provisional and his continuance would be subject to the outcome of the prosecution case pending against him. Thereafter by impugned letter dated 23.8.99 it was stated that the promotion was purely on ad hoc basis and would be until further orders and would not confer any right upon applicant for regular promotion. Thereafter by impugned letter dated 6.9.99 he has been reverted to Group 'C' service.

3. Applicant's counsel Shri Maine has contended that applicant, having been regularly promoted as Asst. Engineer which is a Group B post on his having been selected by a duly constituted DPC, he had acquired a substantive right to hold ~~the~~ the same he could not be reverted without holding <sup>and</sup> departmental proceedings without giving him an opportunity of being heard. Furthermore if any order favourable to applicant was to be superceded by an unfavourable order, applicant should have been put to notice, which was not done in this case. The criminal case against applicant which was pending in the Jodhpur High Court could not be made the ground to revert applicant, and therefore, not only were the impugned orders arbitrary, but they were also discriminatory

2

7

because while he had been reverted, his juniors were allowed to continue. Various rulings have been relied upon by Shri Mainee including AIR 1958 SC 36; AIR 1964 SC 449; AIR 1967 SC 1269; 1990 (1) ATR 265; and the decision in O.A. No. 1645/97.

4. On the other hand respondents' counsel Mrs. Chhibber has stated that applicant's reversion was not by way of punishment but due to wrong clearance of vigilance which came to notice, and the mistake was, therefore, rectified in accordance with law. She has pointed out that applicant was promoted by Notice dated 10.7.96 subject to the condition that he was not undergoing any punishment in D&AR/Vigilance case, and when it came to notice that applicant had been wrongly promoted as there was a prosecution case pending against him in which chargesheet had been submitted on 30.3.95, and his vigilance clearance was, therefore, wrong the matter was examined in the light of Railway Board's instructions P.S. No. 10739 dated 21.1.93 (R II) in the light of which his promotion was treated as ad hoc and subject to further consideration whether he should be continued or not. Accordingly by order dated 18.8.98 applicant's promotion w.e.f. 10.7.96 was treated as ad hoc, which applicant never challenged, being aware that he was facing prosecution. A further clarification issued on 23.8.99. Thereafter his case was reviewed. Mrs. Chhibber has contended that applicant was not cooperating in the prosecution case and was trying to prolong the prosecution

2

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case, it was decided not to allow applicant to continue on the promoted post and he was accordingly reverted.

5. We have considered the matter carefully.

6. It is clear that applicant's promotion by notice dated 10.7.96 was subject to his <sup>not</sup> undergoing any punishment in D&AR/Vigilance case. Applicant was chargesheeted on 30.3.95, and hence when the provisional panel for promotion was issued on 3.7.96 he stood chargesheeted and thus as per respondents' instructions he could not have been promoted on regular basis. No substantive right accrues to applicant to continue on promotion, when the promotion order itself was not in accordance with Govt. instructions, and under the circumstances the rulings relied upon by Shri Maine do not help applicant in the particular facts and circumstances of this case as noticed above. In this connection Mrs. Chhibber has relied upon certain rulings including AIR 1968 Allahabad 279; AIR 1990 SC 100 and 1989 (1) SCC 764, which in our view, support the action taken by respondents.

7. The O.A., therefore, warrants no interference. It is dismissed. No costs.

Lakshmi Swaminathan  
(Mrs. Lakshmi Swaminathan)

Member (J)

/GK/

Adige  
(S.R. Adige)  
Vice Chairman (A)