

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

DATED THIS THE 5<sup>th</sup> DAY OF MAY 1999.

Coram:- Hon'ble Mr. S. Dayal, Member(A.)  
Hon'ble Mr.S.K. Agarwal, Member(J.)

Original Application No. 622 of 1996

Sri Faurabi Prasad aged about 43 years  
son of Sri Hemraj Yadav resident of  
village Chhilahi Buzurg, P.O. Anand Nagar,  
District Maharajganj, at present posted as  
Record Khalasi in the office of Accounts  
Section of Divisional Railway Manager's  
Office, N.E. Railway, Varanasi.

. . . Applicant.

Counsel for the applicant:- Sri B.P. Srivastava, Adv.

Versus

1. Union of India, through the General Manager,  
N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager (Personnel)  
N.E. Railway Varanasi.
3. The Accounts Officer, N.E. Railway, Divisional  
Railway Manager's Office, Varanasi.
4. The Senior Divisional Accounts Officer,  
Divisional Railway Manager's Office, Varanasi.  
Sri Narendra Prasad Pandey.

. . . Respondents.

Counsel for the respondents:- Sri D.C. Saxena, Adv. and  
Sri Prashant Mathur, Adv.

Order

(By Hon'ble Mr. S. Dayal , Member(A.))

This application has been filed under section 19 of the Administrative Tribunals Act 1985 for :-

- (1) Setting aside the order dated 23.5.96.
- (ii) A direction to the respondents to make payment for period of illegal suspension from 2.1.96 to 25.1.96.
- (iii) a direction to the respondents to pay the costs of the application to the applicant.

2. The applicant in this case was appointed as a Khalasi on 11.12.77 and was confirmed on 16.8.86. He applied for change of category from the post of Khalasi to ~~xxxx~~ the post of Record Khalasi in the Account Office which was allowed by order dated 22.8.94. By another order dated 8.2.95 an order confirming his change of category was passed subject to his getting bottom seniority in the list of another Record Khalasi. Yet by ~~an~~ order dated 23.5.96 he was again posted as Khalasi in Engineering department. It is the contention of the applicant that after change of category he can not be transferred to Engineering Department without his consent and without giving a show Cause notice. The applicant has also alleged that he was ~~an~~ illegally suspended by order dated 2.1.96 which was revoked by a subsequent order dated 25.1.96. Yet he has not been paid his salary but has only been paid his subsistence allowance during this period.

3. The arguments of Sri B.P. Srivastava for the applicant and Sri D.C. Saxena and Sri Prashant Mathur for the respondents have been heard. The pleadings on record have been considered.

4. It is not denied by the respondents that the applicant had applied for change of category which was allowed subject to his acceptance of bottom seniority. It is also not denied by the respondents that the applicant was transferred to Engineering Department again. The respondents have, however, mentioned that the applicant was repatriated to his parent cadre in the Administrative exigency of service restoring his seniority and pay in the Engineering Department with all usual facilities by the Competent Authority as per the extent rules. ~~As per the order of the respondents~~ The respondents in this connection have furnished a copy of a letter issued by North Eastern Railway dated 4.2.92 in which power to change of category of group D staff in the Division has been conferred on the D.R.M. It is mentioned that the category shall be changed only once at the request of the employee subject to his placement at the bottom seniority of a changed category. The change of category can be done more than once, for medical decategorization or due to Administrative reasons.

5. Since the change of category was ordered by the respondents without a show cause to the applicant, ~~we~~ we called for the files relating to orders of repatriation of the applicant which was produced by the respondents and has been perused by us. The order at Note No.22 dated 28.5.96 shows that Sri Ram Prasad Yadav, Sri Guhab Chandra and Sri Faurabi Prasad were repatriated on the ground of unsatisfactory performance in the nature of habitually absconding or absenting themselves without intimation or prior approval of leave. This behaviour of the applicant was considered as making them unfit to be

retained in Accounts Department where record keeping was involved. The record of absence of Sri Faurabi Prasad shows that he was absent for 51 days in 1994, 61 days in 1995 and 50 days in 1996. It appears from seniority list as on 1.4.98 produced by the applicant in reply to Misc. Application No. 1189 of 1998 that there were five Record Khalasi in Accounts Department and all of them had not been appointed as Record Khalasis by change of category. The record of <sup>leave</sup> of Record Khalasis regarding leave taken in 1994, 1995 and 1996 has not been produced to show as to whether they had also taken leave for a period corresponding to the period of applicant or not. In any case even if they had taken leave for period corresponding to the applicant and in the manner in which the applicant took leave ~~from~~ the option of repatriating them to their original department was not available to the respondents.

6. It is clear that the order of repatriation was by way of punishment to the applicant. Since the order was punitive in nature, it could not have been passed without <sup>an opportunity</sup> affording/to show cause to the applicant. Hence the order of repatriation can not be sustained, on this account.

7. The applicant has <sup>alleged</sup> ~~shown~~ that Sri Sadanand and Sri Paltoo Vishwakarma who were junior to him <sup>in Engineering Department</sup> have been promoted to the grade of Rs.950-1520/- He has also mentioned that Sri Ram Bachan, Sri Baleshwar Singh Yadav, Sri Arun Kumar Chandel, Sri Tapan, Sri Tilkoo Sri Satya Deo Pandey and Sri Parmatma who were all juniors to him have been promoted to the scale of ~~Rs.950-1500/-~~ Rs.950-1500/-. The respondents have countered it

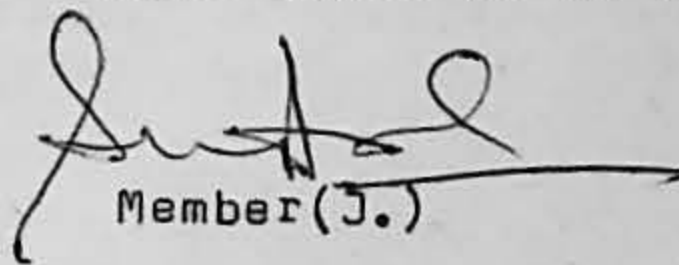
by saying that the persons in question were promoted after trade test. They have also mentioned that they were promoted when the applicant was in Engineering Department. Be that as it may, the fact remains that once the category of a person is changed, he is not considered for various <sup>opportunities</sup> ~~advantages~~ which arise after his change of category. The learned counsel for the applicant has cited the case of Ram Lal Khurana Vs. State of Punjab and others in Civil Appeal No.2941/82 decided on 3.8.89 by the Apex Court, <sup>in which</sup> repatriation of an official from Excise Department to Police Department was set aside because it amounted to penalty which was illegal as it was made without proper enquiry. It has also been held that a Government Servant shall not have two liens simultaneously against two posts in different cadres. This authority shows that change of category is not an administrative action which can be taken at mere whim and fancy of the respondents or can be manipulated for advantage by either of the parties. Once change of category has been allowed repatriation can be done only after considering all aspects including the effect on the career of the official whose category is sought to be changed. Thus the unilateral action of change of category by the respondents is not tenable in the circumstances of the case.

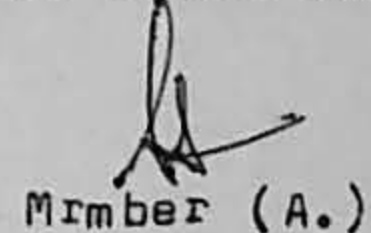
8. The applicant has sought payment of pay and allowance for the period from 2.1.96 to 25.1.96 the respondents have contested the claim of the applicant on the ground that an enquiry was contemplated against the applicant as he had applied for leave by giving misleading statements. It is not on record of the case whether any chargesheet has been served on the applicant for disciplinary proceedings. In case no chargesheet has been served on the

applicant and no orders have been passed regarding the treatment of period of suspension by the respondents, the respondents need to be directed to pass orders regarding this period. In case chargesheet has been served and enquiry has been held in which no punishment has been awarded to the applicant, the respondents need to pass orders regarding the period of suspension.

9. In the light of our findings, we set aside the impugned order dated 23.5.96 as far as it relates to the applicant. The respondents are directed to place the applicant as Record Khalasi in Account Department and change his category only after giving a show cause notice to the applicant, considering his reply and passing reasoned orders thereon. The respondents are also directed to pass orders regarding the period of suspension in case no chargesheet has been issued to the applicant so far or in case the disciplinary proceedings have been concluded as to whether the period is to be considered as duty for all purposes or not. These directions shall be carried out by the respondents within three months from the date of receipt of this order.

There shall be no order as to costs.

  
Member (J.)

  
Member (A.)

Nafees.