

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(6)

O.A. No. 127/89
T.A. No.

DATE OF DECISION 24-9-93

Shri Gulamnabi Shaikh Petitioner

Shri R.K. Mishra Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel Vice Chairman.

The Hon'ble Mr. V. Radhakrishnan Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Shri Gulamnabi G. Shaikh,
"Amina Manzil", Akota,
Baroda.

Applicant

Versus

1. Union of India
(Notice to be served
through Secretary, Ministry of
Railways, North Block, New Delhi)
2. General Manager,
Western Railway, Churchgate
Bombay.
3. Chief Engineer
Western Railway, Churchgate,
Bombay.
4. Divisional Railway Manager,
Western Railway, Pratapnagar, Baroda

Respondents

Advocate

Shri N.S. Shevde.

J U D G E M E N T

In

O.A. 127/1989

Date: 24-9-93

Per Hon'ble

Shri V. Radhakrishnan

Member (A)

The applicant was appointed as Gangman in the Railways in the year 1954 and was promoted as a Mate in December 1955. He was confirmed on that post in the year 1956. The grievance of the applicant is that he was not allowed to sit for the selection for the post of Permanent Way Mistry, while his juniors had been so allowed and promoted and placed in the higher

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Grade of Permanent Way Mistry in March and December 1958. He has quoted the example of Shri Raoji Ranchod, who was appointed as Gangman in August 1956. He was allowed to appear for selection test in February 1987 and promoted to the post of Permanent Way Mistry in March 1987, even though he was junior to the applicant. The applicant represented against the injustice. He was told that since he had not completed five years, he was not eligible to appear in the test of Permanent Way Mistry. It is the case of the applicant that when the other juniors to him like Raoji Ranchod, who had not completed five years of service had been allowed to sit for the test and appointed as Permanent Way Mistry, he was discriminated and not allowed to appear for the said test. Ultimately, he was allowed to appear and after passing the test at first attempt he was appointed as Permanent Way Mistry, in December 1961. For the next promotion of Assistant Permanent Way Inspector (P.W.I -III) when the administration issued the circular for holding test for selection to that post, the applicant was not included in the same. He gave representation to the authorities, but he received no reply from them and he was not allowed to appear in the said examination. Later, the applicant was called for selection for the said post and after his successful attempt he was promoted as Assistant Permanent Way Inspector (PWI-III), with effect from 18-6-1963, (Annexure A-4). In effect, while his junior Shri Raoji Ranchod, was promoted in April 1962, the applicant got his promotion in June 1963, to the grade of Assistant Permanent Way Inspector (P.W.I.-III). In so far as, the promotion from Permanent Way Inspector Grade III to Grade II is concerned the criterion was on the basis of seniority.

The applicant states that his junior Shri Raoji Ranchod was promoted as Permanent Way Inspector-II in 1980. Immediately, the applicant represented to the concerned authorities against his non-promotion, (Annexure A-12). As a result of the application, the applicant was promoted to the post of Permanent Way Inspector Grade II with effect from 6-2-1981 and transferred to Viramgam, (Annexure A-13). However, he was sent back to Baroda, again as Permanent Way Inspector III and posted at Kosumba. He represented against this in March 1981 (Annexure A-14). It appears that the applicant was called and given personal hearing by the Senior Divisional Personnel Officer, Baroda, who wrote to Head Quarters, Western Railways, Bombay, vide his letter in January 1982, (Annexure A-15). In this letter he stated that the applicant was confirmed as Mate from 1-9-1958, while the data was lacking regarding the confirmation of his junior Shri Raoji Ranchod. He also states that it is not clear as to how the condition of five years of service for appearing in the selection was imposed on the applicant, even though Shri Raoji Ranchod who had not completed five years service was allowed to appear for the selection for the post of Permanent Way Mistry. He also states that the applicant should also have been called for the suitability test for Permanent Way Mistry in 1957. He had also asked for instructions regarding the fixation of seniority from Head Quarters. As a result of this correspondence, the General Manager, Western Railways, decided to give seniority to the applicant above that of Shri Raoji Ranchod. He also gave orders to

revise the seniority vis-a-vis the concerned person persons in the grade of Permanent Way Ministry and also Assistant Permanent Way Inspector, after giving notice to all the affected staff and after examining the representation, if any, (Annexure A-16). Accordingly, the Divisional Office also issued orders fixing the seniority of the applicant at Sr.No. 44-A, above Shri Raoji Ranchhod (Annexure A-17), in the grade of Assistant Permanent Way Inspector. Subsequent to this, some persons represented against these orders and those were considered and turned down by the authorities (Annexure A-18). The applicant was then promoted to Permanent Way Inspector Grade II in August 1982 (Annexure A-19). The promotion was regularised in June 1983 (Annexure A-20) However, it appears that the matter of inter se seniority of the applicant and others was taken up by the Union but it was turned down by the authorities in September 1984 (Annexure A-21) The applicant states that order regarding his promotion to the grade of Permanent Way Inspector I (Rs.700-900) was issued in August 1984, (Annexure A-2). It appears that subsequently some other Union took up the matter of seniority of the applicant with the administration and the authorities issued a letter in January 1985, down grading the seniority of the applicant from 139 to 260-A. His promotion order to Permanent Way Inspector Grade I was cancelled. Consequently his - promotion to the scale of Rs.550-750, Permanent Way Inspector Grade II, was also ordered to be reviewed (Annexure A-22). Consequent to this, the applicant approached the High Court which gave interim order

restraining the authorities from implementing the order dated 7-1-1985. The High Court observed:

" It is now a settled position of law that when promotions are based upon seniority-cum-merits, seniority is very important right of a Government servant, and if any change is made in the seniority it hurts the Government servant and some times results into reversion. In the instant case there is no dispute that the petitioner has been reverted only on the ground of change of seniority.

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 and (2) he must be given an opportunity to make representation against the proposed action. In the instant case, no such opportunity has been given to the petitioner. Therefore, the petition deserves to be allowed."

In the result, the petition was allowed, the orders dated 7th January 1985 and 22nd July 1985 were quashed and set aside, and the authorities were directed to continue the applicant in the grade of Permanent Way Inspector Grade I, till his seniority was changed, after hearing him. The Divisional Office, Baroda, vide letter dated 22nd July 1986 (Annexure A-24) issued a show cause notice to the applicant as to why his seniority should not be down graded from 139 to 260-A. The applicant vide his application dated 28th August 1986 (Annexure A-25) gave reasons as to

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how his seniority was earlier revised and he was placed at Sr.No. 139 above his junior Shri Raoji Ranchhod by a decision of the General Manager, Western Railway, vide order dated 12th April 1981 (Annexure A-15). In his view, therefore, the revised seniority was correct and it should not be disturbed so as to adversely affect him. The applicant was then called by the Chief Engineer, Western Railway Bombay, for personal hearing and he was asked to produce certain documents to prove his case without giving him proper notice. As per the applicant, the Chief Engineer, under pressure from the Union, had not given proper opportunity to him and in haste decided against him. The applicant's case is that Article 311(1) has been violated. It is the case of the applicant that the Chief Engineer, who is a lower authority than the General Manager had revised his seniority which had earlier been fixed by the General Manager and hence the action of the Chief Engineer was without jurisdiction and in excess of his powers. The reversion of the applicant from Permanent Way Inspector Grade I to Permanent Way Inspector Grade II by Senior Divisional Engineer, Baroda, was without jurisdiction and illegal, as he had been appointed in the higher grade by the Chief Engineer. The contention is that reduction in rank cannot be done by an authority lower than the appointing authority. Hence he asked for the quashing and setting aside the order (Annexure A-1) reverting him. The applicant also requested for quashing the

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revision of seniority by order dated January 7, 1985 as being arbitrary, discriminatory and based on total non-application of mind. The applicant claims that the order dated 7th January 1985 was earlier quashed by the High Court. He also states that the show cause notice issued by the authorities in July 1986 (Annexure A-24) to revise the seniority of the applicant was without authority as the applicant had been given seniority at Sr.No.139 after proper inquiry and the show cause notice was issued with a view to victimise the applicant. He is of the view that the point contained in the show cause notice has already been considered and decision was taken by the General Manager. He also stated that he was not given proper time and opportunity by the Chief Engineer during the personal hearing.

The applicant has prayed for quashing and setting aside the following orders:

1. Order of reversion dated 8-4-1987 (Annex.A-1).
2. Order of the General Manager, Western Railway Bombay, dated 4-9-1984, Annexure A-21.
3. Order revising the seniority of the applicant adversely, dated 7-1-1985, Annexure A-22.
4. Show Cause Notice dated 22-7-1986.
5. Order dated 8-4-1987, ————
Annexure A-26.

He has prayed for a declaration that the action of the respondent vide Annexure A-1 in reverting him from the post of Permanent Way Inspector Grade I in the scale of Rs.700 - 900 to the lower post of Permanent Way Inspector Grade II, in the pay scale of Rs.550-700 is illegal, unjust and unconstitutional and to direct the respondents to place the applicant in the original post of Permanent Way Inspector Gr.I with all consequential benefits.

We have perused the written statement of the respondents and rejoinder of the applicant and heard both the learned counsel Mr.R.K.Mishra for the applicant and Mr.N.S.Shevda for the respondents. The respondents have contested the applicant's claim. They have denied that the applicant was discriminated in the matter of his seniority and the juniors were promoted. In so far as the question of not calling the applicant for trade test and calling of Shri Raoji Ranchhod, it is their explanation that during a particular period persons were called for trade test as per unit seniority. In so far as the reversion of the applicant from Permanent Way Inspector Grade I to Permanent Way Inspector Grade II, is concerned, the respondents have stated that as his representation regarding seniority was rejected as per office order dated 8-4-1987, the applicant had lost his position in the seniority and he was not eligible for promotion to Grade I and hence he was reverted to Permanent Way Inspector Grade II and his name was deleted from Sr. No.102 as per the promotion order dated 10-8-1984 and his seniority was refixed at Sr.No.260-A. In view of

change in the seniority, promotion order was cancelled. It is the case of the respondents that the applicant was never called for selection for the post of Permanent Way Inspector Grade I (700-900). In view of the High Court's order, he was continued in the higher Grade and thereafter he was given show cause notice and after getting his reply he was subsequently reverted. The respondents have stated that as Shri Ravji Ranchod had passed the test for Permanent Way Mistry earlier, he became senior to applicant and consequently he was promoted from Grade III to Grade II on the basis of seniority. Hence Ravji Ranchod, was promoted earlier to the applicant. The applicant had made representation dated 3-3-1981, to the Chief Personnel Officer, Western Railway, Baroda, for reconsidering his seniority. As a result of the representation the applicant's seniority was revised from 260-A to 139 and he was placed above Shri Raoji Ranchod (Ref. Office letter E/6/5/dated 24-1-1982). The applicant was then given promotion to Permanent Way Inspector Grade II on the basis of the revised seniority. Later on some representations were made regarding the revision of the seniority of the applicant and, based on the discussion among the Railway Union and the Administration, the Chief Engineer, vide letter E/E/1030/5/1/5/5/dated 7-1-1985 revised the seniority of the applicant in the Grade of Permanent Way Inspector- III and down graded him to the position 260-A and because of this, applicant became junior to

Shri Ravji Ranchod. The applicant in the meantime was appointed as Permanent Way Inspector Grade I and was in the scale of 700-900 vide O.M. dated 4-9-86. Consequently upon the rejection of the representation regarding seniority, he was reverted to his original post of Permanent Way Inspector Grade II in the scale of Rs. 500-750. The respondents have also stated that the applicant was shown originally at Sr. No. 102 in the order dated 10-8-1984, but in view of the Chief Engineer's letter dated 7-1-1985, the applicant's name was removed from the list of promotees and his promotion was cancelled. However it appears from the letter of the respondents dated 8-4-87 at Annexure A-1, that the applicant was actually working in the scale of Rs. 700-900 from 4-9-86 or so.

The respondents have admitted that the applicant was appointed as temporary Gangman on 21-12-1954 and Shri Raoji Ranchod on 30-4-1958. They have stated that in past there was a practice to call for the applications for the post of Permanent Way Mistry from the Staff as per unit vacancy, who had completed three years service, but it is not clarified as to why the applicant who joined in December 1954, was not called for the selection test for Permanent Way Mistry even though he had completed nearly four years of service. As urged vehemently by Shri R.K. Mishra, counsel for the applicant, it is clear that the applicant was denied his rightful chance for

appearing for selection as Permanent Way Mistry, while his juniors were allowed to do so. Even after he had passed the suitability test subsequently in the first attempt and he had requested to give him seniority over juniors who were not eligible, it was not acceded to. Further that he was deputed to construction site during 1961-1970 as vered by the applicant and his lien maintained on the open line which had not been denied by the respondents. Hence there was an obligation on the part of the respondents to call him for all tests for which he was eligible during this period when he was working on the construction site. However, he was not given an opportunity to appear for the selection at Permanent Way Inspector Grade III while his juniors who were working in open line were given the chance. Thus at every stage of selection to higher grade the applicant was discriminated against which resulted in loss to him. It appears that according to the agreement made with the Unions any representation pending as on 5-9-1972, would only be considered and re-opened. The Chief Engineer, has stated in his letter that on that date (7-1-1985, Annexure A-22) no representation of the applicant was pending on this crucial date and his case should not have been reopened when it was done so. It is seen from the averments made by the applicant that representation

regarding his seniority were infact pending vide his representations dated 30-12-1962, 25-11-1963 & 31-5-1971. In this view of the matter the stand taken by the Chief Engineer, was not based on facts. In fact, several representations made by the applicant were pending on the crucial date and his case for revision of seniority had to be reopened. The General Manager had reviewed the applicant's case and had given him seniority at Sr. No. 44-A in the grade of Assistant Permanent Way Inspector in the scale of Rs. 425-700 and placed him above Shri Raoji Randhod. This revised position of the applicant was confirmed and representations received from other persons were rejected in November 1984. In the meantime, the applicant was promoted as Assistant Permanent Way Inspector in August 1982, Annexure A-19 and was regularised in June 1983, Annexure A-20. In January 1985, when another Union represented against the applicant, the seniority of the applicant was down graded without offering any opportunity to him to represent and his promotion to the post of Assistant Permanent Way Inspector Grade II was also ordered to be reviewed and in fact he was reverted to his original post. This action of the respondents to reopen the case of seniority after inordinate lapse of time and without sufficient reasons was arbitrary, unjust and resulted in grave loss to the applicant. It is also

the grievance of the applicant that while the General Manager, Western Railway, had earlier accepted the applicant's representation and restored his seniority in 1981, the position was reversed by the another lower authority i.e., the Chief Engineer in January 1985. Regarding this aspect, the respondents have stated that due to decentralisation of work in the Division this had occurred. Whatever may be the reasons, it will be seen that the respondents had adversely revised the seniority of the applicant vide letter dated 7-1-1985 without giving him any opportunity to state his case. The applicant had, therefore, to approach the High Court for relief and the High Court quashed the said order and directed that a show cause notice should be issued before reverting the applicant and that proper opportunity should be given to the applicant to show cause as to why he should not be reverted. Therefore, it is clear that the Railways who had unilaterally downgraded the applicant's seniority in the first instance had denied an opportunity to the applicant to state his case and High Court directed issuance of show cause notice to him asking him to show cause as to why his seniority should not be down graded. Even before the reply was received from him it seems that the respondents had taken a decision to confirm their earlier orders which in effect meant that the show cause notice issued to him as per High Court's direction was a formality only to satisfy the High Court and they had not really examined the question on merits. A personal hearing given by the Chief Engineer to the applicant

was for a brief period and the applicant was not given sufficient time to produce documents in support of his case. In this view of the matter, it is clear that principles of natural justice were not followed in true spirit.

Shri Mishra contended that as the reversion or reduction in rank of the applicant was made by the Senior Divisional Engineer i.e. an authority subordinate to the authority who appointed him to P.W.I. - I, namely the Chief Engineer, the reversion or reduction in rank was illegal. In support of this contention, Shri Mishra cited the case of Krishna Kumar Vs. Divisional Asstt. Electrical Engineer, Central Railway & Ors. - AIR 1979 SC 1912. Reliance placed by Shri Mishra on this decision is thoroughly mis-conceived, because this is not a case of removal of the applicant from service by way of punishment. The case before the Supreme Court was one of removal of an employee from service as a measure of punishment. In the present case, there is reduction in rank, and that too, not by way of punishment. A reading of Article 311(2) of the Constitution shows that a Civil Servant cannot be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Therefore, what Article 311(2) of the Constitution requires is that, when a Civil Servant is to be charged, an inquiry has to be held wherein he has to be informed of the charges against him and has to be given a reasonable opportunity of defending himself against the charges. It is clear

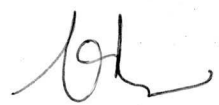
that Article 311(2) of the Constitution is attracted only when a Civil Servant is to be departmentally proceeded with and he is proposed to be dismissed or removed or reduced in rank by way of punishment. We, therefore, find no merit in the contention of Shri Mishra that reduction of applicant to a lower rank falls foul of Article 311 of the Constitution only because the impugned order was passed by the Senior Divisional Engineer, Western Railway, Baroda.

However,

[taking into account the relevant facts and circumstances of the case, we come to the conclusion that the applicant has suffered since the beginning when he was not allowed to appear for the Selection test for Permanent Way Mistry and was also discriminated against at every stage of promotion. Even after the General Manager, Western Railway, had reviewed his case and set right his seniority, the matter was reopened after a long delay and, without giving any opportunity to him he was down graded in seniority and consequently reverted to the lower post. Principles of Natural Justice were not followed in his case and the applicant was not afforded proper opportunity to state his case. Insofar as, the earlier promotion to the Permanent Way Mistry is concerned, nothing could be done at this late stage. Insofar as the question of seniority of the applicant in Permanent Way Inspector III and consequent promotion is concerned, we have no hesitation in quashing and setting aside the orders of the Chief Engineer, (7-1-1985, Annexure A-22) and Divisional Office, Baroda, letter No.E/E/1030/2/1/Vol.III dated 8-4-87, (Annexure A-26). Consequently his reversion

from the post of Permanent Way Inspector Grade I to that of Permanent Way Inspector Grade II also becomes invalid and the order of the Divisional Office, Baroda, dated 8-4-87, Annexure A-1, is quashed and set aside. The applicant will be eligible for consequential benefits as though he had not been reverted in April, 1987. The respondents are directed to refix his pay, and pay him all consequential benefits as though he had not been reverted in April, 1987. The respondents are directed to refix his pay and pay him all consequential benefits within a period of three months from the date of the receipt of a copy of this order.

No order as to costs.



(V. Radhakrishnan)
Member (A)

24-9-93



(N.B. Patel)
Vice-Chairman.

24-9-93

Date	Office Report	Order
18-1-1994		<p data-bbox="792 282 1576 577">Heard Mr. Prajapati for Mr. Mishra. Time to comply with the judgment extended till 22-2-1994. It is made clear that if there is no compliance by that time, serious view will be taken. M.A. disposed of.</p> <div data-bbox="792 667 1089 734"><p>(K. Ramamoorthy) Member (A)</p></div> <div data-bbox="1328 667 1593 734"><p>(N.B. Patel) Vice Chairman.</p></div> <p data-bbox="792 779 862 810">*AS.</p>