

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.1774/1987

DATE OF DECISION 9.8.91

SHRI L.N. NIGAM

.....APPLICANT

VS.

UNION OF INDIA & OTHERS

.....RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

.....SHRI R.L. SETHI

FOR THE RESPONDENTS

.....SHRI O.N. MOOLRI

1. Whether Reporters of local papers may be allowed to see the Judgement?

2. To be referred to the Reporter or not? *N/S*

J U D G E M E N T

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, posted as Chief Traction Foreman (in short CTF) in Northern Railway, Aligarh filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dt. 28.11.1987 by which the applicant was reverted as Senior Traction Foreman.

2. The applicant claimed the following reliefs :-

- (i) That this Hon'ble Tribunal may be pleased to quash the impugned order.
- (ii) That this Hon'ble Tribunal may be further pleased to restrain the respondents from giving effect to the impugned order and allow the applicant to continue to work as Chief Traction Foreman peacefully.
- (iii) That any other or further relief which this Hon'ble Tribunal may deem fit under the circumstances of the case may be granted to the applicant.
- (iv) That the costs of these proceedings may kindly be awarded to the applicant.

3. The facts of the case are that the applicant joined the Railways as Electrical Chargeman in the year 1964 in the Northern Railway and was promoted to the grade of Rs.700-900/- w.e.f. 27.6.1981. On 11.8.1984, the applicant was promoted to officiate in the grade of Rs.840-1040/- as a temporary measure and the letter of promotion (Annexure-A II) clearly makes a note that the applicant is allowed to officiate purely on ad-hoc basis and on temporary measure against local arrangements till posting of regular incumbent from Headquarters Office and as such it will not confer upon him any right for regular absorption in the grade

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ignoring his seniors. The applicant continued to work on this post and by the impugned order dated 28.11.1987, he was reverted from the post of C.T.F. where he was officiating to the post of S.T.F. (Annexure-I).

4. It is stated by the applicant in the application that as per the Circular letter No.E-55-RG-26 dated 1.5.1956 and Circular letter No.E (D&A)/66/RG-5 dated 1.2.1966, a Railway servant officiating in a higher grade should be adjusted by the competent officer within a period of 12 months and no reversion should be effected after prolonged officiating period. Thus any person who is permitted to officiate beyond 18 months, cannot be reverted without following the procedure prescribed in the Disciplinary and Appeal Rules. It is stated by the applicant that he had already completed 18 months when the impugned order was communicated to him and as such he cannot be reverted.

5. The applicant was also served with a chargesheet dated February, 1986 and has been punished with a minor penalty of withholding of one increment for a period of 2 years without postponing the future increments. This punishment has been assailed

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in another application O.A. No.685/1988. The applicant has also been given adverse report for the year 1984-85 and the representations against the same have been rejected.

6. The respondents contested the application and filed the reply stating that by virtue of the impugned order, the incumbent in place of the applicant has also taken charge and the applicant was relieved of the charge of C.T.F. on 28.11.1987. But the applicant has concealed correct factual position and stated wrong facts in the application regarding non-implementation of the order. The applicant was officiating as CTFO purely on ad-hoc basis against local arrangements and the same was mentioned in the officiating order under the heading N.B. The contention of the applicant^{is} that the two juniors to the applicant, who officiated as C.T.F., have been regularised in terms of of Head Quarters' notice dated 28.10.1987. The petitioner could not be regularised due to adverse confidential reports for the years ending March, 1985 and March, 1986. The adverse confidential reports of the applicant upto

March 1987 were also noted down by the authorities in effecting reversion. The applicant made representations against the adverse reports, but he could not gain anything; the same have been rejected. It is further stated by the respondents that the applicant has suppressed vital information ^{therefore,} from the Tribunal and is not, / entitled to any relief. The applicant has been reverted due to his non fulfilment of the pre-requisite conditions/ qualifications for empanelment as C.T.F.O. and also in terms of the notice dated 11.08.1984 allowing him his ad-hoc working on officiating basis in the higher grade. The respondents stated that the application is without merit and needs dismissal.

7. An ad-interim stay was granted by the Tribunal against reversion which was subsequently vacated by the order dated 3.6.1988.

8. We have heard the learned counsel at length. It is not in dispute here that the applicant has earned adverse reports in the year 1984-85 and 1985-86. It is also not controverted that the applicant was chargesheeted for a minor penalty in 1986. However, the

punishment imposed on the applicant was only withholding of ^{for two years} an increment / but he was not reverted. In any case the contention of the learned counsel for the applicant that the applicant could not have been reverted without resorting to Disciplinary and Appeal Rules, 1968, is not tenable in view of the Full Bench decision in Jetha Nand & Others Vs. Union of India reported at Page-353 of the Full Bench Judgements of C.A.T. 1986-89, Bahri Brothers-1989 Edition.

9. In this Full Bench decision, the Bench has considered the circular letter dated 21.5.1956 as well as of 1.2.1960 which have been relied upon by the learned counsel and also referred to in the application. It was held by the Full Bench that the Railway Board could issue circulars through General Managers in respect of reversion of any employee who was officiating in a promotional post in ad-hoc capacity for 18 months or more. The Railway Board could also clarify or modify the said circular by adding a rider that it would apply only to those employees who acquired a prescriptive right by being

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selected after a test and having been empanelled. The Railways are certainly entitled to have competent persons selected for running the Railways. Rules 109 and 110 in the Railway Establishment Manual ^{are} were Establishment Rules framed by the Board under Rule 157 of the Railway Establishment Code, Volume I under which the Railway Board possesses delegated powers to make rules which would have the effect of rules made under Article 309 of the Constitution of India (Union of India Vs. K.P. Joseph). Rules 109 and 110 provided for tests; both written and oral and empanelment thereafter before any one could be regularised in a promotional selection post. The Full Bench further observed that 18 months of officiation by an ad hoc promotee in a selection post will not give him right of automatic regularisation. Reference was also made to the case of M.R. Nafdey reported in 1975 (2) SLR P-110.

10. The Full Bench also referred to the circulars of 1956 and 1960 relied upon by the applicant and discussed the scope of circulars dated 9-6-1965 and 15-1-1966. The Full Bench held, "Railway have

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also made it clear that this principle (18 months rule) would not be applicable to an employee who was officiating merely on a stop-gap-arrangement or on ad-hoc basis. Thus the criteria laid down by the Railway Board is that a Railway servant, in order to have the protection from being reverted after 18 months of ad-hoc officiation in a promotional post applies only in the case of those Railway servants who have been selected or empanelled for the said promotional post.

11. The Full Bench also referred to the subsequent circulars dated 5.12.1984 and 24.9.1985 wherein it is stated that, "The safeguard applies to only those employees who have acquired a prescriptive right to the officiating posts by virtue of their empanelment or having been declared suitable by the competent authority." The Full Bench also observed as follows :-

"In regard to the last questions 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 ad-hoc capacity for more than 18 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 ad-hoc post in the promotional post, he should be given several chances to qualify in the selection

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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."

12. Coming to the case in hand, the applicant was promoted only on ad-hoc basis in August, 1984 and the order N.B. appended to the said appointment has already been referred to above, but is repeated again :-

'Shri L.N. Nigam has been allowed to officiate in grade of Rs.840-1040/- (RS) purely on adhoc basis and on temporary measure against local arrangements till posting of regular incumbent from Head Qr's office and as such it will not confer upon him any right for regular absorption in the grade ignoring his seniors.'

The applicant earned adverse entries in 1984-85 and 1985-86 and representations against the same have been rejected. Thus, there is force in the contention of the respondents that the applicant has not acquired a prescriptive right to hold the post. It is further stated that the promotion of the applicant was only of an ad-hoc nature and he was expressly informed in writing that he will not be given any benefit of regularisation and the applicant can be reverted at any time when a regular incumbent is posted by the from Head Quarters Office.

The respondents also emphasized that unsuitable persons

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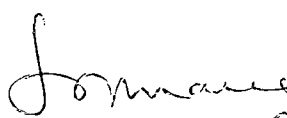
cannot be allowed to officiate as that shall be discriminatory in as much as if they are not reverted, then there cannot be any improvement in the working of those who are not upto the mark in the discharge of their duties. Those who are better, have been promoted. But those who cannot give good performance, cannot be retained only on the basis of 18 months' rule. The applicant in the present case was found unsuitable not only once but also he has been given a chargesheet for minor penalty on the ground of unsuitability.

13. The learned counsel for the applicant has referred to a decision of the Cuttack Bench of the Central Administrative Tribunal in Union of India and Others Vs. A.Joganandan reported in 1991 CAT SLJ P-351. The case is mainly on the point of Review of the judgement. In this case also, there was an interpretation of the application of the judgement of the Hon'ble Supreme Court to the facts of that case covering the decision in S.K. Mohanty Vs. Union of India reported in 1980 (49) CAT Cuttack P-382. Thus the facts of that case are not applicable to the present case at all. In the present case, the person has earned two adverse entries and was adjudged unfit and that is why he has been reverted. The learned counsel has also referred to the case reported in

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JT 1989 (4) S.C. P-377, Co Armugan and Another Vs. State of Tamil Nadu. There the temporary promotions as Deputy Transport Committee were quashed by the Central Administrative Tribunal, Tamil Nadu, the point at issue being, whether a person can be excluded from consideration for promotion, if no chargesheet is pending against him. In the present case, the applicant has already been promoted, but was reverted as he has earned two adverse reports. Thus the facts of the case relied by the learned counsel are clearly distinguishable.

14. After a careful consideration of the whole matter, we are of the view that the application is devoid of merit and it is dismissed leaving the parties to bear their own costs.


(J.P. SHARMA) 9.9.91
MEMBER (J)

 9/5/1991
(D.K. CHAKRAVORTY)
MEMBER (A)