

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 23rd day of September, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.  
HON. MR. D. R. TIWARI, A.M.

O.A. No. 158 of 2002

S.C. Prabhakar, aged about 52 years, son of Shri Matree Lal, resident of Railway Quarter No. RB-III/606-B, Mission Marg, Jhansi.....

.....Applicant.

Counsel for applicant : Sri R.K. Nigam.

Versus

1. Union of India through General Manager, Central Railway, Mumbai CST.

2. Financial Adviser & Chief Accounts Officer, Central Railway, Mumbai CST.....

.....Respondents.

Counsel for respondents : Sri K.P. Singh.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri R.K. Nigam, learned counsel for the applicant and Sri K.P. Singh, learned counsel appearing for the Railway Administration.

2. The O.A. in hand has been instituted for the following reliefs :-

"i) to issue a writ, order or direction in the nature of Certiorary quashing the impugned oral order of reversion being illegal and arbitrary.

ii) to issue another writ, order or direction in the nature of mandamus thereby commanding the Respondents not to disturb in working of the petitioner as ADAC grade Rs.7500-12000 (RSRP) in any manner whatsoever."

3. Though the applicant instituted the O.A. with the allegation that no written order has been passed and that is why the prayer is that the oral order of reversion may be quashed, the respondents have filed the order dated 4.2.02 (Annexure-IV) by which the applicant, who was promoted to Group 'B' service on ad-hoc basis has been

DR

reverted to Group 'C' service with immediate effect. The order purports to have been issued by the General Manager. The applicant, it appears, was selected under 'best amongst failures scheme' to fill the back log of SC candidates for the year 1997-1998 vide order dated 19.3.97. It appears that the said selection could not be given effect to due to the reason that the applicant was facing disciplinary proceedings as stated in the counter affidavit. However, the disciplinary case against the applicant <sup>was</sup> finalised in the month of January, 1999 and he was penalised and demoted to lower grade from Senior Section Officer (Accounts) to Section Officer (Accounts) and his pay was regularised. After that the case of the applicant was again considered for promotion to Group 'B' post as Assistant Account Officer under the scheme 'Best amongst failures scheme' with the approval of the General Manager and in 2000 he was promoted in group 'B' service and was accordingly posted as Accounts Officer w.e.f. 7.8.2000. He was subsequently transferred and posted as Assistant Divisional Accounts Officer, Jhansi w.e.f. 27.9.2000. It is alleged in the C.A. that on completion of six month of service his special report was called for in the month of July, 2001. In the special report, it is submitted, the applicant was graded as 'Average' with adverse remarks which were communicated to him vide letter dated 27.6.2001 and he was asked to submit representation if any, within one month.

4. The applicant came to be reverted vide order dated 4.2.2002. Sri R.K. Nigam submitted that in view of the Railway Board's letter No.E(D&A)-65-RG-6-24 dated 15.1.66 it was impermissible for the respondents to revert the applicant without following the procedure under Discipline & Appeal rules. Sri K.P. Singh has, however, placed reliance on a subsequent circular dated 22.11.1966 annexed as Annexure CA-2 according to which the General Managers have been vested with the power to revert an

(P.S.)

officiating employee in 'very special circumstances' in exercise of their personal judgment in relaxation of the time limit of 18 months prescribed under the earlier circular dated 15.1.1966.

5. Having heard counsel for the parties, we are of the considered view that the order of reversion dated 4.2.02 cannot be sustained. The power conferred upon the General Manager vide circular dated 22.11.66 is to be exercised in 'very special circumstances' which special circumstances, in our opinion, must be spelled out in the order of reversion as otherwise the action shall be vitiated by vice of arbitrariness which would be hit by Article 14 of the Constitution. It cannot be gainsaid that there is no unfettered discretion in the administrative or executive sphere and an authority vested with discretionary power is expected to act with fairness. Since 'very special circumstances' have not been spelled out in the order, the exercise of personal judgment by the General Manager in the instant case reverting the applicant after 18 months would be in violation of the earlier circular dated 15.1.66. It may be pertinent to point out that in the circular dated 22.11.66 also it has been reiterated that there should be no departure from the procedure laid down in the letter dated 9.6.1965 except where the General Managers, in exercise of their personal judgment, considered it expedient to revert the officiating employee in very special circumstances. The departure from the procedure laid down in the letter dated 9.6.65 in the instant case was not justified in the facts and circumstances of the case.

6. In view of the above discussion, the O.A. succeeds and is allowed. The order dated 4.2.02 is quashed with direction to the General Manager to pass a fresh order after proper self-direction to the requirement of the G.Os. dated 22.11.65 and 9.6.65.

No order as to costs.

*Deewa*

A.M.

Asthana

*Q&J*

V.C.