

(2)
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO.633/96
Cuttack, this the 27th day of March 1997

Gobardhan Mohanty

Applicant

Vrs.

Union of India & others

Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? *Y*,
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Narayan
(N. SAHU) 12.3.97
MEMBER (ADMINISTRATIVE)

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO.633 OF 1996

Cuttack, this the 27th day of March 1997

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

...

Gobardhan Mohanty,
aged about 44 years,
S/o late Narayan Mohanty,
At/P.O-Jakhpura, Dist. Jajpur,
at present working as P.W.I. Construction
in the office of Permanent Way Inspector,
South Eastern Railway, Budha-Panka,
under C.P.M., Bhubaneswar, Dist. Khurda, Orissa Applicant

Advocates for applicant - M/s C.A.Rao,
S.K.Behera &
P.K.Sahoo.

-VERSUS-

- 1) Union of India through the
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43
- 2) Chief Administrative Officer (P),
South Eastern Railway,
Chandra Sekharpur, Bhubaneswar,
Dist. Khurda, Orissa.
- 3) Chief Project Manager,
South Eastern Railway,
Chandra Sekharpur, Bhubaneswar,
District-Khurda, Orissa.
- 4) Senior Project Manager/Doubling,
South Eastern Railway,
Chandrakesharpur, Bhubaneswar,
Dist. Khurda, Orissa

.... Respondents

Advocate for respondents - Mr. Ashok Mohanty.

SAHU, MEMBER(ADMN.)

This Application filed under Section 19 of the Administrative Tribunals Act, 1985 prays for a declaration that the order dated 4.7.1996 (Annexure-11) reverting the applicant from the post of P.W.I (Grade III) to the post of P.W.M. is illegal and arbitrary. It is next contended that his repatriation to Open Line is contrary to the settled position of law. Learned counsel for the Railway submitted that the impugned Annexure-12 for repatriation to Open Line is not going to be enforced now and therefore, the only prayer to be adjudicated upon is whether the reversion of the applicant is in accordance with law.

2. On retirement of the then incumbent with effect from 31.1.1994, the Senior Project Manager (respondent no.4) recommended the applicant's name to promote him as P.W.I (Grade III) as a stop-gap measure in the exigency of services. He wrote eloquently about the competence of the applicant and his successful execution of earlier projects. It was approved by the Chief Project Manager, and accordingly the applicant worked as a P.W.I. in the grade of Rs.1400-2300/- by virtue of an order (Annexure-5) subject to the condition that the assignment was on a stop-gap basis subject to termination whenever a senior employee was available and also on account of reduction of cadre. The applicant continued to work in that post from 6.9.1993. There was an attempt to conduct a suitability test of all P.W.Ms. for filling up some posts of P.W.I (Grade III) on 25.9.1993 which the applicant attended, but the said test did not take place. Annexure-8 dated 10.1.1994 is another recommendation from the Senior Project Manager about the

applicant's suitability as the seniormost P.W.M. for promotion to the post of P.W.I (Grade III). It is claimed that there was a promotion order, but the same was kept in abeyance. By Annexure-2 the applicant was promoted as ad hoc P.W.I. (Grade III) for three months. The same was issued with the approval of the Chief Project Manager. Here again the stipulation is that the applicant would continue till a permanent arrangement was made. He worked as P.W.I. (Grade III) upto 4.7.1996 and was placed in charge of Hindol to Talcher Section. He was reverted by the impugned order dated 15.7.1996 (Annexure-11). This reversion order again was kept in abeyance till 30.9.1996. It is necessary to mention that the applicant was given a cash reward for his outstanding performance on 24.5.1995 (Annexure-14).

3. The contentions of the learned counsel for the applicant, Shri C.A.Rao are three-fold. He first submitted that this was not a case where a senior officer was available and ^{was thus} waiting on the wings, nor [↑] a case of reduction of cadre. There was no permanent arrangement also in that post. Thus the contingencies reflected in Annexures 4 and 5 did not arise. It was secondly submitted that the order of reversion was passed without conducting any disciplinary proceeding and without affording an opportunity. It amounted to a punishment. The work which the applicant was entrusted was not complete. He was allowed to work for more than 2½ years and yet he was reverted, keeping his juniors whose work he supervised. This amounted to ^a loss of face and a punishment. All along the applicant was found capable and encomiums were paid for his performance. He fell from grace overnight. In the same order there was another person, Sri P.Prasad

(1)

Rao who was also reverted, but later he was again posted as P.W.I (Grade III). To the respondents' contention that the reversion was entirely due to inability to complete the work by 30.9.1996, the applicant stated that he was asked to prepare a final material statement for the work on the Hindol-Talcher Rail Line to facilitate early payment of bills to the Contractor. The applicant pointed out that unless details of transactions of all the units are made available from other P.W.I.s., it would not be possible for him to prepare the final material statement. This condition put by the applicant did not allegedly find favour with the respondents.

4. Learned counsel for the Railway stated that the elevation of the applicant as P.W.I (Grade III) was expressly a stop-gap arrangement made to look after a particular work and to fill up a vacancy. The superior officers found that he did not perform the job in time and to their expectations. He was reverted to the same grade. P.W.M. and P.W.I (Grade III) enjoy the same pay. It was not a case of reversion as a punishment.

5. Replying to this, learned counsel for the applicant cited the decision of the Supreme Court recorded in AIR 1974 SC 423 (State of Uttar Pradesh & ors v. Sughar Singh) wherein one out of several officers was reverted from an officiating post. The adverse entry in the character roll was the basis of reversion. It is stated that the order of reversion amounted to reduction in rank. He cited the decision of the Supreme Court reported in AIR 1972 SC 2170 (State of Mysore v. P.R. Kulkarni and others) wherein the reversion order passed for extraneous reasons was held to be discriminatory and bad. He next cited

the decision reported in AIR 1971 SC 1011 (The State of Bihar and others v. Shiva Bhikshuk Mishra) which laid down the law that the form of the order is not conclusive of its true nature. Whether it was made by way of punishment or administrative routine, the attendant facts and circumstances have to be seen. The crucial test, according to the Apex Court, is whether the misconduct is a mere motive or is the very foundation for this order. He further cited the decision of the Supreme Court reported in AIR 1990 SC 371 (Bhagwati Prasad v. Delhi State Mineral Development Corporation) which lays down that practical experience is a sure guide to accept/suitability. Finally, the learned counsel for the applicant cited a decision of the Orissa High Court reported in 49(1980)CLT 382 (S.K. Mohanty v. Union of India and others). At paragraph 4 of the judgment it was held that on the basis of the Board's circular letters the continued appointment of the Railway employee in that case for three years itself militates against the concept of stop-gap arrangement. It was held that he could not have been reverted after completing almost three years in the higher post and without any adverse remarks in the absence of a disciplinary proceeding. I shall extract parts of paragraph 4 of the judgment:

"4. There is no dispute that Board's instructions issued from time to time intended to have general application would be statutory and enforceable. The relevant instructions issued by the Board on the question may now be extracted. On 21.5.1956 in a letter marked confidential relating to the subject of observance of disciplinary proceedings in cases of staff officiating in a grade beyond eighteen months when the question of reversion of such staff arises, the Board

indicated :

"The Board, therefore, desire that with immediate effect, the performance of every Railway servant officiating in a higher grade should be adjudged by competent officer before the expiry of 12 months of total officiating service and if the performance is not satisfactory, either the Railway servant may be reverted on the grounds of unsuitability, or he may be warned that his work is not quite satisfactory, but that he is being permitted to draw his increment in the expectation that his performance will improve during the next six months for which he will continue to be under observation. At the end of the extended period of six months, i.e. of a total officiating service of 18 months, either the person should be declared suitable for retention in the grade or should be reverted because he is unsuitable. Any person who is permitted to continue to officiate beyond 18 months cannot in future be reverted for unsatisfactory work without following the procedure prescribed in the Discipline & Appeal Rules."

xx

xx

On behalf of the opposite parties, reliance was placed on a communication dated 15.1.1966 which ran thus:

*Reference Board's letter of even number dated 9.6.1965 wherein it has, inter alia, been stated that, in future, any person who is permitted to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules. A question has been raised whether this safeguard applies to persons who are officiating on promotion as a stop gap measure and not after empanelment (in the case of selection posts) and after passing the suitability test (in the case of non-selection posts). It is clarified that the safeguard applies to only those employees who have acquired a prescriptive right to the officiating posts by virtue of their empanelment or have been declared suitable by the competent authorities. It does not apply to those officiating on promotion as a stop-gap measure and also to those cases where an employee, duly selected has to be reverted after a lapse of 18 months because of cancellation of Selection Board's proceedings or due to a change in the panel position consequent to rectification of mistake in seniority etc."

6. There are two aspects of the matter. The first aspect is whether an ad hoc employee has a right to continue in the post and whether he can claim absorption, a right to permanent posting. On this the law is very clear. He has no right. In the applicant's case also the orders are very specific. The recommendations are also equally specific. The recommendation of the Senior Project Manager dated 1.9.1993 states that as a stop gap arrangement in exigency of service the applicant should be promoted to the post of P.W.I (Grade III) (Annexure-4). Annexure-5 is the promotion order to officiate as P.W.I (Grade III) purely as a stop-gap measure. It is also stated that this order will not confer on the incumbent any claim, title, right for continuance superseding his seniors, if any. Annexure-9 is also an order instructing the applicant to take over Stores and Establishment as a temporary measure as ad hoc P.W.I (Grade III). Thus as he was reverted from P.W.I (Grade III) to the post of P.W.M. on the same status and scale of pay and as he has no vested right whatsoever in a particular post of P.W.I., his case fails. He was merely repatriated to his parent lien maintaining office. There is no question of any infringement of rights involved in this action. The second aspect of the matter is whether it was a punitive measure. The respondents stated that the work entrusted to him could not be completed. The applicant was stated to have no technical qualification. He was initially recruited as a Group 'D'. He rose up step by step by getting ad hoc promotions. He was not conversant with the duties of a P.W.I. He was not able to perform his duties to the satisfaction of the Supervisors. Thus the Chief Project Manager, after examining the

reports of the Field Officers, decided to repatriate him. They simply did not want an unqualified hand for doing permanent way supervision. They did not take any disciplinary action, because it was an ad hoc job. At paragraph 5 of the counter-affidavit it is stated that the applicant was found inefficient to perform the duties of a P.W.I. independently in spite of an opportunity to complete the given piece of work by 30.9.1996. I hold that this is not a case where a showcause notice need to be given to the applicant, because there was no loss of pay, rank, or status. This was also not a case where the guilt of the officer, namely, his misconduct, or fraud, or indiscipline was noticed. It is a clear case of an evaluation that the applicant was not in a position to handle the work because he was found technically deficient. He was found to be not in a position to handle the job. The cases cited by the applicant's counsel are obviously distinguishable.

The Original Application is dismissed. No costs.

Shankar
(N.SAHU) 17.3.97.
MEMBER (ADMINISTRATIVE)