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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 96/89
with MP 1016/89

Date of decision: 27.10.89

Shri Roop Narayan

.....Applicant

Vs.

Union of India & Others

.....Respondents

For the Applicant

.....Shri S.K. Sawhney,
Counsel

For the Respondents

.....Shri Inderjit Sharma,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

(The judgment of the Bench delivered by
Hon'ble Mr. I.K. Rasgotra, Administrative
Member)

The question whether a Railway employee who has been promoted on ad hoc basis could be reverted to the lower post on the ground that a disciplinary case for major ~~penalty~~ *del* contemplated penalty was ~~not~~ *del* against him at the time of promotion is in issue in the present application filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant along with several others were promoted from the post of Booking Clerk to that of Booking Supervisor vide order dated 26.4.1988. In the said order of promotion, it was stipulated that the promotion of the staff concerned

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is subject to the condition that "they are neither undergoing any punishment of WIT/WIP and higher nor any D&AR Vigilance, SPE fraud case for major penalty is pending/contemplated against them". On 28.3.89, the respondents issued the impugned order of reversion on the ground that at the time of his promotion a D&AR case for major penalty was pending against him.

2. We have carefully gone through the records and have heard the learned counsel of both parties. In MP 1016/89, the applicant has prayed that the impugned order of reversion may be stayed during the pendency of the main application.

3. The learned counsel of the applicant has relied upon several rulings in support of his contention that the applicant cannot be reverted from the higher post as no charge-sheet had been issued to him at the time when the order of promotion was issued to him.* He also contended that once the promotion has been given, it cannot be cancelled as has been done by the respondents.

4. The learned counsel of the respondents relied upon the conditions stipulated in the order of promotion to the effect that it is subject to the ^{Sal} condition ~~that~~ that there is no D&AR Vigilance case for major penalty pending/contemplated against him. He also stated that at the time

* Cases relied upon by the learned counsel of the applicant:

- (1) J.P. Sethi Vs. U.O.I. & Others, ATR 1986(2) CAT 372;
 - (2) K.Ch. Venkata Reddy & Others Vs. U.O.I. & Others, ATR 1987 (1) CAT 547;
 - (3) R.D. Madan Vs. U.O.I. & Others, 1988(1) SLJ CAT 586 and
 - (4) Mrs. J.S. Panda Vs. DG, Police 1986(1) SLJ 473
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of promotion of the applicant, a case for issuance of major penalty charge-sheet was pending at the Headquarters Office at New Delhi and due to the lapse on the part of some officials of the Bikaner Division, he was promoted.

5. A copy of the charge-sheet dated 3.10.1988 has been annexed to the application as Annexure-II. It is seen from the statement of Articles of charge framed against the applicant that the alleged misconduct pertained to October, 1986. The charge-sheet was issued by the DRMs office located at Bikaner. The respondents have not given any explanation as to why they did not verify about the pendency of the investigation into the alleged misconduct of the applicant before the order of promotion was issued in respect of those officers working under DRM, *Lal* Bikaner.

6. The plea of the respondents that the order of promotion was issued due to the lapse on the part of some officials does not carry conviction.

7. To our mind, the impugned order of reversion gives rise to an inference that it was made because of the pending investigation into the misconduct of the applicant. At that point of time, even the charge-sheet has not been prepared. In the circumstances, the order of reversion would amount to inflicting a punishment even before the charges are held proved (vide G. Apparao Vs. Deput Director (Administration))

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1977 SLJ 410; see also Jagadiswara Rao Vs. The Post Master General, Andhra Circle & Another, 1978 SLJ 201 and Rup Lal Vs. State of Himachal Pradesh and Others, 1980 SLJ 348). In Rup Lal's case, the respondents had relied upon the decision of Learned Single Judge of the A.P. High Court in one case wherein it was held that if promotion is not solely on the ground that departmental enquiry is pending against the concerned Government servant, that would amount to punishment. A Division Bench of the H.P. High Court disagreed with this view. It was observed that if there are specific rules on this point, then the matter should be decided with reference to these rules. But where there are no rules, the case has to be decided on the basis of the general principles of administrative propriety and public interest. If a person against whom ^{Lal} serious charges are levelled and if those charges are such which may result in a major punishment, it would not be in public interest or in the interest of administration to give him promotion simply because the enquiry in question is not completed. The Learned Judges, however, observed that this may, in some cases, result in serious hardship to the Government servant concerned if the department goes on prolonging the enquiry without proper justification because no Government department can justify its action in prolonging such enquiries indefinitely on one hand and in refusing promotions and other advantages of the service to the Government servant concerned on the other hand for an indefinite period. In view thereof, it was felt

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that the department concerned should dispose of such enquiries in the shortest possible time.

8. Coming to the instant case, the alleged misconduct pertained to the year October, 1986 and the charge-sheet was issued on 3.10.1988. For issuing the charge-sheet alone, the respondents have taken 2 years time. There is no indication as to whether the enquiry has commenced and as to when it will conclude.

9. We admit the application. In the facts and circumstances of the case, we are of the opinion that the impugned order of reversion dated 28.3.1989 is not legally sustainable. We allow the application and hold that the respondents shall not give effect to the impugned order of reversion. MP 1016/89 is also disposed of accordingly.

10. Before parting with this case, we would like to point out that the system followed by the respondents in issuing promotion orders without verifying and satisfying themselves that there is no Vigilance case against the persons concerned, is not conducive to good administration. Promoting officers on ad hoc basis without verification of disciplinary cases pending against them, is not a salutary practice. It keeps the Sword of Damocles over the heads of the promotees with the result that any one of them may be reverted after he had put in several months if not years in the

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promotional post. We hope that the respondents would give consideration to the aforesaid observations and refrain from issuing such orders of conditional promotion as in the instant case. The parties will bear their own costs.

I.K. Rasgotra
(I.K. RASGOTRA) 27-10-89
MEMBER (A)

P.K. Kartha
27/10/89
(P.K. KARTHA)
VICE CHAIRMAN (J)