

(5)  
R3

RESERVED

Central Administrative Tribunal, Allahabad

Registration O.A.NO.273 of 1987

Brijeshwar Prasad Tewari .... Applicant

Vs.

Union of India and another .... Respondents.

Hon.D.S.Misra,A.M.  
Hon.G.S.Sharma,JM

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

This petition under Section 19 of the Administrative Tribunal Act XIII of 1985 is directed against the order dated 23.9.1986 passed by the Senior Divisional Personnel Officer, Northern Railway, Allahabad respondent no.2 reverting the applicant from the post of Head Clerk <sup>his</sup> to ~~A~~ substantive post of Senior Clerk and the order dated 11.2.1987 passed by the Divisional Personnel Officer (for short DPO) purporting to dismiss the appeal of the applicant against the said order.

2. The case of the applicant is that he was posted as Senior Clerk in the Commercial Branch in the office of the Divisional Railway Manager (for short DRM) Allahabad in 1981 and on some alleged complaint he was transferred from the Commercial Branch to the Mechanical Branch but the order of transfer was not communicated to him. As the applicant continued to work in the Commercial Branch the payment of his salary was stopped by the respondents and he had to approach the Prescribed Authority under Section 15 of the Payment of Wages Act. The application of the applicant was rejected by the Prescribed Authority but on appeal under Section 17 of the Payment Wages Act, it was allowed by the appellate authority against which the respondents have filed a writ petition in the High Court of Judicature at Allahabad which is still pending. The applicant resumed his duty in the Mechanical Branch of the Northern

(6) A.3  
24

Railway under the orders of the High Court and as per his seniority, he was promoted as Head Clerk w.e.f. 1.1.1984 by order dated 27.6.1986 by the respondent no.2 and he was also paid the arrears of the promotion post w.e.f. 1.1.1984. On 1.9.1986, the respondent no.2 issued a notice to the applicant to explain as to why the order promoting him to the post of Head Clerk be not cancelled and the necessary recovery from his salary be not made on the cancellation of his promotion. The applicant furnished his reply to the said show cause notice but without applying his mind, the respondent no.2 cancelled his earlier order dated 27.6.1986 ~~on~~ 23.9.1986 cancelling the promotion of the applicant and reducing him in rank as a Senior Clerk with the remark that vide order dated 22.6.1982 the applicant was reduced to lower grade for a period of two years affecting his future increments and seniority in a disciplinary proceeding and by oversight the said order could not be implemented while promoting the applicant on 27.6.1986. ~~THE XXXXAPPLICANT XXXXhad XXXXalso~~

~~XXXXXX~~ The appeal filed by the applicant against the aforesaid order to the DRM Allahabad was wrongly rejected by the DPO without any jurisdiction.

3. The correctness and propriety of these two orders have been challenged by the applicant in this petition on the ground that the order of punishment was never communicated to him and the applicant ~~could~~ ~~cannot~~ be reverted to his substantive post on this ground. In any case the respondents could not enforce the order of punishment after a period of 6 months and as such the order of reducing him in rank amounts to punishment and without affording him a reasonable opportunity the applicant cannot be reduced in rank. It has also been alleged that he was promoted by the respondent no.2 in June 1986 on the repeated representations of the applicant after knowing full facts and he could not review his order thereafter. It is also alleged that as the order was passed under the direction of the DRM, the respondent no.2 could

~~AB  
S~~

.3.

not cancel his order of promotion of the applicant and his order is illegal and beyond his powers.

4. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the respondent no.2, it was stated that the applicant was transferred to Mechanical Branch in the interest of railway administration and on account of his gross misbehaviour with his Office Superintendent, the applicant was placed under suspension by ACS w.e.f. 14.9.1981. The suspension was revoked by the Sr.DCS on 13.1.1982. The applicant had approached the Prescribed Authority under Payment of Wages Act for the payment of his salary for the period of his suspension as he was paid only the subsistence allowance by the administration. The order of punishment was duly served on the applicant and <sup>an</sup> affidavit to this effect was filed by the Divisional Commercial Superintendent in the proceedings before the Prescribed Authority. It was also mentioned in the said affidavit that the applicant had refused to accept the transfer order from the Commercial Branch to Mechanical Branch. The matter is still subjudice before the High Court in the writ petition. In the disciplinary proceedings initiated against the applicant he was reduced to the lower grade for a period of two years affecting his future increments and seniority but due to oversight, the said punishment could not be given effect to and the applicant was wrongly promoted as Head Clerk w.e.f. 1.1.1984. When this mistake came to his notice, the respondent no.2 issued a notice to the applicant and after

considering his representation against it the impugned reversion order was issued because the seniority of the applicant as Senior Clerk has been revised according to his reduction in lower grade w.e.f. 22.6.1982. The applicant was rightly reverted to the post of the Senior Clerk and all allegations of illegality against the order of reversion are false and baseless. In view of the loss of seniority on account of his reversion, the applicant was not entitled to promotion w.e.f. 1.1.1984. The Senior DPO is the appointing authority of the applicant and as such, the order of reversion was well within the jurisdiction of the authority who had passed the order of reversion. The Sr.DPO is competent to decide the representation of the applicant against his reversion and it was decided by the competent authority.

5. In his rejoinder the applicant reiterated that the orders of his transfer and punishment were never communicated to him and he never refused to accept such order-s. Such allegation of the resplondents was not accepted by the VII Additional District Judge, Allahabad allowing the claim petition of the applicant under Payment of Wages Act in appeal. In fact, no penalty was imposed on the applicant and such allegations have been made by the respondents due to malice. Even if any order of reduction was passed and kept on file, as it was not communicated, it could not take effect and after the expiry of the specified period, it lost its force and could not be enforced thereafter. The promotion of the applicant was not made by oversight and it could not be cancelled.

6. According to the undisputed facts of this case the applicant ~~was~~ posted as a Senior Clerk in the Commercial Branch was transferred to the Mechanical Branch on administrative grounds. On 14.9.1981 he was suspended on the charge of misbehaviour with his Office Superintendent by the ACS Allahabad and remained under suspension till 12.1.1982. Though not admitted by the applicant, it also appears from his pleadings that he did not comply with the order of transfer on the plea that it was not communicated to him. The applicant approached the Prescribed Authority under Section 15 of the Payment of Wages Act for the payment of his salary stopped by the respondents on his not complying with the transfer order as alleged by him in para 2 of the petition while according to the respondents he had moved the Prescribed Authority for the payment of his salary for the period of suspension over and above <sup>the</sup> subsistence allowance granted to him. In any case, the respondents had contested the case before the Prescribed Authority and the application of the applicant was rejected. It was however, allowed in appeal by the Addl. District Judge and the writ petition filed by the respondents against the said appellate order is still pending in the Allahabad High Court. The applicant has admitted that on the direction of the High Court he had resumed his duty in Mechanical Branch.

7. The respondents have pleaded that the necessary documents regarding the transfer and the reduction in ~~grade~~ in the disciplinary proceedings in connection with which the applicant was suspended were duly filed in the proceedings before the Prescribed Authority. According to

7/10  
RB  
6

.6.

<sup>Prescribed Authority</sup>  
the respondents, the applicant had believed the contention of the respondents regarding his transfer and reduction in rank but according to the applicant the appellate authority did not accept the case of the respondents regarding service of the said orders- the orders of transfer and reduction in rank. From this averment of the applicant made in para 4 of the rejoinder, it is evident that the respondents have taken the plea of transfer of the applicant and his reduction in rank before the Prescribed Authority under the Payment of Wages Act. Annexure 20 to the petition is a letter from the DRM Allahabad to the applicant on his representation dated 5.11.1986. It contains the reply given by the Sr.DCS Allahabad to the DRM regarding his case and states that the applicant had filed his claim for wages before the Prescribed Authority from 1.2.1982 and it was decided against him on 30.12.1983. The report of the Sr.DCS contained in this annexure further states that the fact of applicant's having been punished with reduction in rank was clearly mentioned in the reply filed by the railway administration in the said case and the copies of DAR report and punishment notice were also filed in that case. It was also stated in that report that the Prescribed Authority had accepted the version of the railway administration. The applicant has not disputed the correctness of this fact before us nor has produced any evidence to show that the facts stated in this report are not correct. We, therefore, infer that irrespective of the fact whether the order dated 22.6.1982 reducing the applicant in the lower grade was communicated to him or not, he atleast

knew about it at the time his application under Section 15 of the Payment of Wages Act was pending before the Prescribed Authority in 1982-83.

8. In view of the factual position stated above, it has to be seen whether the applicant can escape the evil consequences of the said order of his reduction in rank on the ground that it was not communicated and in case it has to be enforced in 1986, it will amount to modification of the said order, which is not permissible after the period of 6 months. After careful consideration of the necessary provisions of the rules on this point, we have come to the conclusion that the order dated 22.6.1982 reducing the applicant in lower grade should be deemed to have been communicated to him atleast before 30. 12.1983 when the Prescribed Authority had decided the case of the applicant against him. In coming to this conclusion we find support from the decisions of the Hon. Supreme Court, some of which we will like to quote here. In State of Punjab Vs. Balbir Singh (1976 (1) Service Law Reporter-36) it was held that the order of dismissal or the like order becomes effective as soon as the same is sent out by the authority issuing it. In Bachhittar Singh Vs. State of Punjab (A.I.R. 1963 S.C.-395) it was held that before something amounts to an order of the State Government, two things are necessary ; first, the order has to be expressed in the name of the Governor and second, that it has to be communicated. Until the order is communicated to the person affected by it, it can be open to the Government to consider the matter over and over again and therefore, till it is communicated, the order cannot be regarded than anything more than provisional in character.

In State of Punjab Vs. Amar Singh Harika (A.I.R 1966 S.C.-1313) it was held that an order of dismissal passed by an authority and kept in his file without communicating it to the officer concerned or otherwise publishing it will not take effect from the date it was actually written out but such an order can be effective only after it was communicated to the officer concerned or it was otherwise published. Personal service of the order of dismissal is not legal requirement to make the order effective. The mere publication of the order in any form is sufficient to prove such an order in force. In our opinion, the ~~main~~ principles which <sup>govern the rule of communication</sup> ~~are applicable to~~ an order of dismissal should apply to an order of reduction in rank and ~~when~~ the applicant could not be personally served with the order dated 22.6.1982 reducing him in grade, he <sup>is</sup> supposed to have knowledge from the date it was published by making a disclosure about it and filing the necessary copies of the disciplinary proceedings in the case before the Prescribed Authority. The applicant, therefore, cannot successfully avoid the effect of such order under the law.

9. The applicant has placed his reliance on Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short DA Rules) which provides that order passed in a disciplinary proceeding cannot be reviewed or modified by the revising authority after a lapse of 6 months. He has also placed his reliance on a Single Bench decision of the Allahabad High Court in J.B.Bhattacharya Vs Chief Engineer South Eastern Railway (1967(14) Indian Factories and Labour Reporter-147). In this connection, it was further contended that the powers of review could be exercised only by the DRM and not by respondent no.2 and as such the impugned order of reversion passed by the respondent no.2 on 23.9.1986 by enforcing the order dated 22.6.1982 reducing him in rank amounts to modification of the order

AB  
S  
13

dated 22.6.1982 and is bad in law on this ground. After a careful consideration of this question, we are of the view that this contention is simply misconcieved. The respondent no.2 did not modity or review the order dated 22.6.1982 exercising his powers under rule 25 of the D.A.Rules and as such, the contention is devoid of any force. Apparently, it appears that if the order dated 22.6.1982 would have been enforced with immediate effect, ~~that~~ could ~~not~~ be less prejudicial to the applicant and as on the own showing of the respondents, they could not enforce it at the proper time due to their own mistake or oversight, the respondents ~~can~~ be directed to enforce it w.e.f.22.6.1982 treating its service on the applicant with immediate effect.

10. The only other contention raised on behalf of the applicant is that the respondents could not revert him by passing administrative order dated 23.9.1986 and for this contention, reliance has been placed on his behalf on a Division Bench case of the Himachal Pradesh High Court in B.S.Sindhu Vs. Union of India (1971(1) S.L.R. 600) wherein it was held that an order cancelling officiating promotion given by mistake three years ago and recovery of excess salary drawn on higher post has penal consequence and the Government servant is entitled to protection under Art.311(2) of the Constitution. On the other hand, in G.K.Shukla Vs. Collector of Central Excise (A.I.R. 1957Allahabad-152); Mazhar Hasnain Vs. State of U.P. (A.I.R.1961 Allahabad-316) and Prayag Das Seth Vs. Secretary to Government of U.P. (A.I.R. 1968 Allahabad-279), the Allahabad High Court had taken the view that if a Government servant is ~~promoted~~ appointed by mistake and if that mistake has been corrected and as a consequence he is reverted it will not amount to punishment or reduction in rank under Art.311 of the Constitution. We find ourselves in agreement with this view.

11. Coming to the facts of the present case, it appears that vide order dated 22.6.1982, the applicant while working as a Senior Clerk in grade of Rs.330-560 was reduced to lower grade of Rs.260-400 for a period of two years affecting future increments and seniority and his pay was fixed at Rs.350 on reduction as a Clerk in the grade of Rs.260-400. In view of this punishment, the seniority of the applicant has been affected for ever and the applicant could not be promoted as a Head Clerk vide order dated 27.6.1986 w.e.f. 1.1.1984 on the basis of his seniority as Sr.Clerk before such punishment. From the various representations of the applicant for promotion, copies whereof have been filed on the record, it does not appear that before his promotion order dated 27.6.1986, he either himself brought the fact of his punishment order dated 22.6.1982 to the notice of the respondent no.2 or the respondent no.2 had considered this fact on his own accord while promoting the applicant as Head Clerk. The only controversy before the authorities at that time was to examine the effect of the transfer of the applicant from Commercial Branch to the Mechanical Branch on his seniority. We, therefore, accept the contention of the respondents that the applicant was promoted by mistake in ignorance of the punishment order dated 22.6.1982 which for some reason or the other could not be given effect to by that date. The impugned order dated 23.9.1986 passed by the same authority cancelling the promotion of the applicant by correcting his earlier mistake was thus, well within his jurisdiction and does not contravene the provisions of Art.311 of the Constitution. It does not appear from the promotion order dated 27.6.1986, copy annexure 11, that it was issued at the instance or under the direction of the DRM and as such, the respondent no.2 himself could cancel this order and the contention of the applicant to the contrary is not correct.

AB (15)

.11.

12. The applicant had preferred an appeal on 4.11.1986, copy annexure 15, against the impugned order dated 23.9.1986, copy annexure 14, reverting him to the post of Senior Clerk to the DRM Allahabad. The other impugned order dated 11.2.1987, copy annexure 17, issued by the DPO Allahabad does not appear to be an order disposing of <sup>this</sup> his appeal but it is simply by way of information that with reference to his representation dated 4.11.1986, it was to be informed that his promotion was made by mistake without implementing the order of his punishment and he was reverted on the correction of this mistake. In case it is to be treated as the disposal of the appeal preferred by the applicant, the DPO was certainly not justified in disposing of the appeal addressed to a senior officer. Annexure 20 to the petition is copy of the letter dated 23.2.1987 of the DRM to the applicant in connection with his representation dated 5.11.1986 to the Senior DPO Allahabad. The report submitted by the Senior DCS in this connection was reproduced in this letter as already pointed out earlier. As a matter of fact, this appears to be the decision of the DRM on the appeal of the applicant though it does not speak so. However, even if it is assumed that the appeal dated 4.11.1986 preferred by the applicant against his reversion has not been disposed of so far or has been disposed of by an authority not empowered to do so, it will serve no purpose of the applicant if we refer the matter to the DRM again for deciding the appeal in accordance with law. We have ourselves examined the validity of the impugned order of <sup>reversion of</sup> ~~rejection~~ and find no force in any of the contentions of the applicant against this order. We accordingly hold that the order of reversion of the applicant was passed by the competent authority according to law on the correction of the mistake committed by him earlier and the same is not liable to be quashed.

11  
AB  
12

.12.

13. In view of the above discussion, we however direct the respondents to fix the pay and seniority of the applicant by enforcing the punishment order dated 22.6.1982 reducing the applicant to the lower grade of Rs.260-400 and fixing his pay at Rs.350 per month w.e.f. the date of the said order and thereafter redetermine the seniority and pay of the applicant w.e.f. 22.6.1984 on the expiry of the period of punishment for the purpose of his future promotion. The excess pay drawn by the applicant for the actual days of his working on the post of Head Clerk shall not be recovered from him and if already recovered, be either adjusted or refunded to him. The parties are directed to bear their own costs.

MEMBER (A) 19.8.87

MEMBER (J)

Dated Aug, 19, 1987  
kkb