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CAT/3/12

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Reversing

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~NEW DELHI~~

O.A. No. 165
~~165~~

1988

DATE OF DECISION 30.4.1991

Shri Kara Kanji Petitioner

Mr. P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi : Vice Chairman

The Hon'ble Mr. R.C. Bhatt : 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? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

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Shri Kara Kanji,
C/o. Association of Railway
& Post Employees, 37, Pankaj
Society, Paldi, Ahmedabad.

: Applicant

(Advocate: Mr. P. H. Pathak)

Versus

1. Union of India
through:
General Manager,
Western Railway,
Churchgate, Bombay.
2. Assistant Engineer (W.R.)
Jetalsar.
3. C. Permanent Way Inspector,
Western Railway,
Porbandar.

: Respondents.

(Advocate: Mr. R. M. Vin)

J U D G M E N T

O.A./165/88

Date: 30.4.1991

Per: Hon'ble Mr. R. C. Bhatt

: Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant for a declaration that the order of reversion and cancellation of the panel dated 11.2.1988 is illegal, invalid and inoperative in law and to quash the same and the action of respondents to continue the applicant on adhoc basis as Mate be declared as arbitrary and that the respondents be directed to consider the applicant as regular Mate from the date of his officiation.

2. The case of the applicant as pleaded in the application is that the applicant joined initially in the service of the respondents as Gangman in the year 1959, that he was selected afterwards as a Keyman from 28.4.82 after assessment of vacancies and was promoted as Keyman, that from 22.7.1983 one Shri Morarji who was working as Mate in the Gang No.35 was transferred to Construction Project and the applicant was given officiating allowances and the work of Mate in his place. It is further alleged in the application that looking to the good performance

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of the applicant, he was transferred ~~from Gang No. 35~~ to Porbandar Dock Gang and posted on so called usual adhoc mate from 14.5.1986. The applicant has produced at Annexure A/1, the copy of the order of posting him as Mate dated 14.5.1986 and since that date the applicant was working as Mate at Porbandar Dock. It is alleged by the applicant that though he has been working on the said post of Mate since 14.5.1986, the respondent No.2 by order dated 11.2.1988 produced at Annexure-A reverted the applicant from the post of Mate in BRD Gang to the officiating post of Keyman. This order marked at Annexure-A dated 11.2.1988 which ~~which~~ is challenged by the applicant on the grounds that though he was working satisfactorily in the post of Mate, the respondents have reverted him on the ground of cancellation of entire process of test of keyman. It is alleged by the applicant that the panel was formed in the year 1982, it was the panel of the keyman and after some years, on the ground of cancellation of the said panel of Keyman, the applicant is now reverted from Mate to the post of Keyman. It is alleged by the applicant that the order of the respondents reverting the applicant to the post of Keyman is illegal, unjust and arbitrary and violative of article 14 and 16 of the Constituion of India, that the applicant ought to have been appointed as Mate on regular basis, that the respondents have no power to discontinue the applicant from the post of Mate to the post of Keyman after about 18 months' service and there is no valid reason to issue the order of reversion and the reversion/^{order} does not show the valid reason nor any opportunity was given to the applicant of being heard before such order.

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3. The order under challenge namely Annexure-A dated 11-2-1988 passed by the respondent No.2 reads as under:

"Consequent upon the cancellation of entire process of test of Keyman held by PBI/PBI as per LRM(E) BVP No.EE/340/4/Vol. V dt. 23.3.87 the following orders hereby issued.

Shri Kara Kanji K/man G.No.35 who was temporarily promoted on adhoc basis as Mate in BRD Gang is now reverted to his officiating post of K/man in scale Rs.825-1200 (RP) and posted in Gang No.35 against existing vacancy as recommended by CPWI/PBO.

Allotment of quarter if any cancelled from the date of carry out of transfer.

This will have immediate effect."

4. The respondents have filed written statement contending that the applicant was holding the post of Mate on adhoc basis and therefore he could be reverted without assigning any reason. It is contended that the letter dated 11.2.1988 is quite clear because the applicant has been reverted from the post of Mate, held by him on adhoc basis, as his selection as Keyman has been cancelled. It is not in dispute that the applicant was placed on the panel of Keyman vide memorandum No.E/835/64, dt. 26.4.1982 by Assistant Engineer, Jetalsar i.e. respondent No.2, that the applicant who was officiating as Keyman at relevant time was promoted as regular Keyman against regular post and was subsequently promoted to officiating in higher post as Mate in scale Rs.225-308 vide Memorandum No.E/840 dated 6/7-5-1986 produced with reply in M.Sc.application which reads as under:-

"5. Shri Kara Kanji, Keyman in G.No.35 in scale Rs.225-308(R) with pay Rs.225-308 (R) with pay Rs.278 is hereby temporarily promoted as on adhoc basis as Mate in scale Rs.225-308 (R) with pay Rs.290 and posted in PERD gang against vacancy."

5. It is contended by the respondents that as the applicant was on panel of Keyman he was allowed the post of mate on adhoc basis. According to the respondents, it was noticed that the selection in which the applicant was selected as Keyman suffered with some technical infirmity. The respondents have produced at Annexure R/1 the letter dated 26/28.12.1983 from respondent No.1 to the respondent No.2 intimating him that the first test was held on 8.12.81 and further test was held on 20.9.1982 but those who had failed in the earlier test had not been considered which

was irregular and against the rules and therefore the test which was held on 20th September, 1982 was cancelled. This letter was followed by another letter dated 18.2.1984 produced at Annexure R/II ~~xx~~ from respondent No.1 to respondent No.2 in which it is mentioned that the entire process of the post of Keyman was cancelled. Thereafter, the respondent No.1 wrote letter to the respondent No.2 dated 19/23.3.1987 produced at Annexure R/III in which the ^{letter} earlier/dated 18.2.1984 is referred to and it was intimated to respondent No.2 that since the entire process of the test of Keyman was cancelled, the promotion of the applicant was not correct. Therefore the contention of the respondent, is that as the panel of the Keyman was cancelled the applicant was reverted from adhoc post of Mate ^{and} was retained as Keyman vide order Annexure A/1 dated 11.2.1988. It is contended that ~~the~~ when the panel was suffering from technical infirmity the competent authority have powers to cancel the same and when some entitled persons were not called the non-cancellation would be tantamount to the denial of justice to them because in that case they would loose the chance for further promotion. It is contended that as a measure of rectification of mistake and with a view to allow equal opportunity to all entitled persons, the competent authority has cancelled the panel and therefore the applicant had to face the reversion. The respondents have denied that the action was against the principle of natural justice. It is contended that there was no question of denial of natural justice in taking the pure administrative actions like cancellation of a defective panel. It is also denied that the applicant was required to be heard before taking any administrative action like cancellation of panel. It is denied that the applicant was promoted on adhoc basis as Mate in 1983. It is contended that the applicant has already received the reversion orders and he is reverted. It is contended that the application has no merits.

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6. The learned advocate for the applicant submitted that the name of the present applicant was in the panel as per the order dated 26.4.1982 produced at Annexure R/IV. He was promoted as Keyman in Gang No.35. Learned advocate for the applicant submitted that the respondents were not entitled to cancel the panel. There is no substance in this submission of the learned advocate for the applicant because the letter produced at Annexure R/I shows clearly the position that when the test was held on 8.12.1981 and subsequently on 20th September, 1982 those who had failed in the earlier test of 8.12.1981 had not been considered in the subsequent test held on 20th September, 1982 which was against the rules and therefore the test which was held on 20th September, 1982 was cancelled. Therefore, if the candidates who had failed in the first test held on 8.12.1981 were not considered in the second test which was held on 20th September, 1982 then there was a illegality and if the panel fixed on the basis of the subsequent test is allowed to remain then there would be a great injustice to the candidates who were not considered in the second test. In short, if the candidates who failed in the first test on 8.12.1981 were not allowed to ^{be} ~~consider~~ ^{ed} while taking the second test on 20th September, 1982, the basis of the second test itself being illegal, it cannot exist. Now if the order is passed Annexure R/I cancelling the second test there is no reason why it should be held as illegal order. If the process of the second test is not cancelled, then a great injustice would be done to the candidates who were failed in the first test and that ~~order~~ was the reason why ~~the~~ all process of the second test was cancelled. The applicant has prayed for the relief for cancellation of the order by which the entire process of test was cancelled but that cannot be allowed because in seeking justice the applicant would be doing great injustice to the persons who had failed in first test and who had legitimate right to ^{be} ~~consider~~ ^{ed} in the second test. Therefore, we see

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no reason to disturb the order of cancellation Annexure R/1 by which the test held on 20th September, 1982 was cancelled.

7. The learned advocate for the applicant submitted that the applicant was promoted on adhoc basis as mate from 1983 but this submission about the year of the adhoc promotion is not correct because the copy of the order of adhoc promotion produced at Mark A/2 dated 14.5.1986 refers to the order dated 7.5.1986 by which the applicant was promoted and which is produced by the respondents in reply of Misc.Application in this case, which clearly discloses that the applicant was temporarily promoted on adhoc basis as Mate vide Memorandum No.E/840 dated 6/7.5.1986. The learned advocate for the applicant submitted that in any case the order of reversion is arbitrary, illegal, unjust and violative of Article 14 and 16 of the Constitution of India.

8. The learned advocate for the applicant submitted that the order dated 11.2.1988 produced as Annexure-A namely the order of reversion is bad in law because the applicant was not given any opportunity of being heard before this order was passed and the second reason was that the applicant was promoted on adhoc basis in EDRD Gang against vacancy was appears from Memorandum dated 6/7.5.1986 produced by the respondents. He, submitted, that when the applicant was promoted even on adhoc basis against vacancy, he could not have been reverted on the alleged ground of cancellation of entire process of test of Keyman as mentioned in the order Annexure-A. It is submitted that Annexure R/3 dated 19/23.3.1987 produced by the respondent No.3 shows that the entire ground for reversion of the applicant from the post of Mate to Keyman was that the entire process of the test of Keyman was cancelled and that is why the applicant was reverted. It is submitted that the applicant could not be reverted in the manner in which the order is passed by the respondents. The learned advocate for the applicant, in support of his submission, has relied on decisions in

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Shri Gokaldas P.Lodhiya & Ors. vs. Union of India & Ors. in O.A./313/86 decided on 21st October, 1986 by the Bench of this Tribunal in which it was held that though the respondents had reverted the applicant in that case on the ground of contraction of cadre rendering the applicants surplus, there was nothing in the orders of reversion, showing that it was the reason for reversion, nor there was anything to show that the applicant has been reverted because in the order of seniority, their turn had come for reversions, ^{and} ultimately the order was quashed. The second decision is 1986 Gujarat Law Times page 7 in which it is held that when an administrative order is passed, which affects the right of a Government servant to his prejudice, at least minimum rules of natural justice require to be observed, viz. (1) he must be given a notice to show cause, (2) He must be given an opportunity to make representation against the proposed action. The learned advocate for the applicant also relied on the decision of the Hon'ble Supreme Court of India in Om Prakash Maurya v. U.P.Cooperative Society Sugar Factory 1986 II LLJ page 145 in which it is held that a probationary period under Rules, cannot be extended beyond maximum period and the employee stood confirmed in the past thereafter. The Hon'ble Supreme Court was considering the U.P.Cooperative Society Employees Service Regularion 1975. The Hon'ble Supreme Court, while interpreting regulation 17 and 18, held that an employee appointed against a regular vacancy cannot be placed on probation for a period of more than two years and during the period of probation ^{if} the appointing authority is ^{of} the opinion that the employee has not made use of the opportunity given to him, he may ^{be} discharged from service or revert him to his substantive post but it has no power to extend the period of probation beyond the period of two years. Regulation 18 of U.P.Cooperative Society Employees Service Regulation 1975 stipulates confirmation of an employee by an express

order of the completion of the probationary period. It was in the light of these two regulations that the Hon'ble Supreme Court held that since regulation 17 did not permit continuation of an employee on probationary period for a period of more than two years, the necessary result was that after the expiry of two years' probationary period the employee stood confirmed by the implication. The next decision relied on was Shankarlal Gangaram & Girdharlal Gopiram v. Union of India & Ors. ATR 1987 (2) CAT 520 in which it is held that when the applicants in that case had been functioning as Signal Inspectors for 9 years without apparantly creating any problem for the railways, it would be idle to contend that they were still not fit for that post and they should be reverted to the lower post. It was held that the impugned order of reversion had lost its contents by now and could not be upheld. The next decision relied on was Hemchandra Raghunath Thakare v. Chairman Central Board of Direct Taxes, New Delhi & Ors. vsx 1990 13 Administrative Tribunals Cases page 630 in which it is held that in absence of prior opportunity such action of lowering seniority in promotional post after seven years purportedly to rectify the consequences of allegedly erroneous procedure adopted by the DPC was bad and the resultant reversion was bad as the principles of natural justice was not followed, in as much as that no notice or an opportunity to show cause ^{against} such an action was given to the concerned applicants and that was against all norms of service jurisprudence and natural justice. The next decision relied was G.V. Swamy and others vs. Union of India & Ors 1987 (2) CAT page 609 in whic case the applicants who were promoted on adhoc basis in 1976 were reverted after six years due to intake of direct recruits, that no charges of unsatisfactory service for any misconduct pointed out. It was held that in such case, they were protected by 18 months rule of Board's circular

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and they of 1966 could not be reverted without DAR procedure. The last decision relied on was E.V.Pavithran v. State of Andhra Pradesh ATR 1988(1) C.A.T. 26. It was held in this decision that cancellation of an earlier order favourable to a government servant without issuing him a show cause notice was against the principles of natural justice and would be illegal and liable to be set aside.

9. In the instant case, the Western Railway's Memorandum dated 6/7.5.1986 shows that the applicant who was working as Keyman was temporarily promoted as on adhoc basis as Mate and posted in EDRD Gang against vacancy. The learned advocate for the respondents submitted that the promotion of the applicant was on adhoc basis and it did not confer any right of the applicant and the applicant could be reverted. The learned advocate for the applicant on the other hand submitted that in the instant case the applicant was promoted on adhoc basis against vacancy. He submitted that the order of reversion produced at Annexure-A dated 11.2.1988 does not show that either a seniormost eligible person as per his turn is promoted or that a selected person to this vacancy was promoted. The learned advocate for the applicant also submitted that the order of reversion does not show that the applicant was unsuitable or that his work was not satisfactory. He submitted that when a probationer or adhoc promotee is later required to be reverted, it is necessary that the respondents should have a proper procedure for giving effect ^{to} such reversion. Learned advocate for the respondents submitted that the order of reversion Annexure-A is self explanatory about the ground on which the applicant was reverted to his original post of Keyman in as much as that the entire process of the test was cancelled. Learned advocate for the respondents submitted that the documents on record produced by the respondents ~~show~~ show that the selection in which the applicant was selected as Keyman suffered with some technical infirmity because there was an

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earlier test on 8.12.1981 and the persons who failed in that rest of 8.12.1981 had to be considered in subsequent test of 1982 in which the applicant was tested but that was not done and the matter was taken up by one of the recognised union and therefore the Divisional Railway Manager in the first instance cancelled the selection of Keyman held by the department at Porbandar vide letter dated 28.12.1983 and subsequently cancelled the entire process of selection for the post of Keyman vide order dated 18.2.1984. The learned advocate for the respondents submitted that when the selection of the applicant and of entire panel cancelled by the competent authority in 1984, it was not justified to promote or to continue the applicant on a still higher post as adhoc mate, in a gang. The submission of the learned advocate for the respondents is not convincing because the order for adhoc promotion of the applicant to the post of Mate does not reveal that he was promoted as he was selected in the panel of the Keyman. In this view of the matter, when his adhoc promotion was not on the basis of he being selected in the panel of Keyman, the subsequent order of reversion on the basis of the cancellation of the panel is illegal and arbitrary. The respondents did not give any opportunity to the applicant of being heard on this point also which was violative of the principle of natural justice. We, therefore, hold that the entire approach of the respondents in reverting the applicant to the post of Keyman from Mate suffers from legal infirmity.

10. The applicant, at present, is already reverted as Keyman and the transfer order is also implemented. The order of reversion being illegal arbitrary and against the principles of natural justice, the same deserves to be set aside.

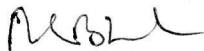
Having regard to the above facts, we see merit in this application that the order of reversion passed by the respondents


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is illegal, arbitrary, unjust and against the principles of natural justice and therefore it deserves to be quashed and set aside. Therefore, so far the relief of the applicant prayed in para 7(a) is concerned, it shall have to be allowed but the prayer of the applicant in para 7(b) to declare the action of respondents to continue as officiating/ad hoc for years as arbitrary and bad in law and the relief Clause (c) for directing the respondents to consider the applicant as regular Mate from the date of his officiating shall have to be rejected because the applicant cannot be considered as regular Mate till all requirements are fulfilled.

11. The result is that the application is partly allowed. The order of the respondents dated 11.2.1988 Annexure A is quashed and set aside and the respondents are directed to treat the applicant as Mate on adhoc basis and to pay the applicant accordingly. The rest of the relief is rejected. Having regard to the facts of the case, we pass no orders as to costs. Application is disposed of.


(R.C. Bhatt)
Judicial Member


(P.H. Trivedi)
Vice Chairman