

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 380 OF 1998

ALLAHABAD THIS THE 01ST DAY OF MARCH 2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Shri Firoz Ahmad, s/o Shri Abdul Aziz,
r/o Mohalla Nawangabad, Post: Gorakhpur,
Gorakhpur presently working as Commercial Superintendent,
Grade-II, North Eastern Railway, Khalilabad.

.....Applicant

(By Advocate : S. K. Om)

V E R S U S

1. Union of India through General Manager,
North Central Railway,
Gorakhpur.
2. Divisional Railway Manager,
North Eastern Railway,
Lucknow.
3. Sr. Divisional Commercial Manager,
North Eastern Railway, Lucknow.

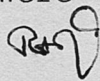
.....Respondents

(By Advocate: Shri A.K. Gaur)

O R D E R

By Hon'ble Mr. Justice S. R. Singh, Vice-Chairman

Impugned herein is the office order No.15 whereby the applicant has been reverted from the post of Commercial Superintendent Grade-II (5500-9000/-) to the post of Commercial Supervisor in the scale of Rs.5000-8000/-. The applicant, it is not disputed, was empanelled for promotion vide notification No.253 dated 06.10.1995. A perusal of the said notification would indicate that the applicant and 30 others were "provisionally" empanelled for promotion



from the post of Commercial Supervisor in the scale of Rs.1400-2300/5000-8000/- to the post of Commercial Superintendent in the scale of Rs.1600-2660/5500-9000/-. The said provisional empanelment was given effect to vide office order No.336 dated 28.11.1995. It is however, not disputed that disciplinary proceedings² consequent upon the charged memo dated 05.10.1993 was pending against the applicant. Article of charges of misconduct / misbehaviour framed against the applicant was that while working as ASM at Jagatbela and Sahjanwa Railway Station during the year 1991-1992, he committed serious misconduct in as much as, in a well planned manner, ²he fraudulently managed to take out the 'Receipt' foil of local EFT (Extra Fair Ticket) No.260187 quite blank from the EFT book while working at Jagatbela Railway Station during the year 1991 and made out the 'Record' foil for Re.1.00 on 06.03.1991 and subsequently while working at Sahjanwa Station in the year 1992 he fraudulently made out the 'Receipt' foil of that EFT No.260487 for Re.405.00 and sold on 29.01.1992 to a passenger who was found traveling in authority of the said EFT in Train No.2553 UP on 11.03.1992 for which the applicant had also arranged reservation in a fraudulently way. In the statement of the imputation of misconduct and misbehaviour it was stated that it could not^{be} ruled out that ~~the~~ the applicant had not committed such fraud at some more chances² and sold the receipt foils of some other EFTs also bearing No.260453 to 260497 by realizing and pocketing good amounts from the intending passengers of longer distance in respect of the record foil of those EFTs which he had prepared and issued for very nominal amount viz., Rs.1.00, Rs.1.50, and Rs.2.00. The disciplinary



proceedings result-ed in imposition of punishment reversion to the lower scale.

2. By impugned office order, ~~18~~, the applicant's name has been excluded from the provisional panel due to the reasons that disciplinary proceedings was pending against him. It has been submitted by Shri S. K. Om learned counsel appearing for the applicant that since the provisional panel had already been given effect to, it was not competent for the competent authority to revert the applicant without affording opportunity of showing cause, merely because disciplinary proceeding was pending against him when he was empanelled provisionally for promotion. Shri S. K. Om has placed reliance on the Railway Board's letter No.E(D&A)97RG6-26 dated 18.09.1997 issued on the subject of model time table for finalization of disciplinary proceedings. The said letter emphasizes on expeditious finalization of disciplinary cases so that promotions of the staff adjudged suitable for promotion may not be held back for an unreasonably long time. In terms of the letter, the competent authority[✓]~~s~~ are required to review comprehensively the cases of such Railway servants on the expiry of 6 months from the date of the original selection/original suitability list and inspite of the 6 monthly review referred to above, the disciplinary case is not finalized even after expiry of 2 years from, the date of original selection/formation of suitability list, the case of the employees concerned has to be reviewed for grant of ad-hoc promotion in the light of the conditions mentioned in the para 5 of the Board's instructions referred to in the letter.

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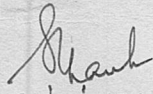
3. Shri M.K. Sharma brief holder of Shri A.K. Gaur counsel for the respondents on the other hand submits that according to the Railway Board's letter No.E(D&A)92 RG 6-149(A) dated 21.01.1993 (Annexure R-I), railway servants under suspension; railway servants in respect of whom a charge-sheet for major penalty has been issued and the disciplinary proceedings are pending; and railway servant in respect of whom prosecution for a criminal charge is pending ought not to be promoted even if already borne on a selection panel/suitability list till after the results of the proceedings against him are known. A conspectus of Railway Board letter dated 18.09.1997 relied on by Shri S.K. Om learned counsel for the applicant would show that it simply entitles a Railway Servant borne on a select list to be given ad-hoc promotion in the light of condition mentioned in para-5 of the instructions contained in letter dated 21.01.1993 reliance on which has been placed by the learned counsel representing the respondents. Concededly the applicant was facing departmental proceedings at the time of preparation of the panel for promotion to the post of Commercial Superintendent and therefore, in the light of Railway Board's letter referred to above, he could ^{have} been ^{given} only ad-hoc promotion.

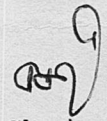
5. In the circumstances, therefore, failure to issue show cause notice to the applicant has not resulted in any prejudice to him in as-much-as the departmental proceedings initiated ~~or resulted~~ against him ^{has} a result ⁱⁿ an order of punishment. We are, therefore, not persuaded ^{to} interfere with the order of reversion merely on the ground that it

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was passed without issuing show cause notice. The Original Application is liable to be dismissed. It is however, made clear that nothing herein shall prejudice ~~to~~[✓] the applicant to file a case against the order of punishment.

6. Accordingly the Original Application fails and ^{is} dismissed subject to above observations. No order as to costs.


Member (A)


Vice-Chairman

Shukla/-