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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

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REGISTRATION NO. 1028 (T) OF 1986

Vivekanand Pandey ..... Petitioner.

Versus

Union of India and others ..... Respondents.

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Hon'ble S. Zaheer Hasan. V.C.

Hon'ble Ajay Johri. A.M.

(Delivered by Hon'ble Ajay Johri)

1. Writ Petition No.14001 of 1984, Vivekanand Pandey v. Union of India and others, has been received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunal Act.,
2. The petitioner was working as a Deputy Yard Master in the grade Rs.700 - 900 till 18.8.1984 on the Northern Railway at Allahabad when he was spared by the Station Superintendent for his posting as Guard Grade 'C' but on his verbal appeals he was promoted as Guard Grade 'A' with effect from 18.8.1984. The petitioner's case is that he was promoted to officiate as Assistant Yard Master on 16.3.1977 and was subsequently promoted as Deputy Chief Yard Master on 4.7.1981. According to him, after having worked for 18 months he became confirmed in his appointment. His lien on the post of Guard also had come to an end on 1.8.1980 and was shifted to the channel of Yard Master. Since he had acquired a lien on



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the post he feels that he cannot be reverted from the post of Deputy Chief Yard Master. According to the petitioner <sup>by</sup> ~~that~~ his passing of P-16 course for the purposes of promotion to the cadre of Yard Master was not/<sup>a</sup>pre-requisite qualification and an order was illegally passed on 26.7.1984 by the respondents reducing him in rank on the ground that he had not passed P-16 course and hence he was being reverted to the post of Guard Grade 'C' from the post of Deputy Chief Yard Master. The petitioner has stated that even if passing P-16 course was necessary for promotion to the post of Assistant Yard Master in 1977, ~~and~~ the said impediment has been removed in the year 1980 and he was not reverted till 18.8.1984, the respondents should be <sup>by</sup> estopped from reducing the petitioner in rank. Thus the order of reversion was wholly arbitrary and illegal. The petitioner could not be sent back five steps below his present post, i.e. from the scale of Rs.700 - 900 to the scale of Rs.425 - 600. The impugned order is an utter disregard of the provisions of the Discipline and Appeal Rules and the principle of natural justice and fair play. The petitioner has, therefore, prayed for quashing the order dated 26.7.1984 passed by the Senior Divisional Personnel Officer, Northern Railway, Allahabad and for issue a writ of mandamus commanding the respondents not to interfere in the working of the petitioner as Deputy/<sup>Chief</sup>Yard Master and directing them to pay the petitioner's salary and allowances of the said post, and any other directions deemed fit.

3. The respondents' case is that the petitioner was promoted as Assistant Yard Master subject to his



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passing P-16 course which is a condition pre-requisite for promotion as Assistant Yard Master. The petitioner was sent for this course in the year 1977 but he failed. The Railway Board vide their circular letter of 12.2.1980 (Annexure 'III' to the writ petition) directed that passing the P-16 course in the cadre of Yard Master upto the grade of Rs.450 - 700 will no more be a pre-requisite qualification. However, Yard Staff seeking advancement to grade 550 - 700 and above were required to pass P-16 and P-16-A course. The petitioner's promotion to the grade of Rs.550 - 700 could not be made in view of the above letter. The petitioner has been on one pretext or the other refusing to go for the P-16 course and, therefore, could not be retained in the cadre of Yard Master. He himself made an application that he should be sent back to his original post of Guard and in view of his own request he has been posted as Guard Grade 'A'. The Grade of Guard Grade 'A' is Rs.425 - 600 plus 30 per cent running allowance as element of pay. If he withdraws the letter of his posting as Guard he can still be posted as Assistant Yard Master in the grade of Rs.450 - 700. The petitioner had not acquired any lien to the post of Deputy Chief Yard Master and has been <sup>3/0</sup>legally reverted to the post of Guard Grade 'A' on his own request and it is not open to him to complain now. It was not necessary to initiate disciplinary proceedings before reverting him as he has been posted on his own request.



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4. We have heard the learned counsel for both parties. At Annexure-3 of the writ petition is placed a letter dated 12.2.1980 wherein a decision has been taken by the defendants that for the purpose of promotion in the cadre Yard Master upto grade Rs. 455 - 700 passing of P-16 course will not be pre-requisite qualification. Guards grade 'C' have avenue of promotion in the category of Guards when they get promotion to grade 'B' , Grade 'A' and Grade 'A' Special. They can also seek an alternative avenue of promotion which is in the Yard cadre and they get promoted as Assistant Yard Master, Yard Master, Deputy Chief Yard Master and Chief Yard Master. There is a third avenue available to the Guards which is the cadre of the <sup>2d</sup> ~~Second~~ <sup>ton</sup> Controller. Here the promotions are made to <sup>2d</sup> ~~Second~~ <sup>ton</sup> Controller, Deputy Chief Controller and Chief Controller. The petitioner's name <sup>3d</sup> ~~also~~ appears in the seniority list of Assistant Yard Master grade Rs.455 - 700 placed at Annexure-4 to the writ petition. This seniority list shows his date of promotion as 25.9.79. His date of appointment has also been shown as 25.9.79. It has been indicated that he has not passed the course P-16 as there is no remarks against this column. In his rejoinder the petitioner has said that he was promoted to the post of Deputy Chief Yard Master on 14.1.81 but he refused to go to Kanpur hence he remained



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at Allahabad till 20.4.1982 and thereafter he was posted as Deputy Chief Yard Master at Allahabad upto 18.4.84 in the grade Rs. 550 - 750 which was eventually upgraded to Rs. 700 - 900. According to his <sup>re</sup>joinder affidavit the petitioner was booked on two occasions to go to Chandausi for P-16 course but he was not spared hence he was helpless. Thereafter he made a representation that he may be sent back to his original post of Guard. This application of his is filed at Annexure-CA-1 in the Counter Affidavit submitted by the respondents. In this application the petitioner has said that he was not able to accept the promotion <sup>at</sup> ~~to~~ Kanpur on account of family circumstances and he cannot leave Allahabad. Therefore this application may be treated as a refusal for his promotion. He had further requested that he may be allowed to work in the present grade Rs. 455 - 700 at Allahabad and if a vacancy is available in the grade Rs. 550 - 750 at Allahabad he may be considered for the same. He has further gone on to say that since he is a non-qualified hand and has failed in P-16 course after his selection as Assistant Yard Master, <sup>therefore</sup> ~~therefore~~ he may be sent back as a Guard on administrative ground.

5. In his Writ Petition the petitioner has prayed for quashing of the order dated 26.7.84 transferring him back to the Guards cadre as well



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as for the issue of a writ of mandamus commanding the respondents not to interfere in his working as Deputy Yard Master grade Rs.700 - 900. The Writ Petition was filed by him on 25.9.84 after he had received the transfer order dated 26.7.84 which according to the respondents were passed on his application of 26.8.81 requesting for being sent back as a Guard since he has not been able to qualify in the P-16 course, a condition <sup>at the relevant time</sup> which was pre-requisite before he could be selected as Assistant Yard Master in the grade Rs. 455 - 700. The petitioner has therefore on his own showing admitted that he is not qualified person to hold the post in the Yard Master's cadre. The order of his transfer to the category of Guards where he was originally recruited <sup>to his request and to</sup> was a consequence of a letter from the Chief Yard Master, Allahabad dated 25.4.84 wherein he had reported to the Divisional Railway Manager (Annexure-CA-2) that Shri V.N.Pandey had flatly refused to accept the letter relieving him for attending the P-16 course at Chandausi from 24.4.1984. This letter says that Shri V.N.Pandey went on sick w.e.f. 23.4.84, the day after he was informed about his being spared for the P-16 course. In this letter it has also been mentioned that at the previous time <sup>31</sup> also when the letter was given to him on 29.9.83



he had refused to take it and therefore it was concluded that he was avoiding to attend the P-16 course. Passing of this course was essential for a person to find a place in the Yard Master's cadre. Exemption has been given in 1980 for the lowest rung of this cadre in the grade Rs. 455 - 700 where a person could work without passing the P-16 course but for further promotions and the post that he was holding i.e. Deputy Chief Yard Master passing of the P-16 course is essential. From the above it is very clear that the petitioner had failed in his earlier chances and when he was spared in 1983 and 1984 he avoided attending the course and it was only in this background of his lack of confidence in his ability to pass the P-16 course that he gave the application for going back to the category of Guards. He is now requesting that the transfer order issued on 26.7.84 may be quashed. The respondents have no objection to take him back as Yard Master in the grade Rs. 455 - 700 where passing of P-16 course is not a condition.

6. It was the contention of the learned counsel for the petitioner that he had no objection to go back as a Guard but he should have been given the grade of Guard grade 'A' Special and not Guard grade 'C'. We do not find any illegality in the order dated 26.7.84. No principles of natural



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justice have been contravened. The petitioner had no prescriptive right to continue on the post from where he was transferred as he had not passed the requisite qualifying examination and from the facts available it appeared that he had no intention to pass the same. We do not find that the course of justice has <sup>3/2 suffered or has</sup> been interfered by this order. The petitioner had claimed protection that he had been officiating more than 18 months and therefore he should not be reverted. Such a protection cannot be granted to him for these sensitive posts where the ignorance of any rule can cause a severe havoc in the operation of the Railways. <sup>3/2 and then he is working on officiating basis</sup> It is not a question that even though not qualified he may be exempted from attaining the basic qualifications required to successfully and safely and efficiently perform <sup>3/2</sup> the duties for the post of the Deputy Chief Yard Master. His order of promotion had indicated that the promotion is adhoc and will remain adhoc till he qualifies in the P-16 course and that he is liable to be reverted if he does not qualify.

7. In the result the writ petition is liable to be rejected. However, it will be open for the petitioner to request for being posted back in the Yard Master's cadre in the grade Rs.455 - 700 as offered by the respondents. The writ petition is rejected. Parties will bear their own costs.

V.C.

राजरा वैद्य  
A.M.

Dated the 24<sup>th</sup> Feb., 1987

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