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Central Administrative Tribunal, Allahabad.
Registration T.A.No.1582 of 1986

Raj Kishore Mehrotra ... Plaintiff
Vs.
Union of India and another ... Defendants.
Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit has been transferred from the Court of IV Additional Munsif Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff had originally joined the service of N.E.Railway as a Khalasi but he was promoted as Store Issuer w.e.f. 27.6.1978 on ad-hoc basis. Apprehending his reversion, the plaintiff filed the present suit for permanent injunction to restrain the defendants from reverting him to the post of Khalasi with the allegation that he had already completed 18 months officiation on higher post and his work being satisfactory, he could not be reverted to his substantive post without taking the disciplinary proceedings against him and Mukhtar Khan and others, who were not going to be reverted, were junior to him and there could be no discrimination against him under the law. With the filing of the suit, the plaintiff also got an ad-interim injunction and on its basis, he tried to avoid his reversion.

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The appeal preferred by the defendants against the temporary injunction obtained by the plaintiff was however, rejected by the III Additional District Judge Bareilly on 17.5.1985.

3. The suit has been contested on behalf of the defendants and it was pleaded by them that the plaintiff was promoted as Store Issuer in a totally local and tentative arrangement on ad-hoc basis and he has no right to continue on this post. His work was not found satisfactory and as per conditions of his promotion, he was reverted to his substantive post vide order dated 22.10.1981. The plaintiff absconded from duty to avoid the service of the reversion order on him and filed this suit with wrong allegations after his reversion. The suit has become infructuous and is not maintainable under the law. A charge sheet for unauthorised absence has been issued against the plaintiff and he is to be proceeded against in accordance with the rules for his absence. The suit without a notice U/S.80 of the Code of Civil Procedure is not maintainable and the plaintiff, having been rightly reverted, has no case on merit.

4. The arguments advanced on behalf of the parties have been considered in the light of the evidence available on record by us. If we take a technical view, we will hold that the plaintiff filed this suit on 9.11.1981 much after ^{the} order of his reversion dated 22.10.1981. According to Rule 2045 of the

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Indian Railway Establishment Code Vol.I, the reversion order should be deemed to have taken effect from the date of issue and its actual service on the plaintiff was not necessary. Despite the dismissal of his appeal by the Addl. District Judge, as pointed out above, the plaintiff did not care to get the plaint amended to seek any special relief and as such, so far as the relief for permanent injunction is concerned, it cannot be granted to him and the ^{as far as} issues framed has become infructuous or otherwise ^{was} not maintainable from the very beginning and we should not consider his case on merits at all.

5. Arguments were, however, advanced on behalf of both the parties and as such, we will like to consider the same in brief. Annexure 1 filed by the defendants before this Tribunal is the copy of the order dated 27.6.1978 under which the plaintiff was promoted from class IV to class III. According to this order, the plaintiff was promoted purely on ad-hoc and local basis and he could be reverted to his substantive post without any notice. The order also states that no right will accrue to the plaintiff by this promotion regarding ^{seniority} and promotion. The contention of the defendants is that the plaintiff could be reverted to his substantive post without any notice and no right could accrue to the plaintiff to continue on this post. According to this order, besides the plaintiff, 11 persons were promoted from class IV to class III. Annexure 2 is the copy of reversion order dated 22.10.1981 which states that during the period of ad-hoc promotion of the plaintiff, his work was found highly unsatisfactory as a result of which,

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he is reverted to his substantive post. Annexure 6 filed by the defendants is circular letter dated 23.6.1969 of the General Manager, N.E. Railway.

The plaintiff has also filed its copy as annexure 'A'. Para 6 of this letter provides that if it is proposed to revert an employee, who has completed 18 months officiating period other than by following of Head of Department & DAR proceedings, personal sanction/must be obtained in case of class IV employees and of General Manager in case of class III staff. Para 8 of the letter states that if an employee is not confirmed in higher grade post for want of permanent vacancy, he cannot be reverted after his completing 18 months of officiation period on the charge of unsatisfactory work except after following the DAR procedure being the same for confirmed or officiating employees.

6. Reliance has been placed on behalf of the defendants on a Single Judge decision of the Allahabad High Court in Umesh Narain Singh Vs. Union of India (1985 U.P.L.B.E.C -185) in which it was held that if any person is allowed to act on temporary capacity as stop gap arrangement and has not been appointed to officiate as a result of selection to that post, his reversion will not amount to reduction in rank so as to attract Art.311(2) of the Constitution. On the other hand, the plaintiff has placed his reliance on a Division Bench case of the same

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High Court in the State of U.P. Vs. Pursottam Swarup Johri (1976 A.W.C.-223). It was a case of pre-mature retirement of a Government servant and considering the provisions of Civil Service Regulations and Art.311 of the Constitution, it was held that if an order of termination of service or compulsory retirement is made by way of punishment, it will amount to dismissal or removal from service and will attract the provisions of Art.311(2) of the Constitution. In that case, during the pendency of the disciplinary proceedings, the Government servant was retired compulsorily and considering the legality of the action taken, certain observations made in that case are reproduced below :-

" When passed in the normal exercise of the power under the terms of the contract of service or under the relevant rules, neither an order of termination of the services of a temporary Government servant nor an order of compulsory retirement is by way of punishment in the sense in which an order of dismissal or removal from service is. Both types of orders can be made on the ground of misconduct or inefficiency of the Government servant concerned. In both types of cases where Government examines the misconduct or inefficiency of the servant only to decide whether he should be further retained in service or not, the orders will not be by way of punishment. In such cases misconduct or inefficiency will only be the background motive for the action and will not be the basis

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or foundation thereof. But where the Government examines the charge of misconduct or inefficiency with a view to punish the Government servant and the order is founded or based upon the misconduct or inefficiency, there is no reason why, if the order purports to be one terminating the services of a temporary Government servant, the Courts can go behind it and hold that it is by way of punishment, but if it purports to be one of compulsory retirement, the Courts cannot go behind it and hold that it has been passed by way of punishment.

..... Every circumstance, which can lead to the conclusion that the order has been passed by way of punishment, can be examined by the Court. The Court can, therefore, see whether the order is founded or based on the misconduct. This it can only do by going behind the order."

7. We are in full agreement with the view expressed by the Allahabad High Court in the aforesaid Division Bench case and are of the view that as the plaintiff was reverted by way of punishment on his work being found highly unsatisfactory, it could be possible only by drawing proceedings under Railway Servants (Discipline and Appeal) Rules, 1968 as well as in accordance with para 8 of the circular letter, annexure 6, discussed above. There is still one other ground to justify this view. The plaintiff has repeatedly stated in his plaint and affidavits that several persons including Mukhtyar Khan junior to him have been retained and he is being reverted. The defendants evasively denied this fact

but did not controvert the same by filing a counter affidavit or other relevant documents. In our opinion, even in a case of ad-hoc or temporary appointment, if there is a discrimination against the incumbent of a civil post, he has a right to challenge his reversion or removal under the law and we are, therefore, of the view that the order of reversion of the plaintiff passed by the defendants is not in accordance with law even on this ground.

8. Regarding the relief to be granted to the plaintiff in this case, we really find ourselves in a little difficulty ; firstly, because the plaintiff appears to have filed this suit concealing true facts with a wrong allegation that the defendants wanted to revert him while in fact he already stood reverted ; secondly, because he did not get the plaint amended after the matter was thrashed out on the dismissal of his appeal against the temporary injunction and thirdly, because on the own showing of the plaintiff, he was suspended vide order dated 4.8.1981 in pursuance of the charge sheet dated 5.9.1981 as mentioned in para 8 of his rejoinder, 19-C. This suspension was in connection with some disciplinary action, the fate of which is not known to us. The defendants have already alleged in para 26 of the written statement that a charge sheet

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for unauthorised absence of the plaintiff was issued and shall be inquired into according to prescribed procedure. The orders passed by us may, thus, come in conflict or otherwise prejudice the defendants in passing appropriate orders in case the same disciplinary proceedings are still pending.

9. There is no other point for determination in this case.

10. In the result, despite our finding that the order of reversion of plaintiff was not in accordance with law, we are unable to extend any help to him. We accordingly and direct the parties to bear their own costs.

Bhmr 20.5.87

MEMBER (A)

Subbarao
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MEMBER (J)

Dated May 20, 1987
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