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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O. A. NO. 1628/88

New Delhi this the 24th day of January, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN  
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Jagdish Pershad Bishnoi,  
Sr. Clerk, S & T Branch,  
Northern Railway,  
Divisional Railway Manager's Office,  
Moradabad. ... Petitioner

By Advocate Shri B. L. Madhok for Shri  
B. S. Mainee

Versus

1. Union of India through  
General Manager,  
Northern Railway,  
Baroda House, New Delhi.
2. Divisional Railway Manager,  
Northern Railway,  
Moradabad.
3. Shri B. O. V. Rao,  
Dy. C.S.T.E. (Planning),  
Northern Railway,  
Baroda House, New Delhi. ... Respondents

By Advocate Shri N. K. Aggarwal

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath —

The petitioner, Shri Jagdish Pershad Bishnoi, started his career as a Khalasi in the year 1967, promoted as Material Checking Clerk in 1980 and as Senior Clerk on 20.4.1982. He was then promoted as Head Clerk w.e.f. 11.11.1985. He came to be reverted by order Annexure A-1 dated 18.12.1986 as Senior Clerk. He preferred an appeal against the said order to the Divisional Railway Manager (DRM for short).

That appeal came to be dismissed on 17.2.1987 by the Divisional Railway Manager vide Annexure A-6. It is the said order which has been challenged in this case.

2. Learned counsel appearing for the petitioner, when the case was argued on the last occasion, formulated the following contentions :-

- (1) that the appellate order is not a speaking order;
- (2) that the order has been made by an authority lower than the appointing authority; and
- (3) that the inquiry officer's report was not given to him before passing the impugned orders.

3. In the light of the records that were shown to us today for which purpose further hearing of the case was put off, the learned counsel for the petitioner also argued that the approval of the DRM as required by the instructions was not taken when the impugned order of reversion came to be made.

4. Shri Aggarwal, learned counsel for the respondents, produced relevant records and we have perused the same. On a perusal, we are satisfied that the appellate authority has applied its mind and the records show reasons which persuaded the

appellate authority to dismiss the appeal. The mere fact that the order communicated to the petitioner does not contain reasons would not, therefore, justify our interference. There is no good reason to accept the contentions having regard to the material placed by the parties that the impugned order was passed by the authority not competent to do so.

5. As regards the contention that the inquiry officer's report was not furnished, it is too late to contend so having regard to the fact the impugned order came to be made in this case in 1986. The Supreme Court has pointed out that the law laid down by it that the inquiry officer's report should be furnished to the delinquent before the order of punishment is imposed would apply prospectively to orders made on or after 29.11.1990. The impugned order in this case had been passed much earlier.

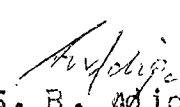
6. It is no doubt true that an additional ground was urged in the light of the records shown to us by the respondents indicating that when the earlier decision was taken by the authorities to revert the petitioner, the approval of the DRM was not taken. The instructions on the point make it clear that his concurrence ought to have been taken. The records however, show that the DRM who was the appellate authority in this case has applied his mind and concurred with the decision of the original authority. In one sense, one can say that the

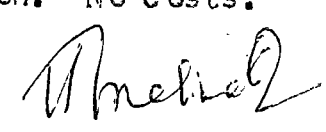
superior mind of the DRM was applied and he has agreed with the action to terminate the promotion of the petitioner and to revert him. In that sense, there is concurrence of the DRM though at a belated and at appellate stage. We need not interfere in exercise of our jurisdiction with the orders of the administration, if we are satisfied that the order is just and fair having regard to the totality of the circumstances. It is from this angle that we looked into the records in this case. There are several instances of lapses on the part of the petitioner. We find that the petitioner was informed as per Annexure A-3 dated 30.7.1986 that he was not present in his office during the office hours. Another intimation was given to him on 26.11.1986 saying that it was observed that the inspection notes of various officers are being dealt with by him very carelessly in that no proper chasing was done by him to clear the inspection notes. He has been warned that in this respect his work is not satisfactory and unless he improved his working, action would be taken against him. Another instance of lapse is noticed from communication dated 5.12.1986 by the superior authority as per Annexure A-4 which says that the petitioner was called upon to put up a particular case within a specified time, which he did not comply with. The conduct of the petitioner which has been found fault with on more than one occasion immediately on his promotion as Head Clerk shows that he had not been discharging his functions consistent with the responsibility which he had to assume on his

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promotion as Head Clerk. That is the reason why the DRM was willing to dismiss the appeal even though he was told that his approval had not been taken as required by the prescribed procedure before the original authority passed the order reverting the petitioner. The superior authority, namely, the DRM, was satisfied on the material on record that the reversion of the petitioner was justified, with which conclusion we are inclined to agree having regard to the materials available in this case. This, in our opinion, would not, therefore, be a fit case for interference on the technical ground that the DRM's approval was not taken before the orders were passed.

7. Before concluding, we would like to examine another contention of the learned counsel for the petitioner that if the concurrence of the DRM had been taken when the order of reversion was made, he would have preferred an appeal to an authority higher than the DRM. But in this case, as the DRM's approval was not taken, he rightly invoked his right of appeal to the DRM. To that extent, the petitioner is right in saying that approval of the DRM should have been taken before passing the order of reversion. But when the Tribunal is satisfied on the material on record that the reversion was justified, no other question would survive.

8. Hence, we decline to interfere in this case and dismiss the original application. No costs.

  
( S. R. Adige )  
Member (A)

  
( V. S. Malimath )  
Chairman