

(9)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.449 OF 2005

WEDNESDAY, THIS THE 7TH DAY OF February, 2007

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN
HON'BLE MR. P. K. CHATTERJI, MEMBER-A

Ashok Kumar Kharwar,
S/O Bikan Prasad,
R/o 722 B, West Colony,
D.L.W. Varanasi,

Presently working as Mechinist Gr.III

.Applicant

By Advocate : Shri S. K. Om

Versus

1. Union of India through General Manager,
Diesel Locomotive Works,
Varanasi.
2. Senior Personnel Officer/Work Shop,
Diesel Locomotive Works,
Varanasi.
3. Chief Mechanical Engineer,
Diesel Locomotive Works,
Varanasi.


. Respondents

By Advocate : Shri Anil Kumar

O R D E R

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN

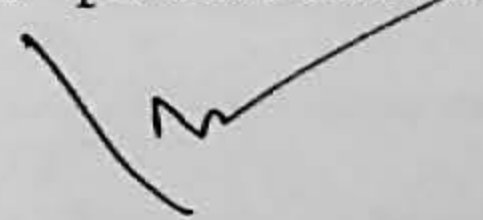
The applicant is challenging order dated 30.03.2005 (Annexure-7) by which his promotion to the post of Technical Mechanist Grade III was cancelled and he was reverted to the post of Helper-I LMS Grade Rs.2650-4000. He also prays that the respondents be directed not to revert the applicant



from the post of Mechanist Grade III to that of Helper Grade I.

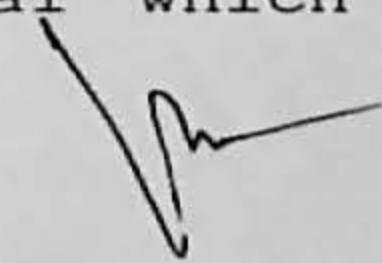
2. In brief, his case is that in the year 2001 he was inducted as substitute Helper Grade-III, in the Mechanical Workshop of Diesel Locomotive Works. He alleges in para 4.2 that after screening he was regularly appointed as Helper vide letter dated 26.03.2002 (Annexure-2). The respondents notified under 25% quota, for holding selection to the post of Mechanist Grade-III in the Grade of Rs.3050-4590. The applicant belonging ^{to} the Schedule Tribe category, applied and was declared selected. He was promoted vide order dated 20.12.2003 (Annexure-6) and he joined on the same date. It was by the impugned order that his promotion to the post ^{of} Mechanist Grade-III was cancelled and he was reverted to the post of Helper, on the ground that his promotion was erroneous as he was not eligible for such promotion on the relevant date ^{of} i.e. 24.10.2002.

3. The applicant is challenging the said cancellation and reversion on the grounds inter alia that the same ^{is} bad in law for want of notice or for want of opportunity of hearing. ~~and it is~~ ^{is} the respondents are not right in saying that the applicant was not eligible for promotion.



4. The respondents have tried to defend the said order dated 30.03.2005, by referring to para 228 of the Railway Establishment Manual and to Railway Board's circular dated 17.09.1964. They have also tried to say that it is not correct to say that a ^A Schedule Caste or Schedule Tribe candidate was not required to fulfill the criteria of particular service in the lower grade. According to them, such candidates had to complete at least one year service in Group 'D', before being eligible for promotion to the post of Mechanist Grade III in terms of Rule 159 (I) (II) of Railway Establishment Manual and Railway Board's letter no. 2298 and 12.01.1999.

4. Relying on Ram Ujarey Versus Union of India and Others, 1999 SCC (L&S) 374 and N. K. Durga Devi Versus Commissioner Of Commercial Taxes, Hyderabad and Others, (1997) 11 SCC 91, the learned counsel for the applicant has contended that the applicant was entitled to an opportunity of hearing or at least to a notice before his promotion was cancelled or before he was reverted to the lower post of Helper Grade I. He says that even if the promotion was erroneous as contented by the respondents, the same could not have been cancelled and the applicant reverted to the lower post without giving him a notice or opportunity of hearing. Learned counsel for the applicant has submitted that para 228 of the Railway Establishment Manual which deals with the



erroneous promotions, does not say that such promotions can be cancelled, without notice to the promotee and so, the same does not come in the way of the applicant, in assailing the said cancellation, on the said ground.

5. Learned counsel for the respondents has submitted that para 228 of the Manual, nowhere provides that in cases of erroneous promotions, the promotee has to be given notice or given reasonable opportunity of hearing, and so the impugned order cannot be attacked on that ground. According to him, if the applicant was aggrieved of this order he ought to have exhausted the departmental remedies, before rushing to this Tribunal.

6. We have considered the respective submissions on the above mentioned point. In the instant case, the applicant was not only promoted, but he also worked on the promoted post for sufficient period, before his promotion was cancelled and he was reverted. Even if para 228 of Railway Establishment Manual ~~of circumstances etc~~ does not expressly provide for notice or for opportunity of hearing to the promotee, before cancellation of promotion or before reversion, rules of natural justice demand that notice should be given to the person concerned before his promotion is set at naught and before he is reverted to the lower post. It all depends upon

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the facts and circumstances of a particular matter, whether notice or hearing is needed. Since the proposed order was to visit the applicant with serious civil consequences, so he was entitled to have his say in the matter. So in our view, the impugned order deserves to be quashed on the ground that the applicant was not given show cause notice.

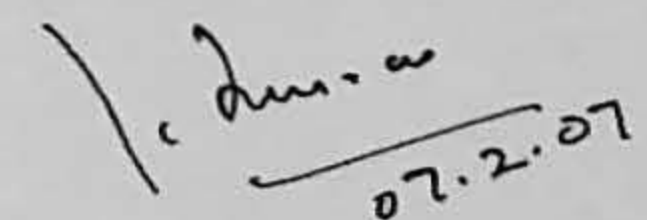
7. We need not⁴ enter into other aspects of the matter as we propose to set aside the impugned order on the above mentioned point, but with liberty to the authority concerned to pass suitable orders after giving opportunity to the applicant to show cause against the action proposed.

8. In the result the impugned order dated 30.03.2005 is quashed, but with liberty to the respondent concerned to proceed in accordance with rules and pass suitable orders as he thinks fit, but after giving him an opportunity to show cause against the proposed action.

9. Accordingly, the OA is disposed of. No Costs.


Member-A

/ns/


Vice-Chairman