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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 170 of 1988.

Ghanshyam Govind	Applicant.
Versus		
Divisional Railway Manager, N.E. Railway, Varanasi & others	Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

By this application, received under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, Ghanshyam Govind, a Shunter Driver, N.E. Railway, Varanasi Division, has challenged the order dated 22.5.1987 passed by the Senior Divisional Mechanical Engineer (Sr.DME), Varanasi, respondent no.2, reverting the applicant to the post of Fireman for three months and thereafter for doing refresher course and obtaining competency certificate. The applicant was promoted as a Shunter Driver on 28.12.1983 and according to him he was confirmed in December, 1986. While he was working on a Shunting Engine on 18.5.1987 there was an accident, ^{when} ~~while~~ his Engine was stationary another Engine came from the ^{near} ~~near~~ and collided with his Shunting Engine. In the enquiry conducted by the Loco Inspector, P.W.I. ² Station Superintendent and Traffic Inspector he was not held responsible for the accident. He was, however, served the impugned order dated 22.5.1987 by which his competency was withdrawn and he was asked to work as a Fireman for three months. He appealed against this order to the Divisional Railway Manager (DRM), but this appeal has not yet been decided. The applicant has said that since the receipt of this order he is on medical leave and is not getting any salary with the result his family is coming to

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the stage of starvation. He has assailed the order on the grounds that no show-cause notice or charge-sheet was served upon him before passing the impugned order neither any enquiry was held against him, so he was not given any opportunity to defend his case. He has, therefore, prayed for setting aside of the impugned order dated 22.5.1987 and for issue of a direction that the entire salary and allowances etc. to which he is entitled as Shunter from the date his salary has been withheld be paid to him.

2. The respondents have opposed the application on the ground that the Union of India has not been made a party by the applicant and the application is also not ~~out of~~ ^{referred within the} a period of limitation. According to the respondents there is no post of Shunter Driver and the applicant was promoted and confirmed as a Shunter. According to the respondents it is not the accident for which the applicant has been taken up but he was taken up for a separate incident. On 18.5.1987 when the answering respondent no.2 was proceeding to Mau Jn. he went to the site of accident for inspection. The applicant was manning loco no. 4266 Y.G. and as per rules it was his duty that before taking out the locomotive from the shed he should oil, grease and lubricated ^{it} well but when the respondent no.2 inspected the locomotive he had found lack of lubrication on ^{several} ~~separate~~ parts and since he could not explain satisfactorily the non-lubrication of his locomotive the respondent no.2 keeping in view the fact that there was no lubrication on the locomotive and the safety of public was involved directed the Assistant Mechanical Engineer (AME) that the applicant should not be utilised as Shunter and also should not be permitted to work as Shunter independently on the Shunting Engine and should be utilised as First Fireman and after satisfactory performance of three months be sent for refresher course and on satisfactory completion of which his case should be put up to the answering respondents for orders. It was also contemplated in the note that

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a show-cause ~~a show-cause~~ notice be issued to the applicant for his lapse and in case he fails to submit a satisfactory explanation suitable action should be initiated against him under D & A Rules. AME in compliance of the directions given by respondent no.2 issued the letter of 22.5.1987 addressed to the Loco Foreman, Varanasi and another letter on the same date addressed to the applicant whereby the orders regarding his utilisation as Fireman I were conveyed. The respondents have further said that no reversion order was ever intended or sent to the applicant. It was a mere direction issued keeping in view public ^{or safety} ~~safety~~ and the utilisation of the applicant's service as Fireman and sending him for ^{or} ~~refresher~~ course was to let him ^{or} ~~again~~ ^{or} ~~for~~ further experience and knowledge for better performance though for the entire period he was treated and paid the salary of a Shunter with all benefits. It has already been said in the reply that whenever a running staff is involved in an accident or is found incompetent he ^{or is} ~~was~~ sent for a refresher course. It is not done by way of penalty and, therefore, no show-cause notice is necessary. It has been emphasised in the reply that the applicant has not been reverted as Fireman I. On receipt of this letter of 22.5.1987 the applicant reported sick with effect from 23.5.1987. The respondents have further said that the applicant was called by the answering respondent to his Chamber on 1.7.1987 and explained the ^{or} ~~implications~~ of the impugned order and the benefits that will accrue to him after which the applicant agreed to join duty, but he did not join and according to the respondents is absconding. The applicant again met respondent no.1 on 16.9.1987 when the whole thing was re-explained to him and he was advised that his deployment as a First Fireman is not by way of reversion but has been done in order to help him to recoup his knowledge of ^{or engine} ~~locomotive~~ running and was advised to undergo the refresher course after doing a short

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stint as Ist Fireman. Ultimately it was found that he was on sick list with the Railway Doctor till 3.1.1988 and thereafter he was discharged for non-attendance in the hospital. During this entire period his salary and other benefits were paid to him as admissible under the extant rules.

3. We have heard the learned counsel for the parties. On behalf of the applicant it was contended that he cannot be forced to work as a Fireman and that the applicant is prepared to join back on his post after obtaining the fitness certificate. The learned counsel for the respondents submitted that the applicant has not been reverted as a Fireman, he was only asked to work as a Fireman for three months to refresh his practical knowledge and thereafter he was to undergo a refresher training course before he could be put back to work a Shunting Engine. He was being paid as a Shunter only. We have perused the case file and the documents filed before us.

4. It is clear from the documents filed that the impugned order was issued on the orders of Sr.DME. According to this order the applicant was to be utilised as Ist Fireman on main line trains and after a satisfactory performance of three months he was to be sent for refresher course for Shunter. His competency was to be re-certified by Sr. F.I. thereafter. The impugned order had withdrawn the competency of the applicant for working as a Shunter. There is also no ambiguity about the fact that the applicant was given this order not as a result of the accident but as a result of the inspection of his locomotive by Sr.DME. The plea taken by the applicant that he was given this order as a result of the accident for which he has not been held responsible is thus based on misconception. The applicant was a regularly promoted Shunter. He had worked as a Shunter for nearly 3 years. According to the Avenue of Promotion Chart placed as Annexure 'CA-1' of the reply to the application after Fireman Gr.I the next promotion is as Shunter. So the post of Shunter

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is the next promotional post for a Fireman I. A person who has been promoted to work as a Shunter, can ³¹~~only~~ be asked to work as Fireman only if he is r-everted to the post. In our opinion, no authority is available to Sr.DME to order a Shunter to be put to work as a Fireman without following the proper procedure under D&A Rules. An executive ³¹~~fiat~~ cannot revert a person to a lower post. So the orders given by Sr.DME on the basis of which the impugned order was issued by AME are not sustainable and are bad in the eye of law.

5. The respondents have said that the impugned order is not an order of reversion, and that the applicant is being paid the salary of a Shunter. We are not able to appreciate the logic. A person who has been working as a Shunter cannot be ordered to work as a Firemen which is a lower post without being reverted. So how can the respondents ³¹~~on~~ one breath say that the applicant is being paid as a Shunter and ³¹~~on~~ the other order him to work on a more strenuous job of a Fireman. If his competency is withdrawn, at best he could be debarred from working a locomotive till he goes through the refresher course and is certified competent to handle a locomotive again but he cannot be ordered to perform the duties of a Fireman I. Thus the impugned order which for all purposes reverts the applicant from the post of Shunter to that of for Grade I is liable to be quashed.

6. The applicant reported sick when he ³¹~~got~~ the impugned order. He was discharged from the hospital on 3.1.1988 due to non-attendance. He has not stated in his application where he remained after 3.1.1988. His period of absence after his reporting sick has been regularised by the respondents as ³¹~~leave~~ ³¹~~leave~~ of any kind due to him. The applicant has been seeing the respondents for being taken back on duty and the last interview he had was on 1.7.1987. His last letter requesting for decision on his appeal dated 7.10.1987 was sent by him on 10.12.1987. Thereafter there is nothing to show that he reported

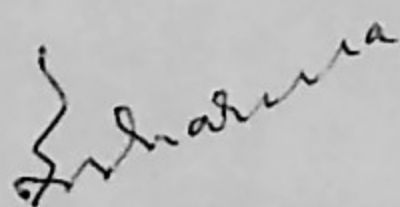
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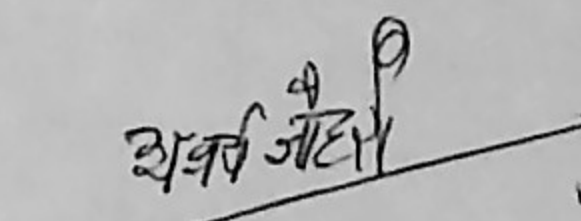
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back for duty and he was denied the same. It is only in para 16 of his rejoinder affidavit where he has stated that if the answering respondents are treating him as a Shunter the applicant be given the duty of a Shunter. He has also alleged that he sent an application dated 23.7.1988 to the Loco Foreman where he had offered to resume duty as a Shunter subject to medical fitness, but no order has been passed on this application. This request has been made by him during the pendency of this application and is not a subject matter of the application too. He can persue this with the respondents.

7. In the above circumstances and in conclusion we quash the impugned order dated 22.5.1987 as far as it concerns the utilisation of the applicant as a Fireman Grade I for three months. As regards the prayer for payment of salary etc., the applicant remained on sick list and his present status is not known. The fact is that he has not worked or been on duty. We, therefore, reject this prayer with a direction to the respondents to examine his case in this respect according to rules when he reports for duty. Parties will bear their own costs.


MEMBER (J).


MEMBER (A).

Dated: August 19, 1988.

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