

(17)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 25 day of Jan. 2008.

Original Application No. 617 of 2006

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. Shailendra Pandey, Member (A)

Sri Munna Lal Murya, S/o late Daya Ram, R/o Mandav,
Post Rohania, Distt: Varanasi.

... Applicant

By Adv: Sri A. Srivastava

V E R S U S

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. The General Manager, (Personnel), Diesel Locomotive Works, Varanasi.
3. Senior Personnel Officer, Headquarters, Diesel, Locomotive Works, Varanasi.
4. The Dy. Chief Personnel, Officer, Diesel, Locomotive Works, Varanasi.

... Respondents

By Adv: Sri A.K. Sinha

O R D E R

By Hon'ble Mr. A.K. Gaur, Member (J)

Through this Original Application the applicant has prayed for following main reliefs:

- "i. Issue a suitable direction and order setting aside the impugned order dated 31.03.2006 issued by respondent No. 3.
- ia. Issue a suitable direction and/or order quashing the clauses No. vi and vii of order dated 19.8.2003.
- ii. issue a suitable directions commanding the Respondents not to interfere with the working of the Applicant as IOS (P) and pay him salary of the said post in the pay scale of Rs. 6500-10500 month to month as and when it falls due in accordance with law.

✓

(18)

iii. issue suitable order or direction commanding the Respondents to release the arrears of salary with effect from the date the impugned order came into force till date with interest at the rate of 10%."

2. The brief facts of the case are that the applicant was appointed as input-output Superintendent for major application in the year 2003. This post was created for major application viz Review Accounting and Fuel Account, ii. Pay Roll including Provide Fund, iii. Stores Accounting/Inventory Control and iv. Transportation applications including operating statistics. The Input Output Superintendent were to function under the control of Data Processing Manager for so long as they continued in the Data Center. The duties of Input-Output Superintendent consists of ensuring that the basis documents of each applications have fully been taken into account, defects in the basic account and taking action to tone up the quality of Input data and establishing quality control of the various output reports from the computer. Vide order dated 31.03.2006 the applicant was reverted to the post of Head Clerk on 31.03.2006.

3. The grievance of the applicant is that he has been repatriated on the post of Head Clerk without issue of any show cause notice and the principles of natural justice and fair play has been violated. It is alleged by the applicant that after adopting the proper selection procedure the applicant was

✓

empanelled for the said post of IOS vide order dated 29.09.2003. A copy of the order dated 29.09.2003 has been filed as Annexure A-4 to the OA. According to the applicant his work and conduct has already been quite satisfactory and no complaint of any nature whatsoever was ever made against the applicant. But all of a sudden without any notice or opportunity, vide order dated 31.03.2006, he has been repatriated to the post of Head Clerk from the present post of IOS (P). It is seen from the record that while issuing notice to the respondents this Tribunal vide its order dated 10.08.2006 directed the parties to maintain status-quo as on date and since then the stay order is continuing. It is urged on behalf of the applicant that the function of the applicant is under the control of the Data Processing Manager for so long as he continues in the data center and his further promotions will be in his parent department. It is also noticed that vide letter dated 12.05.2006 of Deputy Chief Personnel Officer addressed to the applicant (Annexure 9), ~~in which~~ certain lapses in performance of duties of the applicant are noted and have been communicated to him. In the reply dated 16.05.2006 the applicant has submitted that maintenance of the proper data in respect of SC/ST employees pertained to recruitment wing and not to him and that data in respect of allotment of accommodation to the employees were being maintained and prepared

(20)

separately by Residential allotment
Section/department.

4. By filing counter reply the respondents have negatived the claim of the applicant. According to the respondents the post of Input-Output Superintendent Grade Rs. 650-10500 is an **ex-cadre** post and was required to be filled-up as per *the* following terms and conditions in office order dated 19.08.2003. The terms and conditions are being reproduced hereunder:

- "i. The post shall be operated on Ex. Cadre basis as Input-Output Superintendent (P) ex-cadre basis in Gr. Rs. 6500-10500 in Personnel Deptt.
- ii. The post of Input-Output Superintendent (P) ex-cadre in Gr. Rs. 6500-10500 shall be filled from volunteering staff belonging to the grades of 5500-9000 and 5000-8000 (holding on substantive basis) in the clerical cadre and PI (Personnel Inspector) cadre of Personnel Deptt.
- iii. Optees from only these cadres and grades shall be subjected to selection.
- iv. The post being Ex.Cadre, no employee promoted to this post shall draw the benefit of seniority/enhanced pay fixation on repatriation to his parent cadre.
- v. Continuation as IOS/Personnel shall be subject to his continued suitability for this Ex. Cadre post.
- vi. Continued suitability shall be adjudged by Dy. CPO.Hq., on periodic intervals as deemed fit.
- vii. The incumbent of the post of IOS can be reverted back to the parent post/cadre without assigning any reason whenever deeded necessary by the administration."

5. The applicant was promoted vide office order dated 29.09.2003 with the following conditions:

h

"श्री मौर्या की तैनाती उक्त पद पर किए जाने पर भी इनका लियन मूल कैडर में बना रहेगा तथा आई0ओ0एस0 (कार्मिक पद पर कार्य करने की वजह से दिए जाने वाले वेतन इत्यादि का लाभ उनके मूल कैडर के पद एवं वेतन इत्यादि का लाभ उनके मूल कैडर के पद एवं वेतनमान में देय नहीं होगा, न ही उनके मूल कैडर में इन सेवाओं की वजह से उच्चतर वरीयता का लाभ मिलेगा ।"

6. After having considered the performance report of the applicant ~~by~~, the competent authority ~~it was~~ decided to repatriate the applicant to his parent cadre in terms of paragraphs VII and VIII of office order No. 796 dated 19.08.2003.

7. The applicant filed rejoinder reply denying the facts stated in the counter reply and reiterated the same facts of the OA. The applicant submitted that the conditions laid down in paragraph 6 and 7 of the notification dated 19.08.2003 is against the principles of natural justice and fair play. Nothing new has been stated in the rejoinder reply.

8. During the pendency of the case the applicant filed amendment application incorporating certain pleas. The said amendment application was allowed and the applicant was permitted to add certain paragraphs in the relief clause as well as in the statement of fact. By filing supplementary counter reply to the rejoinder reply it is submitted by the respondents that the repatriation of the applicant from the ex-cadre post to his original cadre is wholly in accordance with the terms and condition of the appointment of the applicant to that post. The repatriation of the applicant is not punitive

✓

(22)

because his suitability was to be adjudged by the Dy CPO Headquarter on periodic intervals as deemed fit.

The applicant has accepted these terms and condition of his promotion and appointment without any demur or protest and aggrieved to join the ex-cadre post.

Now since he failed to maintain continued suitability as adjudged by the Dy CPO Headquarters, he was repatriated to his substantive post.

9. We have heard Shri Ashish Srivatava for the applicant and Sri A.K. Sinha for the respondents.

10. The sole question to be determined in the present case is whether the applicant was promoted on a substantive post or was only officiating against an ex-cadre post and whether the order of reversion was punitive in nature or not. We have carefully considered this crucial point and given our anxious consideration to the pleas advanced by the parties counsel. The respondents are not obliged to record any reason or pass a speaking order while adjudging the continued suitability of the applicant under the condition laid down in office order dated 19.08.2003 in Clause iv and viii it is clearly specified **that the post being ex-cadre, no employee promoted to this post shall draw the benefit of seniority/enhanced pay fixation on repatriation to his parent cadre.** It is also seen from the Clause viii of the condition that **the**

(23)

incumbent of the post was liable to be reverted/repatriated back to the parent cadre without assigning any reason when ever deemed necessary by the administration. The repatriation of the applicant from the post of Input-Output Superintendent to his parent cadre i.e. on the post of Head clerk has been done as per terms and conditions accepted by him while submitting application for the post. The applicant was fully aware that the post was an ex-cadre post and he did not have his lien on the said ex-cadre post. It is also seen from the record that the applicant has accepted these terms and conditions for his appointment/promotion without any demur or protest and since the applicant failed to maintain continued suitability in terms of the notification and also as adjudged by the Dy CPO Headquarters, he was repatriated to his parent post. The repatriation of the applicant is not at all punitive but it is simplicitor and there is no necessity to give him any show cause notice and the said repatriation does not attract the provision of Article 311 of the Constitution of India. In our considered view since the applicant has accepted the terms and conditions before joining post of IOS (P) voluntarily in view of **AIR 1986 SC 1413 Om Prakesh Shukla Vs. Akhilesh Kumar Shukla 2006 (6) Scale 167, K.H. Siraj Vs. High Court of Kerela and AIR 1976 SC 2428, Dr. G Sarna Vs. Lucknow University**, the action of the applicant

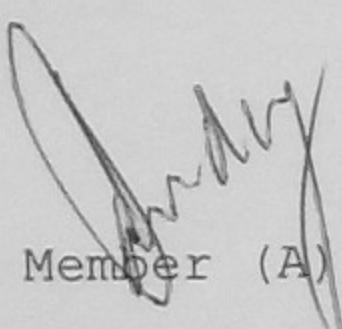
W

(24)

is clearly barred by the doctrine of Estoppel and Acquiescence. The applicant now cannot make departure from his own acceptance.

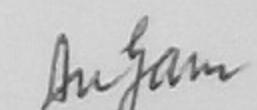
11. In an identical situation the Hon'ble Supreme Court in two decisions rendered in 1998 (5) SCC 450, *Punjab Electrical Board and others Vs. Baldev Singh* and AIR 1970 SC 364 *Narash Chand Saha Vs. Union Territory of Tripura* has clearly held that the nature of appointment clearly indicated that no right shall accrue in favour of the applicant and therefore, the question of giving an opportunity of hearing before repatriating the applicant did not arise. The theory of granting an opportunity of hearing would be an empty formality.

12. In view of our aforesaid discussions the applicant has failed to make out any case warranting interference. OA is accordingly dismissed. Stay order dated 18.08.2006 is vacated and discharged. Parties to bear their own cost.



/pc/

Member (A)



Member (J)