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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 35 of 1986.
T.A. No.

DATE OF DECISION 12.8.1986

M. C. Gandhi Petitioner

Mr. B. J. Shethna Advocate for the Petitioner(s)

Versus

Divisional Railway Manager (DRM) Respondent

Mr. R. P. Shatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi

(Vice Chairman)

The Hon'ble Mr. P. M. Joshi

(Judicial Member)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes



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Per : Hon'ble Mr. P.M. Joshi (Judicial Member)

JUDGMENT

The question of legality of the order of reversion dt. 4.2.'86, issued qua the applicant, is raised in the present application filed by the applicant under section 19 of the Administrative Tribunals Act, 1985 (Act No. 13 of 1985). The material facts leading to this application, may succinctly be stated as under :-

1. The applicant Mr. M.C. Gandhi, holding the position as a Senior Clerk at S.S. Anand, was promoted as a Head Clerk at the same Station, in accordance with the seniority, vide order dated 16.5.'85 (Annexure - 'A'). The applicant, after having been apprised about the said order, took over the charge of his office as Head Clerk on 25.5.'85. Later on, his pay was fixed vide office order dated 10.6.'85 (Annexure 'B'). He was assigned the pay scale of Rs. 425-700 with the benefit of drawing last increment from 1.6.'84. The applicant held the said post for about nine months. According to the applicant, when he had proceeded on sick leave from 8.2.'86 to 22.2.'86, he came to know through his Union that the respondent had passed an order dated 4.2.'86, reverting him to the post of Senior Clerk from the post of Head Clerk and in his place one Mr. A.S. Vohra, working at Bharuch was posted, at his own request. The applicant has assailed the impugned order of reversion (Annexure 'C') on the grounds, inter-alia, that no opportunity of being heard was afforded to him before passing the same and hence it is a clear violation of the principles of natural justice and hence liable to be quashed and set aside. The prayer was sought that the respondents may be forbidden from giving effect to the impugned order. The direction was also sought against them to put back the applicant on the post of Head Clerk at Anand. Consequential benefits are also sought.

2. While entertaining the application, "Status quo", as of 18.2.'86 was ordered to continue till 6.3.'86 and a show cause notice to the respondent was issued. In reply, thereof, it was shown that Mr. Vohra had already taken the charge of his post prior to the date of the application. Hence, the stay order was vacated vide order dated 6.3.'86. Since then, the applicant is holding the post as a Senior Clerk. In the Affidavit in Reply, filed by Mr. S.N. Pillai, Chief Law Assistant, Western Railway, Baroda on behalf of the respondent, it has been stated inter-alia that as a major D.A.R. Action was pending against the applicant since December, 1981, he was not eligible for promotion, in light of the instructions contained in para 4.2 (i) of Brochure on Railway Servant (Discipline and Appeal) Rules, 1968. According to him, when the above mistake came to the notice of the Railway Administration, the applicant was reverted from Head Clerk to the post of Senior Clerk, vide order dated 4.2.'86. An Affidavit in Re-joinder has also been filed by the applicant Mr. M.C. Gandhi contending that several other incumbents against whom, the inquiry was pending have been promoted to a higher post. It was



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further contended that the impugned order was passed in violation of the Rules with an oblique motive to accommodate Mr. Vohra. It was also stated that the pendency of the inquiry in respect of a major D.A.R. action, cannot operate as a bar for the promotion of the applicant, on any account.

3. While assailing the impugned order dated 4.2.'86, Mr. B.J. Shethna, the learned counsel for the applicant has raised two-fold contentions. Firstly, the impugned order, as far as, it related to the applicant is illegal and invalid, for the applicant could not be adjudged unsuitable on the basis of pendency of the Departmental Inquiry. Secondly, once the order of promotion has been passed, it can not be either withheld or cancelled even though it was a result of mistake. On the other hand Mr. R.P. Bhatt, the learned counsel for the respondent urged that the applicant was rightly adjudged unsuitable for promotion for the post of Head Clerk. as a major D.A.R. action was pending against him and when this fact came to the notice of the Railway Administration there was no option but to revert him to the original post of Senior Clerk at Anand.

4. We propose to take up the first contention. The applicant does not challenge the pendency of an inquiry against him which was pertaining to a major D.A.R. action. It is ^{vehemently} ~~vehemently~~ contended by Mr. B.J. Shethna, the learned counsel for the applicant that there cannot be any bar for promotion in the case of an employee serving in the Railway Administration,

^{a and} even though, any departmental rule creates such a bar against such promotion, it would be illegal and liable to be struck down. In support of his contention, he relied on the case of Dr. D.N. Chatterji v. State of Gujarat (21(2) G.L.R. Page-108). In this regard, at the out set it may be stated that Mr. R.P. Bhatt, the learned counsel for the respondent has not been able to invite our attention to any rule which may create a bar for the promotion against applicant on the ground that a major D.A.R. action is pending against him. In the case of Dr. Chatterji (supra) Hon'ble Mr. Justice B.K. Mehta (as he then, was) had an occasion to consider the circulars issued by the State Government in its Administrative Instructions, in so far as, they enjoined the Select Committee or Appointing Authority from excluding Govt. servant or officer from being included in the select list or from being promoted



on the ground of pending enquiry. After examining the relevant issue in depth, it was held that the impugned circulars or rules in so far as they issue administrative instructions in the matter of incursion or otherwise of the names of the Govt. servants or Officers against whom preliminary or regular disciplinary enquiries are pending, must be held to be ultra vires. Thus, any administrative instruction or rule which creates a bar against the promotion is void and ineffective.

5. In our considered opinion, in the facts and circumstances of the case on hand, the applicant cannot be adjudged unsuitable for promotion to the post of Head Clerk, on the ground that an inquiry is pending against him and for that matter, he could not have been reverted to the post of Senior Clerk.

6. It was next contended by Mr. Sethna, the learned counsel for the applicant that in the instant case the applicant was considered suitable for promotion and for that matter, an order of promotion was issued and in pursuance of the said order, his pay scale was fixed and he had discharged the duties as a Head Clerk for nearly nine months. According to him, once the promotion has been given, it cannot be cancelled or withheld, subsequently, on the ground that it was passed in ~~xx~~ ignorance of a pending departmental inquiry. In support of his submission, he has relied on the case of ~~the~~ Mrs. J.S. Pandya v. Director General of Police and Ors. (1985 G.L.H. page 557). In light of the rationale adopted in the said case, it can be well said that the impugned action of the respondent in passing the order of reversion is obviously wrong and untenable in law.

7. We are satisfied with the basis of the aforesaid two contentions, the impugned order (Annexure 'C') dated 4.2.'86, in so far as it relates to the reversion of the applicant to the post of Head Clerk cannot be sustained. The result is that the application is allowed and the order dated 4.2.'86 (Annexure 'C') in so far as it relates to the applicant, is quashed. The respondent will be free to consider the case of the applicant in light of the result of the inquiry which was pending against him, in accordance with law, but till then the applicant shall be restored to his position prior to his reversion and he will also earn the pecuniary benefit attached to the post held by him. In the situation of the case, the parties are left to bear their own costs of this application.

DATE: 12-8-1986

(P.M. JOSHI)
JUDICIAL MEMBER

(P.H. TRIVEDI)
VICE CHAIRMAN

