

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A.No.1865/91

DATE OF DECISION 21.2.92

SHRI JOHN ALBERT KUJUR -- APPLICANT

VS

UNION OF INDIA & Anr. -- RESPONDENTS

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

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

FOR THE APPLICANT --SHRI G.D.BHANDARI, COUNSEL

FOR THE RESPONDENTS --SHRI R.L.DHAWAN, COUNSEL

1. Whether Reporters of local papers may *4/2* be allowed to see the Judgement?

2. To be referred to the Reporter or not? *4/2*

JUDGEMENT

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

In this application under Sec.19 of the Administrative Tribunals Act, 1985 the applicant/assailed the order has dated 24-7-1991 passed by respondent No.2, Divisional Railway Manager, Northern Railway, Bikaner whereby the

applicant, who has been working as Station Superintendent Grade Rs.2000-3200 since 1984, has been ordered to be reverted as Station Master Grade Rs.1600-2660.

2. The applicant prayed for the relief of quashing the aforesaid impugned order dated 24.7.1991 (Annexure A-1) and also setting aside and quashing the letter of January, 1989 communicating adverse remarks for the year ending 31.3. 1988.

3. The applicant belongs to the Scheduled Tribe community and was appointed as Assistant Station Master in Grade Rs.1600-2660. In March, 1984 he was promoted as Station Superintendent. In May, 1984 the applicant was transferred from the station of posting CRW to DEP in the same grade and on the same post. However, on 31st May, 1984, the applicant was again transferred as RG Stn. Suptd and was posted to Station DEP. However, the applicant was again transferred from Station DEP to Station LNB. In January, 1985, the applicant was transferred from Station LNB to Patel Nagar Station, New Delhi in the same grade and on the same post. The applicant, at the relevant time, was holding the post of Station Superintendent at Patel Nagar Station and had put up desired level of performance. The applicant continued to work as Station Superintendent at Patel Nagar till 8.9.1989 when he was transferred to Mahajan in the same grade and in the same capacity.

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and post. While the applicant was working at Patel Nagar Station he was communicated certain adverse remarks recorded in his confidential report for the year ending 31.3.1988. Against the item "Grading", the remarks given to him were "Average. He is an average worker. He is easy going". He submitted representation against these remarks on 27.2.1989. The applicant stated that he has been performing his duties devotedly and has to his credit the achievement of the set targets. He also pointed out that the column of "Grading" has since been deleted in respect of S.T. employees by the Ministry of Railways. However, not having received any response from the respondents, he does not know whether any action has been taken on his representation or whether the adverse remarks have been withdrawn.

4. The combined selection was held for Station Master/Station Superintendent/Chief Yard Master in the grade Rs.2000-3200 and a notice was issued on 6.3.1990. The applicant passed the written test and was called for interview but applicant's name did not figure in the provisional panel dated 2.10.1990 comprising 52 successful persons. After the issue of this panel the impugned order of reversion was passed. The applicant was being replaced not by a selected/empanelled person but by one Shri O.P.Tyagi who is far junior to the applicant. The name of the applicant in the seniority list appears at Sl.No.121 while the name of Shri O.P.Tyagi appears at Sl.No.143. However, in the seniority list of Station Master Rs.550-750(RS) in Col.12 the date of officiation is 1.8.1982 for the applicant while for Shri Tyagi it is July, 1985. The case of the applicant is that he has been reverted arbitrarily and illegally to accommodate a junior person, Sh.O.P.Tyagi. The applicant stated that

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his reverion, after he has worked for more than seven years. From March, 1984, was only to accommodate a far even junior person who failed in the written test, ^{2nd} is most illogical, irrational, unreasonable and arbitrary and has been resorted to for extraneous reasons. It is further stated that the rejection of the applicant in the selection for the post of Station Superintendent impliedly is based on the adverse remarks passed in the Confidential Report for the year ending March, 1988/ ^{although no} reply to / representation against the said adverse remarks has yet been communicated to the applicant.

5. The respondents contested the application and stated that the promotion of the applicant to the post of Station Superintendent in March, 1984 ^{under} / the letter dated 20th January, 1984 has been on purely adhoc and temporary basis informing the applicant that he is likely to be reverted at any time. The applicant was further warned that the promotion is on adhoc basis and will not confer any right upon him to claim seniority in future over the seniors. It is stated that the post of Station Master/Station Superintendent/Chief Yard Master Grade/2000-3200 is a selection post and the selection for the same was held by notice issued in March/April, 1990 in which the applicant also appeared.

The transfer order in the case of applicant, was passed in the public interest. The applicant was given adverse remarks for the year ending March, 1988 and after his representation the said adverse remarks were retained in his Confidential Report. Since the applicant did not come out successful in the interview, he was not empanelled. The applicant was reverted and this reversion is not a punishment in view of the Explanation (iv) of Rule 6 of Railway Servants (Discipline and Appeal) Rules, 1968. The applicant has not made any representation against the impugned order and the present application is barred by Section 20 of the Administrative Tribunals Act, 1985. The applicant has no cause of action. An ad hoc appointee, who failed to qualify in the selection to become suitable for the post, has no right to hold the post and can be reverted to lower post. Since the applicant has been found unsuitable for the post of Station Superintendent grade of Rs. 2000-3200 after taking into account his performance the applicant cannot challenge the legality of the selection. Regarding Shri O.P.Tyagi the respondents stated in the reply that he was already working as Station Superintendent grade/2000-3200 on ad hoc basis and has been posted in the same capacity vice the applicant. Shri O.P. Tyagi has also not been impleaded as a party.

6. We have heard the learned counsel of the parties and have gone through the record of the case. The order of promotion of the applicant as Station Superintendent dated January, 1984 clearly goes to show that the applicant was given ad hoc promotion purely on temporary basis to a selection post and the applicant has no lien on that post. The promotion order clearly describes the nature of appointment as also the condition of joining the post solely as a temporary stop gap arrangement till a final selection is held. The applicant was also informed that he cannot claim any seniority or right to hold the post vis a vis his seniors. In fact the applicant has taken part in the selection which was held in March, 1990 but he failed in that selection and was not empanelled. The applicant has been reverted to his substantive post of Station Master grade Rs. 1600-2660. This, as per Explanation (iv), Rule 6, Railway Servants (Discipline & Appeals) Rules, 1968, is not a punishment. This issue has also come before the Hon'ble Supreme Court in Nydar Singh Vs. Union of India & Ors. reported in A.I.R.1988 SC Page 1979 in which the Hon'ble Supreme Court observed that a person who is working in a officiating

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capacity on higher post can be reverted for valid reasons to the substantive post and this will not amount to reduction in rank. The same view has been taken in Niranjan Singh Vs. Union of India, 1991(1) SLJ CAT p.32

that if a person is reverted from an officiating post to a substantive post with valid reasons, he cannot call it a reversion in the strict sense and is not a punishment. The applicant had been reverted only after he failed in the selection.

7. There is, however, another aspect of the matter. The applicant is being replaced by one Shri O.P.Tyagi, who is also working on ad hoc basis as Station Superintendent in the grade of Rs.2000-3200 but the date from which he is working in this capacity has not been indicated by the respondents. The date must be later than 20.3.1984 when the applicant herein had started officiating as Station Superintendent. The applicant's contention that Shri Tyagi's name appears at Sl.No.143 in the seniority list whereas the applicant is at Sl.No.121 has not been controverted by the respondents. A perusal of the seniority list of Station Masters as on 24.10.1985 shows that while the applicant has been officiating in the grade of Rs.550-750 with effect from 1.8.82 Shri Tyagi was promoted only in July, 1985. Obviously his promotion on ad hoc basis to the next higher grade for Station Superintendent Rs. 700-900 came on a later date. Further, that the applicant had qualified in the written examination and also appeared for the interview while Shri Tyagi

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did not even qualify in the written examination and was not called for interview have also not been denied by the respondents. The question, therefore, arises whether an ad hoc employee who has held the post for more than seven years, can be replaced by another ad hoc employee who is admittedly junior and has also not been selected for empanelment. We have no hesitation in holding that such replacement is unfair, arbitrary and is not legally sustainable.

8. The applicant has not specifically prayed for any relief in regard to his non-empanelment for the post of Station Superintendent. It has, however, been mentioned in the application and also strongly argued during the hearing that his non-selection is impliedly based on the adverse remarks in the confidential report for the year ending March, 1988 which should not have been taken into consideration by the DPC as his representation remains undisposed. There is no denial from the respondents that the confidential report of the applicant for the year ending 1988 was placed before the DPC. According to them, the selection committee had considered the applicant on the basis of his performance and the grading was done as per extant rules applicable for selection for the post of Station Superintendent. The learned counsel for the applicant stated that there is a gross violation of the established principles of law laid down by the Hon'ble Supreme Court in ^{catena of} judgements.

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9. The applicant has specifically prayed for setting aside and quashing the adverse remarks in his confidential report for the year ending 31.3.1988. The applicant had filed his representation against the adverse remarks in Feb.1991 to which no reply has been received by him. The respondents have taken a preliminary objection that since the present application was filed in August 1991 any relief against the adverse remarks is clearly barred by limitation. They have also stated that the representation has been rejected and the adverse remarks have been retained. However, the respondents have not made available a copy of the letter under which the representation was rejected.

In the case of Ramachandram Shankar Vs. State of Maharashtra,

1974 (1) SLR 471 the Hon'ble Supreme Court has observed that the rule which says that the court may not enquire into the belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay to the court must necessarily refuse to entertain the petition. "Each case must depend on its own facts."

A Government servant is entitled to be told if any adverse entry has been made in his confidential report and the representation made thereagainst must be replied to. We reject the plea of limitation and

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direct the respondents to consider his representation dated 28.2.1989.

10. The representation shall be decided by an authority superior to the Reviewing office in accordance with the prescribed procedure and shall be disposed of by a speaking order. We hold that placement of the confidential report for the year ending 31.3.1988 before the DPC without disposing of his representation against the adverse entry has caused prejudice to the applicant. The applicant's suitability for promotion to the post of Station Superintendent has to be considered afresh by a Review DPC after his representation against the adverse remarks in his confidential report is disposed of.

11. In the conspectus of the facts and circumstances of the case, we order and direct as follows:-

- (i) The order dated 24.7.91 reverting the applicant to the post of Station Master in the grade of Rs.1600-2660 is quashed and set aside.
- (ii) The representation of the applicant dated 28.2.89 made against the adverse remarks in the confidential report for the year ending 31.3.1988 shall be considered and disposed of by the respondents within a period of two months from the date of receipt of this order. On receipt of a reply to his representation, the applicant shall have the liberty to file a fresh application before the Tribunal if so advised.

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(iii) The respondents shall constitute a review DPC, within a period of three months from the date of disposal of the applicant's representation against the adverse remarks in his confidential report, to consider his suitability for promotion to the post of Station Superintendent in the grade of Rs.2000-3200. If found suitable, he shall be promoted from the date his immediate junior was promoted with all consequential monetary benefits and fixation of seniority.

There will be no order as to costs.

J.P.Sharma
(J.P.SHARMA)
MEMBER(J)

21.2.92

D.Chakraborty
(D.K.CHAKRAVORTY)
MEMBER(A)
21/2/92