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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 268
T.A. No.

1986

DATE OF DECISION 19th August, 1986

Shri R.P.Singh

Petitioner

Shri J.S.Bali

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Madan Lokur

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Administrative Member.

The Hon'ble Mr. H.P.Bagchi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

(H.P.BAGCHI)

(S.P.MUKERJI)

Shri R.P.Singh

... Applicant

v.

Union of India

... Respondents

Shri J.S.Bali, Advocate

... For the Petitioner.

Shri Madan Lokur, Advocate

... For the respondents

CCRAM

Hon'ble Shri S.P.Mukerji, Administrative Member,

Hon'ble Shri H.P.Bagchi, Judicial Member.

JUDGMENT

The applicant Shri R.P.Singh who is a member of the Scheduled Caste Community has moved the Tribunal under Section 19 of the Administrative Tribunals Act praying that the impugned order dated 31.3.1986 passed by the Assistant Controller of Stores, Northern Railway, Ghaziabad, reverting the petitioner from the post of officiating Clerk in the scale of Rs.260-400 to the post of Sr. Khalasi in the scale of Rs.200-250 may be set aside.

2. The facts of the case are simple and may be summarised as follows. The petitioner was recruited as a Class IV Employee on 9.8.1979 and having passed the qualifying test was promoted as officiating Clerk on 16.4.1984 on an ad hoc basis. He passed suitability test once in December 1983 and again in December, 1985. On 19.12.1985 allegation of his involvement in shortage of some steel ankles were made and the matter has been under investigation. By the impugned order he was suddenly

reverted and transferred. According to the petitioner even though his innocence about the shortage of steel ankles had been established and he was ranked at no. 6 in the written test for ad hoc promotion as Clerk in January 86 he was reverted as Khalasi when those who are ranking below from 7th to 13th position are still being continued as Clerks.

3. According to the respondents the petitioner was promoted as a Clerk on a purely ad hoc basis on 16.4.1984 and the petitioner has put in around two years in Class III service. They have averred that the matter regarding shortage of steel stores is under investigation and has accepted the allegation of the petitioner that he is not being allowed to enter the depot at Ghaziabad on the plea that the petitioner had already been transferred as Khalasi to Kalka Depot.

4. We have heard the arguments of the learned counsel of both the parties and gone through the documents very carefully. The learned counsel for the respondents in fairness has come out with an assertion that the reversion of the petitioner has nothing to do with the allegation of shortage of steel stores. He has contended that as an ad hoc employee the petitioner could be reverted as he was found to be unsuitable.

5. The respondents in spite of given adjournment to produce papers about the petitioner's unsuitability have failed to show us any document in which an analysis of the performance of the petitioner has been done and he was adjudged as unsuitable. The learned

counsel for the respondents did not produce the character roll or any performance assessment report on the petitioner and indicated that perhaps such reports or character roll are not maintained. It was also admitted by the learned counsel for the respondents that no committee as such went into the assessment of suitability of the petitioner. The assertion of the learned counsel for the petitioner that one Shri Munilal who is junior to the petitioner has been appointed as Clerk against the post to which the petitioner was holding and that there was no communication of adverse reports of the performance of the petitioner, were not ^{the} challenged by the learned counsel for the respondents. We saw a commendatory certificate dated 26.3.1985 in original in which the performance of the petitioner had been appreciated. We also saw the photostat copies of the statements made by the Depot Incharge Shri Ramvir Singh dated 26.12.1985 in which he has clearly stated that the full consignment of the steel ankles were unloaded at the store from the truck which had been escorted by the petitioner. We have also seen the photostat copy of a letter dated 19.12.1985 written by the Chief Goods Officer about receipt of full consignment of steel ankles.

5. Even though the investigation is under way we do not find any prima-facie case to hold that the petitioner's involvement with the shortage of steel ankles if the same had been received in the stores to call for his reversion. As a matter of fact the petitioner was involved only in escorting the steel ankles in the

truck to the stores after which he had no responsibility. The Store Keeper had received the steel ankles in full. The possibility of the shortage occurring from the stores after the same had been received cannot be ruled out. In any case the learned counsel for respondents has clearly indicated that the reversion and transfer of the petitioner has nothing to do with the shortage of stores. In any event if the respondents were so sure about the petitioner's involvement in the shortage they could have suspended the petitioner or framed charges against him.

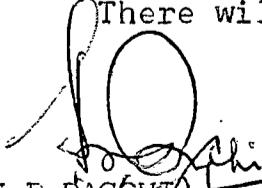
6. We feel that the petitioner having been promoted after passing the qualifying test as Clerk and having held that post on an ad hoc basis for two years his sudden reversion as Khalasi and transfer to a far off place when his juniors are maintained in the higher scales is not fair and militates against the principles of natural justice and Articles 14 & 16 of the Constitution on grounds of hostile discrimination. The Hon'ble Supreme Court held in the Manager, Government Branch Press and another vs. D.B. Baliappa 1979 Vol. 2 SCR P. 458 that " if the services of a temporary government servant is terminated arbitrarily and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service the appointing authority was purporting to act in accordance with the terms of the employment." They further

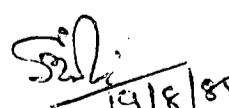
observed that "in the absence of any information from the appellant indicating that the respondent was marked off for discharge on the basis of an intelligible differentia having a reliable nexus with the object of maintaining the efficiency and integrity of the public service, we are constrained to hold, in agreement with the High Court the impugned order suffers from the vice of unfair discrimination and is violative of Articles 14 and 16 (1) of the Constitution.

7. Since in the instant case the respondents have not given us any satisfactory proof or material about the petitioner having been adjudged as unsuitable as compared to his juniors who have been retained as Clerks we hold that the impugned order suffers from the vice of unfair discrimination and being violative of Articles 14 and 16(1) of the Constitution has to be quashed. In similar circumstances reversion from ad hoc promotion has been set aside by the Tribunal in Shri Ramali v. Lt. Governor and others AIR 1986(2) CAT 34.

8. In the facts and circumstances discussed above we allow the petition and set aside the impugned order of reversion dated 31.3.1986 and direct that the petitioner should be reinstated in the grade of Clerk with effect from the date of his reversion. The respondents are however at liberty to post him in the grade of Clerk in any post permissible under the Rules and to take disciplinary proceedings if they are so advised in accordance with law.

There will be no order as to costs.


(H.P. BAGCHI) 19.8.86
JUDICIAL MEMBER


(S.P. MUKERJI) 19/8/86
ADMINISTRATIVE MEMBER