

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad This The 28th Day of August, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1340 of 1997

Ajit Kumar Pandey
son of Banshidhar Dutt Pandey
r/o 20-B Type II Ram Garh Tal
Railway Colony,
Gorakhpur.

.... Petitioner.

Counsel for the Applicant: Sri S.K. Om. Adv.

Versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Chief Personnel Officer (Administration)
N.E. Railway, Gorakhpur.
3. Assistant Personnel Officer (Head Quarter)
N.E. Railway, Gorakhpur.
4. Financial Advisor and Chief Account Officer
N.E. Railway, Gorakhpur.

.. Respondents.

Counsel for the Respondents: Kumari Sadhna Srivastava,

Order (Open Court)

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

This application has been filed for setting aside order dated 2.12.1997 by which the applicant has been repatriated from the cadre of Welfare Inspector in the scale of Rs.1600-2660/5500-9000 to the post of Accounts Assistant in the scale of

Rs.1400-2600. The applicant also seeks a direction to the respondents not to change his category and revert him in above manner. He has sought consequential benefits also.

2. The applicant was initially recruited as Junior Accounts Assistant in the scale of Rs.1400-2600. He made a request for an order in accordance with rule 2011 of Indian Railway Establishment Code which permits transfer from a Railway Servant from one post to another and also provides that no-one shall be made to officiate any post carrying less pay than the pay of the permanent post on which he holds lien except on account of inefficiency or misbehaviour or his lien not been suspended. The applicant sought change of category from Accounts Assistant to Welfare Inspector which was allowed by order dated 22.12.93 by Chief Personnel Officer. Thereafter the applicant came to be promoted to the post of Senior Welfare Inspector with effect from 19.2.96 in the scale of Rs.1600-2660. The respondents however by order dated 2.12.97 changed category of the applicant and sent him back to Accounts cadre on the ground that he belonged to that cadre. It is against this order that the applicant has approached us.

3. The arguments of Sri S.K. Om for the applicant and Kumari Sadhna Srivastava for the respondents have been heard.

4. It is an admitted case that the applicant was given no opportunity before he was repatriated

to the cadre of Accounts Assistant. The learned counsel for the respondents has sought to justify this order on the ground that the initial change of category was not done in the proper manner. It is so stated by her that the Chief Personnel Officer who passed the order of change of category was not authorised to do so. She has in this connection relied on order of General Manager (P.) Northern Eastern Railway Gorakhpur dated 30.7.93 which lays down that transfer of Group 'C' staff has to be considered by PHOD(s) concerned only from the Railway servants who are in the initial recruitment grades or in the intermediate grades to which there is an element of direct recruitment. The persons transferred should be set off against the vacancies reserved for direct recruitment in the new seniority unit. The learned counsel for the respondents has contended that the category of Welfare Inspector has no element of direct recruitment. She is, however, not in a position to counter the averment of learned counsel for the applicant that there are several cases of direct recruitment to the cadre of Welfare Inspector. We, therefore, can not accept the contention that the order of change of category suffered from any infirmity.

5. The second contention made by the learned counsel for the respondents is that there is a procedure for filling up of posts of Welfare

Inspectors in the scale of Rs.1400-2300 and that the selection was to be held on all railway ~~bases~~ basis by the Selection Board at the Head Quarters. Since the applicant did not face any selection ^{not} board, therefore his selection was/in accordance with the laid down procedure. This still does not counter the averment of the applicant made in paragraph ~~4 and 3~~ ^{4.3} of his application that the proper procedure for transfer of a Railway employee as laid down in Rule 2011 of Indian Railway Establishment Code was followed in the case of the applicant, and ⁱⁿ under repatriating him, this rule has ^{not} been followed as neither the applicant was accused ~~to~~ of any inefficiency or misbehaviour nor did the applicant make a request for such repatriation.

6. The respondents are not in a position to justify the repatriation of the applicant under rules and such repatriation is clearly illegal on account of non provision of any opportunity to the applicant before his repatriation.

7. In effect the order dated 2.12.97 is set aside. The applicant shall be entitled to all consequential benefits which shall be given to him within three months from the date of communication of this order.

There shall be no order as to costs.

R. N. Reddy
Member (J.)

H.
Member (A.)

Nafeds.