

Central Administrative Tribunal
Principal Bench

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DA-2508/91

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)
Hon'ble Shri R.K. Ahooja, Member (A)

New Delhi, this day of 8 December 1995

Shri Hari Dutt Sharma
S/o Sh. Hira Lal Sharma
Chief Goods Supervisor
Delhi Cantt.
New Delhi.

.. Applicant

(By Sh.A.K. Bhardwaj, Advocate)

VERSUS

1. Union of India: Through

General Manager
Northern Railway
Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway
Bikaner Division
Bikaner (Rajasthan)

3. Divisional Personnel Officer,
Northern Railway,
Bikaner Division,
DRM Office, Bikaner.

4. Area Manager (NR)
Bikaner Division
Queens Road Opp. Tees Hazari Court.
New Delhi.

.. Respondents

(By Shri R.L. Dhawan, counsel)
Sh.A.Kalia for Respondent
No. 2.

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

Shri H.D. Sharma has filed this application
under section 19 of the Central Administrative Tribunal

agrieved by an Order No. PCM/131-E/GC/X dated 24.10.91 whereby he was reverted from the post of Chief Goods Supervisor on the ground that his promotion to that post was erroneous.

2. The case of the applicant is that he joined the Railway Department as a Commercial Clerk in 1954. After obtaining promotions from time to time he reached the rank of Goods Supervisor in the pay scale of Rs.1600-2660 w.e.f. 1.1.1984. While he was so posted at Delhi he was served with a chargesheet (SF-5) for major penalty on grounds which need not concern us here. An Enquiry Officer was also appointed on 11.4.91 in pursuance of the chargesheet. The applicant had however taken a written test on 12.10.90 for the selection to the post of Chief Goods Supervisor in the grade of Rs.2000-3200 and having passed the same he was placed on the approved panel vide letter No.PCM/812/E/CGS/Vol.Ipx dated 26.12.1990. His promotion order was issued by Bikaner Division of Northern Railway on 27.12.90 (Annexure A-3) and he joined as Chief Goods Supervisor in Delhi Cantonment on 10.1.91. The allegation of the applicant is that vide the posting letter of 24.10.91, the Respondent No.2

decided to transfer the post of the applicant from DEC to MBY against one post of Goods Supervisor from MBY to DEC adjusting him against the lower post and promoting and adjusting two other persons S/Sh. Babu Lal and Nand Kishore as Chief Goods Supervisor on adhoc basis. The main ground on which the applicant contests this Order of reversion is that the same has been issued during the pendency of the enquiry against him and without its reaching a conclusion and the same is liable to be quashed on the ground that it is not in accordance with the rules and principles of natural justice.

3. The respondents have controverted the above allegation and have sought to explain that the chargesheet for imposition of major penalty was issued to the applicant on 11.10.90 and in view of the pendency of major penalty proceedings against him he could not be given a promotion as was erroneously done w.e.f. 26.12.90. Since the applicant was not eligible for promotion during the pendency of major penalty proceedings, the erroneous promotion was cancelled when the mistake came to notice.

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4. The applicant has taken some additional grounds in his application regarding the nature and fairness of enquiry against him and the competence of the authority which issued the chargesheet. When the matter came up for hearing ~~these~~ additional grounds were not pressed since the main question for decision is the cancellation of promotion, already made effective ~~on the ground that~~ done the same ~~had been~~ erroneously, without following the procedure for imposition of a major penalty or even without issuing a show cause notice. On this question, the learned counsel for the applicant submitted that the order of promotion could not be regarded as an error for two reasons. Firstly, there was a considerable time gap between the issue of chargesheet, the issue of promotion order and the issue of order of reversion. Secondly, the chargesheet was issued on a date later than the initiation of the selection procedure for the post of Chief Goods Supervisor in as much as the written test had already been held and only viva remained to be gone through. On the first point, the 1d. counsel submitted that the chargesheet was issued on 11.10.90 while the promotion orders were issued on 27.12.90

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that is more than two months later. Further more, the reversion orders were issued on 24.10.91. There was thus sufficient time available with the respondents to decide whether the issue of the chargesheet stood in the way of the promotion order. The lapse of time in the reversion order, almost one year since the issue of chargesheet as well as the order of promotion, the 1d. counsel for the applicant argued, is indicative of the fact that the said order of reversal was by *way of a penalty and not of a bona fide correction of a benefit* mistake. Such a reversion during the pendency of Departmental enquiry could not be sustained, as per the 1d. counsel, in the ratio of Tara Chand vs. Union of India and others - 1990 (2) ATJ 389 (New Delhi) in which the Principal Bench of the Central Administrative Tribunal held that reversion ordered during the pendency of the Departmental enquiry could not be sustained as it would amount to inflicting a punishment even before the charges were yet to be proved.

5. *In this content*
 As regards the second ground, the 1d. counsel vehemently argued that the order of promotion having become effective and having continued for almost a year, the applicant had acquired certain entitlement

by way of pay, allowances and status and he could not be deprived of the same without being afforded an opportunity to show cause. This opportunity was denied to him by cloaking the order of reversal under the guise of correction of an error. The respondents had in this view of the matter acted against the rules of the department itself pertaining to punishment of the railway employees as well as the rules of natural justice.

6. The ld. counsel for the respondents Shri R.L. Dhawan in his reply cited the judgement of the Hon'ble Supreme Court in the case of Ayurvedya Prasarak Mandal and another vs. Mrs Geeta Bhaskar Pendse and others - SLJ (43) 1992 (1) 27 wherein it was held that the appointment which are illegal cannot be continued. He also relied on the decision of this Tribunal in the case of DR Sharma vs. UOI and others - ATC 1989 (11) 243 to establish that it was not necessary to issue notice before correcting a bonafide mistake. The ld. counsel for the respondents argued that the Tara Chand case (supra) does not apply in the instant case since the reversion had not been ordered on the pendency of Departmental enquiry nor by way of punishment but only by way

of correction of an erroneous order.

7. We have considered the pleadings of the parties as well as the respondents by the respective counsel. The question to be decided is whether the promotion of the applicant was erroneous ab initio and illegal and therefore to be set aside automatically without following any procedure regarding issue of show cause notice etc. The contention of the respondents is that the Railway Board's letter No. E(D&A)88-RG6-21 dt. 21.9.1988 lays down that the names of the railway servants in respect of whom disciplinary proceedings for major penalty are pending should be excluded from the list prepared for promotion to the selection post and the cases of such persons for promotion should be taken up only after the finalisation of the disciplinary proceedings. This being so the promotion of the applicant had to pend till the finalisation of the disciplinary proceedings against him. Thus, the inclusion of the name of the applicant in the selection list and his subsequent promotion even on adhoc basis was contrary to the instructions of the Railway Board, the same being statutory in nature.

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8. Prima facie thus it would appear that there was a bonafide mistake in promoting the applicant. However, as argued by the ld. counsel for the applicant, this clear position gets blurred by two circumstances, namely, the time interval between the issue of chargesheet and the issue of order of promotion and subsequent reversion and secondly the vested interest which the applicant had acquired due to receipt of pay and allowances and higher status over a considerable period of time. The ld. counsel for the respondents urged before us that the delay was understandable in such a huge organisation as the Railways since there are various Divisions and Departments involved and in the very nature of Govt. functioning delays are inevitable. We are unable to concur with this view. It is true that delay can take place and mistakes will occur but the respondents had to explain that this delay took place because of plausible reasons such as in the mean time the personal records of the officer were sent elsewhere or the applicant himself had been shifted or the supervisory authorities changed or some other similar circumstances which would stand scrutiny. This has not been done and

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This has not been done and considering that no less than a period of two months elapsed after the issue of chargesheet to the issue of promotion order and no less than another 10 months elapsed before the authorities could detect the mistake and issue the reversion order, the validity of the plea of ignorance loses its impact. In the case of DR Sharma vs. UOI (supra) relied upon by the respondents, it was held that a bonafide mistake can be corrected on a subsequent stage when the mistake comes to notice and it does not attract article 311 of the Constitution of India. In that case the bonafide mistake was that the applicant's name had been included in the list for which he had in the first place not given an option. The Tribunal held that such an inclusion was a bonafide mistake and its correction at a later stage was justified. The facts and circumstances in the present case are different in that the applicant ^{was} ^{but} ^h considered entitled to the promotion ^{for} the issue of the chargesheet against him. The respondents indeed had the right to defer the promotion of the applicant to a date after the conclusion of the disciplinary proceedings against him. But that did not mean that they could reserve this right to be

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exercised at any time over an indefinite period.

If the contrary view were to be accepted then the respondents could, at will, by pass the requirements of article 311 on the plea that some executive instructions or the other had been contravened at the time of promotion and admitting the shortcoming on their part, deny a fair hearing and opportunity to the employees before reverting him.

9. The other case cited by the respondents viz. SLJ (43) 1992 (1) 27 (supra) also affords no support to their case. In that case the Competent Authority had not been apprised of the regularities when an appointment in contravention of the rules had been made nor the approving authority had any power to relax the rules. Even so, the Supreme Court while ordering the fresh selection procedure to be followed gave relaxation to one of the persons wrongly appointed who had become overaged. It has not been averred by the respondents before us that they had no authority whatsoever to relax the executive instructions which barred promotion during the pendency of the disciplinary proceedings and that therefore no such promotion could at all have been made by them.

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10. There is no denying the fact that the order of reversion of the applicant resulted in civil consequences in as much as he had to undergo a loss of pay and allowances as well as status. The applicant continued to receive higher emoluments and hold a higher post for a period of one year. With the passage of time this became a vested right and taking away this vested right by the order of reversion without affording an opportunity to show cause could not / be regarded but an arbitrary and capricious act on the part of the respondents. It was open to the respondents to intimate him that due to the contravention of the executive instructions on the subject he was liable to be reverted and to show cause. After that it was open to the respondents to take a decision in the matter after considering the explanation of the applicant. The denial of this opportunity is, in our view, clear violation and contravention of the accepted rules of natural justice and cannot be upheld.

11. In view of this matter and considering the circumstances of the case, we quash the

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impugned order dt. 24.10.91, the applicant
would be entitled to ~~all~~ the consequential
relief and benefit which would be given to
him within a period of three months. We
make it clear that this would be without
prejudice to the disciplinary proceedings
which had been initiated against the applicant
and the result thereof and the rights of
the disciplinary authority to pass any
orders thereon in accordance with law.
No order as to costs.

R. K. Ahoja

(R. K. Ahoja)
Member (A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

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