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Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1998/89

New Delhi this the 28th Day of April, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)
Hon'ble Ms. Lakshmi Swaminathan, Member(J)

Shri Pritam Singh,
Permanent Way Inspector Gr. I,
Northern Railway,
Jagarati Workshop,
Jagarati(Haryana).

Applicant

(By advocate Sh. B.S. Mainee)

versus

1. Union of India,
through the General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Administrative
Officer(Constn.),
Northern Railway,
Kashmeri Gate,
Delhi.

Respondents

(By advocate Sh. D.N. Moolri)

ORDER(ORAL)
delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

This O.A. has been filed by Sh. Pritam Singh challenging the order dated 22.1.1986 passed by the Chief Engineer(Construction) reverting him from the post of Assistant Engineer Group-B to the post of Permanent Way Inspector Grade-C. While working as PWI Grade-I, the applicant appeared for the selection for the post of Assistant Engineer Group-B. He was declared successful in the written test and the viva-voce. Provisional panel was declared on 3.1.1984. He was placed at serial No. 25 on the panel. He took over charge as Assistant Engineer (Construction) with effect from 31.8.1984.

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An adverse entry was communicated to him for the period 1983-84. He submitted his representation against the adverse entry on 27.12.1985. Ultimately, his representation against the adverse entry was rejected on 17.6.1986. However, the impugned order of reversion was passed on 22.1.1986, i.e., even while his representation against the adverse entry was still under consideration. He has prayed for the direction to the respondents to restore his original position as Assistant Engineer from the date on which he was reverted with all consequential benefits.

Heard the learned counsel for the parties. The learned counsel for the respondents has raised a preliminary objection regarding limitation. The impugned order was passed on 22.1.1986 while the application was registered on 26.9.1989 i.e., after three years. We have given a serious consideration to this question. The applicant had been continuously on the sick leave from 21.2.1985 to 27.7.1989. At the instance of the respondents, he was examined by a railway doctor on 6.8.1986, who found him suffering from Osteo Arthritis and hypertension. He submitted his representation on 7.5.1986 and in normal course, he should have ~~been~~ filed this application by 6.11.1987. These averments have not been specifically denied in the counter subject to what we have observed hereinafter. Their preliminary objection of limitation is vital taking into account the illness and absence from duty. The learned counsel for the respondents argued that there were adequate reasons for reversion of the applicant as mentioned in ^{the} counter. Sh. Pritam Singh is the son of Sh. Bhag Singh who is working as Contractor in Ludhiana Division. Sh. Pritam Singh gave more

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attention to the work of R.O.B. which was being handled by his father. He also remained on the sick list and even ADMO/LDH, who issued him fit to report to his head-quarter but he did not do so. A note to this effect was recorded by the C.E. (Const.) who opined: "Sh. Pritam Singh does not appear to be fit to work as AEN. He should be reverted to the post of PWI and transferred fartherst away from LDH/JUC in the interest of public service. Further disciplinary action may also be taken after he resumes)". While endorsing this recommendation, the Chief Engineer (Construction) stated that "the behaviour of Sh. Pritam Singh and his performance demands an exemplary action. His case is, therefore, recommended for reversion to Class-III". Orders of reversion were passed with the approval of General Manager.

It is well settled that the ^{persons} officiating in regularly government service are also entitled to protection of Article 311(2) in the same manner as permanent government servants. If the Government takes action against them by inflicting one of the punishments i.e. dismissal/removal or reduction in rank. Clearly, this is a case where an officer, duly selected for 75% promotional post of Asstt. Engineer through a written examination and viva-voce has been reverted without affording him any opportunity to defend himself. It has been observed by the Hon'ble Supreme Court in the case of P.L. Dhingra vs. U.O.I. (AIR 1958 SC 36):-

"Reduction in rank likewise may be by way of punishment, or it may be an innocuous thing. If a government servant has a right to a particular rank, then the very reduction from that rank will operate as penalty, for he will then lose the emoluments and privileges of that rank if, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere

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fact that the servant has no title to the post or the rank and the government has, by contract, express or implied or under the rules, the right to reduce him to a lower post, does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment, is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the government had purported to exercise its right to terminate the employment or to reduce the government servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the government had terminated the employment as and by way of penalty. The use of the expression "terminate" or "Discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind here in before referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank, and if the requirement of the rules and Articles 311, which give protection to government servants, have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant".

It is clear in this case that the reversion order was passed on allegations of prolonged absence, interest in the work handled by his father and other specific events. ~~XXXXXX~~ the respondents seemed to have taken a short cut by passing a barred order of reversion without giving any opportunity whatsoever to the officer clarifying his position. We, therefore, hold that the impugned order of reversion dated 22.1.1986 cannot be sustained. It is hereby set aside and quashed.

Sd/-

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On the question of limitation even though we have over-ruled the preliminary objection raised by the learned counsel for the respondents and have accepted explanation of the applicant that he has suffering from Oste Arthritis and Hypertension, the fact remains that filing of this O.A. is delayed. The applicant himself admits that he has been on sick leave from 21.2.1985 to 27.7.1989. To balance the equities, we direct the respondents to pay him arrears arising out the difference between the pay of Public Way Inspector and the Asstt. Engineer w.e.f. 28.7.1989 i.e. the date on which he resumed his duty. For all other purposes, the applicant will be deemed to ^{have} worked as Asstt. Engineer as if no order of reversion was ever issued.

We make it clear that it will be open to the respondents to take any departmental action under the rules as they deem fit.

No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

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