

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 1<sup>st</sup> DAY OF SEPTEMBER 1997

OA NO.1423/1992

Shri S.N. Tripathi  
Room No.108A, Rail Bhawan  
New Delhi

...APPLICANT

(By Advocate - Shri H.L. Bajaj)

VERSUS

1. UNION OF INDIA, through  
The Secretary  
Railway Board  
Ministry of Railways  
Rail Bhawan  
New Delhi

..RESPONDENTS

(By Advocate - Shri R.L. Dhawan)

1. Whether it be referred to the Reporter or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

*De*  
(R.K. AHOOJA)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON. SHRI R.K. AHOOJA, MEMBER (A)

(A)

NEW DELHI, THIS ~~16~~ DAY OF SEPTEMBER 1997

OA NO.1423/1992

Shri S.N. Tripathi  
Room No.108A, Rail Bhawan  
New Delhi

...APPLICANT

(By Advocate - Shri H.L. Bajaj)

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ORDER

R.K. AHOOJA, MEMBER (A)

The applicant is aggrieved by the order dated 21/26.4.1989 (A-3) whereby he was reverted from the post of Senior Booking Clerk (SBC for short) in the Railway Transport Museum to the lower grade post of LDC. The facts of the case in brief are that the applicant while working as LDC in the grade of Rs.950-1500 had applied in response to a staff notice No.58/88 whereby a panel was proposed to be prepared for the posts of SBC in Rail Transport Museum (RTM for short) in the grade of Rs.1200-2040. It was also stated that the post was ex cadre with a tenure of four years and that the incumbents by virtue of these posts will not be entitled to any extra benefit of increment etc. in any scale other than that applicable to the grade of LDC. By staff notice No.81/88 dated 11.10.1988, the applicant was placed at No.2

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in the panel in order of merit. By another order dated 14.10.1988, he was posted to the Rail Transport Museum as SBC. However, vide order No.88/Museum/Staff he was spared on 1.4.1989 from the RTM and by the impugned order of 21.4.1989 he was reverted with retrospective effect from 1.4.1989 to his original post of LDC. The case of the applicant is that this was done without giving him any show cause notice or by conducting any departmental enquiry. His representation (A-2) was also rejected vide letter dated 29.11.1991 (A-1) by which he was also informed that since a complaint against him was under examination, his request for revoking his reversion could not be agreed to. The aforementioned order of reversion as well as memorandum rejecting his representation are impugned on the ground that the applicant had been promoted on a regular basis consequent upon the empanelment and he could not be reverted, without giving him an opportunity to show cause, to a lower post until the expiry of the tenure of four year.

2. The respondents state in reply that there was a ~~unauthorised~~ complaint against the applicant alleging <sup>unauthorised</sup> sale of tickets and considering this as a serious lapse he was relieved from the RTM to avoid further monetary loss to the Government. The applicant had no permanent lien on the post and he was reverted to his parent cadre by the competent authority in the public interest. The respondents claim that under explanation (iv) of Rule 6 of Railway Servants Discipline and Appeal Rules (hereinafter referred to as the Rules), reversion of a government servant officiating on higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service or grade or on any administrative ground unconnected with his conduct, will not amount to a penalty. Hence, they claim that it was not incumbent upon them to conduct or complete any departmental enquiry for reverting the applicant.

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3. Shri H.L. Bajaj, 1d. counsel appearing for the applicant, has sought to refute the arguments of the respondents that their action fell within the explanation (iv) of Rule 6. He pointed out that this explanation will apply only where reversion was on account of unsuitability of the uncumbent or due to administrative grounds. He submitted that if the applicant was found unsuitable, then in the ratio of the Supreme Court judgement in DR. S.B. SHARE VS. UOI SCC 1989 (3) SLJ 111, he had to be informed of the deficiency in advance so that he could improve, otherwise the action of the respondents would have to be considered as arbitrary. As regards the second part of this explanation, the relevant administrative ground unconnected with the conduct could only refer to situations such as the abolition of the post, repatriation of a senior and such like ~~situations~~ <sup>consequences</sup>. There was a complaint against the applicant and thus it had to relate to his conduct and reversion on that basis could not be deemed to be reversion on administrative grounds. He also cited the case of DR. L.P. AGGARWAL VS. UOI SLJ 1992 (3) SC 137 wherein in the case of appointment to the post of Director, AIIMS, the Supreme Court held that the tenure appointments could not be cut short without justifiable grounds. The 1d. counsel pointed out that the Supreme Court had enunciated the principles in respect of disciplinary enquiries and orders of punishment in cases falling under the "no notice", "no opportunity" and "no hearing" categories in STATE BANK OF PATELALA VS. S.K. SHARMA AIR 1996 SC 1669 and ECIL VS. B. KARUNAKAR 1993(3) SLJ (SC 196) and sought to show that the present case fell in the category where no action could be taken without a reasonable opportunity to show cause. He also sought to rely on P. RADHA AND ORS. VS. UOI 1992 SLJ (CAT) 321 wherein it was held that orders causing severe consequences cannot be passed without show cause notice. We are in complete agreement with the 1d. counsel regarding the need for complying with the rules of

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natural justice and giving due opportunity if it is found that the impugned order was by way of punishment. The essential point therefore is to see whether the present case fell, as claimed by the respondents, within the definition of explanation (iv) of Rule 6.

4. The 1d. counsel for respondents has pointed out that the applicant had no lien on the post of SBC and if by his conduct he was found unsuitable then the respondents were free to revert him to his substantive post. In our view, distinction has to be drawn between his "work" and his "conduct". There is no indication that the "work" of the applicant as SBC was found to be unsatisfactory. What the respondents state is that there was a complaint of unauthorised sale of tickets whereby government money was siphoned out. This in our view would squarely fall within the meaning of "conduct". Any misconduct of a government servant may have a bearing on his suitability for a job, but there may be many cases of unsuitability like professional incompetence which would have no relation to the conduct of the employee. One is thus a <sup>matter of</sup> professional unsuitability and the other is <sup>of</sup> personal unsuitability. Obviously, the unsuitability <sup>to</sup> which reference is made to in explanation (iv) of Rule 6 relates to professional unsuitability. Professional unsuitability may result in refusal of promotion, transfer and in extreme cases to retrenchment by way of early retirement, termination of service as per contractual provisions; while personal unsuitability reflecting misconduct would invite punishment under disciplinary rules, ranging from censure to dismissal. In case the reversion of the applicant to a substantive, albeit lower post, was on account of his alleged misconduct implying his personal unsuitability, then his case could not be treated to be within definition provided in explanation (iv) of Rule 6.

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5. In the light of the facts of the case, the applicant could not be reverted and visited with a punishment without giving him due opportunity, which admittedly in the present case was not done. The order of reversion therefore has to be treated as illegal and bad in law and liable to be quashed.

6. We are not persuaded by the argument of the respondents that ultimately disciplinary action was initiated against the applicant and the disciplinary authority imposed upon him a penalty of stoppage of two increments. We find that while the reversion of the applicant took place in 1989, the disciplinary proceedings were initiated in 1991 and the final orders were passed in 1995. The disciplinary action in 1991 has therefore to be seen separately from the order of reversion of 1989. It has been argued for the respondents that when an enquiry was contemplated against the applicant, then either he could have been placed under suspension as SBC or he could have been sent back to his substantive post. In the result, the applicant has been better off as an order of suspension would, in the event of penalty being imposed, most likely have resulted in ~~as~~ the relevant period not being treated as on duty. The applications for the post of SBC were invited on the basis of four-year tenure and the applicant had therefore ordinarily an expectation of working against that post for that length of time. There had, therefore, to be a cause for reversion. That cause of action was not intimated to him; nor his explanation sought at the time of reversion. Admittedly this was done almost two years after reversion. In the result, the applicant was punished twice, first by reversion and then by imposition of penalty of stoppage of increments. We are therefore not inclined to connect his reversion with the ultimate fate of the

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disciplinary enquiry initiated against him. Needless to add that it is not the action of the disciplinary authority which is the subject matter of the present O.A. as these orders have not been questioned here.

7. In the light of the above discussion and the facts and circumstances of the case, we allow the O.A. The impugned order of reversion is quashed and set aside. The period of four years having passed, we order that the applicant will be entitled to the difference of pay in the post of Senior Booking Clerk and the pay drawn by him as LDC. The respondents are directed to make the payment thereof to the applicant within a period of three months from the date of receipt of a copy of this order.

8. The O.A. is disposed of accordingly. No order as to costs.

*R.K. Ahuja*  
(R.K. AHOOJA)

MEMBER (A)

*Lakshmi*  
(MRS. LAKSHMI SWAMINATHAN)

MEMBER (J)

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