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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 45 DAY OF April, 2011)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D. C. Lakha, Member (A)

Original Application No.448 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

S.C.Prabhakar aged about 54 years Son of Shri Matroolal, resident of Railway Quarter No. RB-III 606-D Mission Marg, Jhansi.

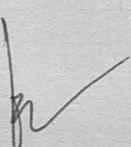
..... Applicant

By Advocate: Shri R.K. Nigam

Versus

1. Union of India through Secretary Railway Board, New Delhi.
2. General Manager, Central Railway, Mumbai CST.
3. General Manager, North Central Railway, Allahabad.
4. Financial Adviser and Chief Accounts Officer, Central Railway, Mumbai CST.
5. Financial Adviser and Chief Accounts Officer North central Railway, Allahabad.

..... Respondents


By Advocate: Shri A. Tripathi

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

The facts capsule:

1. The applicant belongs to the SC community and he commenced his service career in the Central Railway as clerk Gr. II in the Accounts Department in Jhansi Division of the Central Railway at the relevant point of time. He was later promoted as Section Officer in Aug 1981, and later on as Senior Section Officer in the grade of Rs. 7450 11500 w.e.f. 01-01-1996. He had then appeared in the Limited Departmental Competitive Examination of the Accounts Department for the year 1997-99; Though he did not get the minimum marks, as per the existing system, the applicant was placed in the panel of Class II, Group 'B' cadre as best amongst failures and posted as Asst. Divisional Accounts Officer, Bhusawal on 07-08-2000. For such candidates who are promoted as best amongst the failures, there are certain privileges available to SC ST candidates vide circular dated 31-08-1974, which include due facilities and assistance for six months for improving the knowledge; however, the applicant was not given any such facility during his tenure. The Applicant performed his duties sincerely with additional responsibilities also.

Railway Board Circular dated 22-12-1966 provides for procedure

for repatriation back to Class III from Class II in case of unsuitability and in the event of reversion from Group B to Group C, strict following of the procedure has been mandated. Rules provide for protection of the promotion once service for 18 months in the higher post is complete.

2. The Applicant was conveyed an average report vide letter dated 26-07-2001 to enable him to make representation against the same. Accordingly, the applicant represented against the average report on 20-08-2001. While there was no response to the representation, suddenly a reversion order dated 04-02-2002 was issued, but not served before 18 months of promotion.

3. The applicant filed OA No. 158 of 02 seeking quashing of the impugned order of reversion given under 18 months' of the officiating Rules. The Tribunal recorded a finding viz., failure to record special circumstances for reversion and hence, order dated 04-02-2002 quashed, vide order dated 23-09-2004.

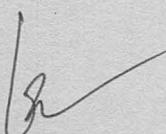
4. Meanwhile, on the creation of new zonal railways, the North Central Railway called NCR, created on 01-04-2003 thus, Central Railway had lost control upon Jhansi Division as that

Division has been attached with NCR. Applicant already opted for NCR, which was accepted, and he is now borne in the substantive seniority list of Class II Group 'B' Accounts Officer of the NCR. At this juncture, instead of G.M. NCR considering and issuing proper orders either by himself or through his FA & CAO, it was the G.M. Central Railway who passed the order of reversion vide order dated 05-04-2005 and the same was carried out by the FA & CAO, NCR who is not under the administrative control of the G.M. Central Railway, vide impugned order dated 07-04-2005 reverting the applicant.

5. Grounds - The order is without jurisdiction; the same goes against professed rules; after 18 months of officiation, there is absolutely no scope for reversion.

6. Relief sought:

- (i) To issue a writ, order or direction in the nature of Certiorari quashing the impugned Orders dated 4.5.2005 and 7.4.2005 (Annexures A-I & A-II)
- (ii) To issue another writ, order or direction In the nature of Mandamus thereby commanding the Respondents not to give Effect to the impugned orders in any manner Whatever and further commanding the respondents to give all consequential benefits to the applicants as provided under law.



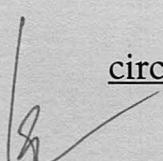
- (iii) *To issue any other suitable order in favour of the applicant as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case.*
- (iv) *To award cost of the application in favour of the applicant.*

7. Respondents have contested the O.A. According to them, the applicant was neither promoted to the higher post after due empanelment in selection nor promoted after passing trade/suitability test in non-selection post. The DPC observed that the applicant was awarded only 'average' and therefore recommended that the officer should be reverted to the original post. The impugned orders dated 05-04-2005 and 07-04-2005 issued by Respondents Nos. 4 and 5 were issued in pursuance and in compliance of the order dated 23-09-2004 of this Tribunal and on consideration of the records and documents as also the service grading of the applicant, recommendation of the selection committee and the power bestowed upon the General Manager for special circumstances and the fact that the applicant was promoted on ad hoc basis for trial purpose.

8. As regards the initial selection, as none of the reserved candidates qualified, in order to fill in the backlog for SC category as per Railway Board Circular dated 31-08-1974, three persons



including the applicant were called for Viva voce under the best among the failures. In fact, the applicant could not be promoted even on ad hoc basis to Group B service on his turn as major penalty charge sheet was pending against the applicant. After finalization of the case and imposition of penalty of reversion to the lower grade from Sr. S.O (A/cs) to S.O (A/cs) the applicant was considered for promotion to Group B services as AAO on ad hoc basis and posted to Bhusawal. Further the applicant was not placed on the panel of 70% regular selection for the year 1997-99 and was only considered for promotion to Group B service as best amongst failure candidates. In so far as provisions of letter dated 15-01-1966 is concerned, the Board clarifies that the safeguard of non reversion after 18 months of satisfactory service applies only to those employees who have acquired prescriptive right to the officiating post by virtue of their empanelment or having been declared suitable by the competent authority. Therefore, respondents submit that the same does not apply to those officiating on promotion as stop-gap measure and also to those where an employee duly selected has to be reverted after lapse of 18 months because of cancellation of selection or due to change in panel position consequent to rectification of mistakes. The said circular also provides the General Manager may in very special



circumstances revert an officiating employee in relaxation of time limit of 18 months in exercise of his personal judgment.

9. The applicant was warned several times with reference to his average performance in working. On completion of six months service, his Special Report was called and was written in the month of July 2001. The average report during this period was communicated to the applicant by letter dated 26-07-2001. Reversion of the applicant is due to his unsatisfactory performance during his tenure as Group B officer (promoted on ad hoc basis on the basis of Best among failure policy).

10. As regards competence of the G.M. Central Railway, the respondents have stated that it was the General Manager Central Railway who had approved the selection of the applicant on officiating basis as the best amongst the failure. The panel in which the name of the applicant was to be interpolated was also formed on the recommendation of the DPC consisting of officers of Central Railway with the approval of General Manager, Central Railway. Hence, any interpolation in question of final decision would be proper with the personal approval of the General Manager Central Railway and not by the General Manager, North Central Railway.

11. In his written submission the applicant has emphasized the aspect of powers of the General Manager and contend that once the administrative control of Jhansi Division has shifted from Central Railways to North Central Railways, notwithstanding the fact that it was the General Manager who would have approved the promotion of the applicant as Group B officer on ad hoc basis, at the time of consideration for continuance or reversion, it is that authority which has the administrative Control that should decide. Thus, according to the counsel for the applicant, it is the General manager, North Central Railways that has the power.

12. There is substance in the arguments of the counsel for the applicant. After the creation of the new zone (NCR), Jhansi division having been attached to NCR, the Central Railway has severed all the administrative control with reference to that division. From 01-04-2003, it is the General Manager N.C.R, who had full powers in this regard. That the applicant has to submit to the administrative control of the NCR is evident from very fact that the seniority of AAOs prepared on zonal Railway Basis contains the name of the applicant in the NCR, vide Annexure A-XIV dated 18-02-2004. If at all there is any one other than the G.M.

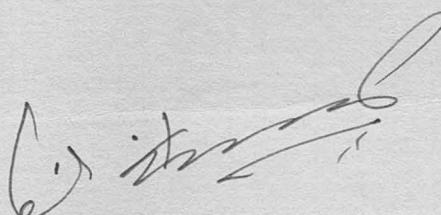
NCR who may have the power to revert the applicant from the group B post, it is only the Railway Board and not the General Manager, Central Railways.

13. In view of the above, we have absolutely no hesitation to hold that the impugned orders cannot stand judicial scrutiny. Hence, orders dated 05-04-2005 and 07-04-2005 impugned herein are hereby quashed and set aside. The O.A. is allowed. The applicant shall be deemed to have continued in the post of AFA/JHS as if the aforesaid orders have not been issued. The applicant would be entitled to the consequential benefits of difference in pay arising out thereof as also annual increment admissible to the grade of AFA, and his seniority would also not be affected.

14. Respondents are directed to pass suitable orders accordingly. Arrears of pay and allowances arising out of the order shall be paid to the applicant within a period of three months from the date of receipt of copy of this order.

15. No cost.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil