

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

DA NO. 1910/89

DATE OF DECISION: 9.7.90

SHRI PRITHVI SINGH

APPLICANT

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI B.B. SRIVASTAVA

ADVOCATE FOR THE APPLICANT

SHRI SHYAM MOORJANI

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

This application was filed by Shri Prithvi Singh on 12.9.1989, who was reverted from the post of Parcel Clerk to Safaiwala after he had officiated in that post for over 6 years without following the principles of natural justice. Further the reversion order was given effect to dispute the fact that it was set aside by the competent authority on 29.7.1987. He was allowed to join duty as Safaiwala on 20.4.1988. Although the application was to be decided at the admission stage itself, it took quite sometime to reach this stage as the first written reply was filed by the respondents only on 10.12.1989 and

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secondly the rejoinder thereto was submitted by the learned counsel for the applicant on 15.1.1990. The case was heard on 20.2.1990 when the respondents were directed to produce the personal file, Service Records and the file dealing with the disciplinary action against the applicant in the court on 1.3.1990. After a number of adjournments the respondents submitted file No. VIG/244/86/Comml./163-A on 30.5.1990. The learned counsel ^{was} again directed on 30.5.1990 to submit personal file and the Service Book of the applicant in a week's time when the orders were reserved on 30.5.1990. The relevant records however have not been submitted by the respondents so far. We are, therefore, proceeding to deal with the case as per the material on the judicial file and the vigilance file submitted by the learned counsel for the respondents.

2. The case of the applicant, in brief, is that while the Divisional Traffic Superintendent, New Delhi vide order No. Vig./244/87/Comml./163-A dated 19.8.1987, set aside the order of his reversion from the post of Parcel Clerk in the grade of (Rs.975-1640) to that of Safaiwala, the applicant was directed to join in the vacant post of Safaiwala at Nizamuddin Railway Station vide order dated 24.8.1988 in the pay scale of Rs.775-1025.

There is no dispute about the facts of the case. The applicant was working as Parcel Clerk, when he was served with S.F. for infringing the priority in loading of consignments and also for misdespatching the consignment of 7 cycles booked on 14.4.1988. As the applicant was working as Coaching Clerk on

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ad hoc basis having been locally promoted from the post of Safaiwala, he was reverted to his original post of Safaiwala by the Station Superintendent, Delhi on 3.9.1986. The applicant made an appeal to the Area Manager, Delhi, which was rejected. His next representation was considered by the Additional Divisional Railway Manager, who on consideration of the same set aside the reversion order on 29.7.1987. He was, however, not taken back on duty by the Station Superintendent. On the other hand, Station Superintendent, Delhi directed him to report to the office of Divisional Traffic Superintendent. The applicant brought the situation to the notice of Divisional Traffic Superintendent on 13.10.1987. By a subsequent order dated 20.4.1988, the applicant was posted as Safaiwala at Nizamuddin Station where he resumed the duty on 22.4.1988. The applicant however, continued to pursue the matter with the respondents for being put back to duty as Parcel Clerk. After failing to get the expected response from the respondents, he filed this application under Section 19 of the Administrative Tribunals Act, 1985. By way of relief the applicant has prayed that Tribunal may call for the records of the case and direct the respondents to pay to the applicant pay and allowances for the period from 12.9.1986 to 21.4.1988 togetherwith interest at the market rate and further to direct the respondents to post him as Parcel Clerk which post he was holding on 28.7.1986 when he was issued the chargesheet.

2. The respondents in their written reply, have submitted that the applicant was never promoted to the post of Parcel Clerk. He was only appointed as Parcel Clerk as a local stop gap arrangement. His substantive post is that of a

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Safaiwala.

4. From the records available, we find that the applicant had officiated as Parcel Clerk from 30.5.1980 to 4.9.1986. He was served with S.F.II on 28.7.1986. He did not submit any representation in his defence in the time allowed to him. The Divisional Traffic Superintendent, New Delhi vide order No. Vig./244/86-Comml. 1/63A dated 4.9.1986 passed the following orders:

"I, therefore hold you guilty of the charges as mentioned in memorandum of even number dated 28.7.1986 levelled against you and have decided to impose upon you the penalty of withholding of increment. Your increment raising your pay from Rs.292 to Rs.300/- in the grade of Rs.280-430 normally due on 1.5.1987, is, therefore, withheld for a period of three years without postponing your future increments."

The Area Superintendent, New Delhi, however, sent a separate confidential memo No. Vig.244/86/Comml.1/63A on 9.9.1986 to the station Superintendent, Delhi with reference to his note No.D/2/86/P5 dated 22/8/1986 received from Station Superintendent, New Delhi stating that "it has been advised by you vide office letter quoted above that the above named employee is working as temporary Coaching Clerk promoted from the post of Safaiwala. In case, he is a temporary Coaching Clerk, he should be reappointed and sent back to his original category of Safaiwala." This order of Areas Superintendent, was later set aside vide DTE order dated 10.8.1987 on consideration of his appeal and the

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Station Superintendent, New Delhi was directed to take further necessary action in the matter.

From the facts detailed in the preceding paragraph, it is clear that the penalty properly levied viz. withholding of one increment for three years without cumulative effect alone survives after the reversion order was set aside by the A.D.R.M. on 19.8.1987. The enforcement of reversion order by making the applicant join as Safaiwala on 20.4.1988 was therefore without any authority and patently unfair when the vacancy in the category of Parcel Clerk/Coaching Clerk was available. The applicant should have been taken back on duty as Parcel Clerk by the Station Superintendent, Delhi. Further the case of the applicant falls within the ambit of the law pronounced in the case of Jethanand & Others Vs. Union of India & Others (T-844/86), decided by the Full Bench (CAT) on 5.5.1989. The Full Bench observed:

"In regard to the last question as to when an adhoc employee can be reverted, the answer is that if he has been appointed in a stop gap arrangement, he can be reverted at any time. If he has not qualified in the selection test, he can still be reverted. If he has qualified in the test and had continued in adhoc capacity for more than 19 months, he cannot be reverted except after following the Discipline and Appeal Rules. Further, we have also held that a person who has so far not qualified in the selection test and is holding an adhoc post in the promotional post, he should be given several chances to qualify in the selection test and if

even after repeated chances given to him he fails, there would be no other alternative but to revert him. The cardinal principle is that he must have qualified in the selection test to become suitable for the post." (emphasis supplied).

5. In the facts and circumstances of the case, we direct that the applicant:-

- i) should be taken back to duty as Parcel Clerk in the Grade of Rs.975-1640/- within four weeks from the date of communication of this order.
- ii) should be given reasonable number of opportunities hereafter to appear and qualify in the examination for promotion to the Group 'C' post before regularisation. In case, he fails to qualify in the said examination after having availed reasonable opportunities in accordance with the Full Bench decision of the Tribunal in the case of Jethanand and Others (Supra), ^{then} / alone he should be reverted to the substantive post;
- iii) the only penalty that he is liable to be validly subjected to is of withholding of one increment for a period of three years without cumulative effect which was imposed on him vide order dated 4.9.1988, which may operate in accordance with normal rules.

The application is disposed of with the above directions, with no order as to the costs.

I. K. Rasgotra
(I.K. RASGOTRA) 9/7/90
MEMBER(A)

T. S. Oberoi
(T.S. OBEROI)
MEMBER(J)