

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. No. 696/1997

This the 16th day of March 2005

CORAM

HON'BLE SHRI J K KAUSHIK, JUDICIAL MEMBER

HON'BLE SHRI M K MISRA, ADMINISTRATIVE MEMBER

Nila Ballav, W/o Shri Dilip Kumar Ballav
R/o 20, Kirtybus Dhare Lane, Howrah - 1,
Working as Head Typist under Chief Works Manager
Eastern Railway, Liluah workshop, Liluah, Howrah.

...Applicant

(By Advocate Shri B.Mukherjee)

V E R S U S

1. Union of India service through the
General Manager, Eastern Railway
17, N.S.Road, Calcutta - 1.
2. The Chairman, Railway Board
Rail Bhawan, New Delhi.
3. The Chief Works Manager, Eastern Railway
Liluah Workshop, P.O.Liluah, Dist. Howrah.
4. The Workshop Personnel Officer
Eastern Railway. Liluah Workshop
P.O. Liluah, Dist. Howrah.
5. Shri Valentine Kujur (ST)
Posted as Chief Typist
working under the C.W.M.,
Eastern Railway, Liluah Workshop
P.O.Liluah, Dist. Howrah.

...Respondents

(By Advocate Shri R.K.De)

ORDER (ORAL)

Per Mr. J K Kaushik, JM

Smt. Nila Ballav has assailed the order dated 12.6.96 and
31.7.96 at Annexure A-8 and A-10 respectively and has sought
further direction for reinstating her on her original post of Chief
Typist for all purposes treating her as continuously working

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against existing vacancy w.e.f. 28.2.96 with all consequential benefits.

2. We have heard both the learned counsel representing the contesting parties and have carefully perused the pleadings and records of this case.

3. The material facts of this case are that the applicant belongs to unreserved category and came to be appointed on the post of Jr. Typist on 24.10.79. She enjoyed her further promotion to the post of Sr. Typist and Head Typist w.e.f. 1.4.85 and 1.9.91 respectively. The private respondent, i.e., respondent No.5 belongs to ST community and came to be initially appointed on 24.5.88. He was further promoted to the post of Sr. Typist, Head Typist and Chief Typist w.e.f. 7.7.90, 1.3.93 and 31.7.96 respectively by jumping the queue since he enjoyed accelerated promotions as ST candidate. When the applicant was holding the post of Head Typist, the private respondent was holding one grade lower than the applicant. As per the rules the applicant became eligible for promotion to the post of Chief Typist after two years, i.e., w.e.f. 1.10.93. This position is borne out from Annexure A-2 where the name of the applicant is placed at Sl. No.4 of the seniority list. The applicant was called for selection test along with other candidates for the promotion to the post of Chief Typist vide order-dated 14.6.95 for filling up 3 un-reserved posts. Despite there being no vacancy against SC/ST category, the respondent No.5 was called to appear in the test vide order

dated 14.6.95 (Annexure A-3). The result of selection test was published on 19.10.95 in which the applicant and one Shri S. Halder was found suitable and were empanelled for the post of Chief Typist (Annexure A-4). There were three posts lying vacant in the post of Chief Typist and out of three Shri Halder and applicant were declared suitable and Shri B.K.Das at Sl.No.1 of the order dated 14.6.95 was upgraded as Chief Typist who was illegally reverted and came to be reinstated w.e.f. 1.3.93. Therefore, due to filling of the post of Chief Typist by Shri B.K.Das w.e.f. 1.3.93, and Shri Halder and the applicant on 25.2.96, no post/vacancy of Chief Typist was lying vacant after 25.2.96. After the empanelment of the applicant, the other candidates including respondent No.5 became un-suitable in the test and there was no question of their promotion. Therefore, the applicant was promoted vide order dated 25.2.96. Shri Halder was also promoted. One Shri S.C.Dolui (SC) Chief Typist was promoted as Supdt. Typist w.e.f. 1.1.95. There was no vacant post for SC/ST category.

4. The further facts of the case are that respondent No.5 was called for the selection and thereafter vide order-dated 31.7.96, the applicant was reverted and the private respondent was promoted. The applicant protested against the same through a representation but no response has been the result. The OA has been filed on numerous grounds. Inasmuch as there remain no ST vacancy and the applicant had been promoted after passing the requisite selection and as per her seniority position. The



impugned order has been issued in gross violation of selection and promotion rules and in gross violation of settled principle of law laid down by the Apex court in the cases of **R K Sabharwal, Veerpal Singh Chauhan as well as Ajit Singh Januja**. The respondents have not chosen to file reply to the Original Application.

5. Learned counsel for the applicant has reiterated the facts and grounds raised in his OA as noticed above. Our attention was drawn towards the seniority list at Annexure A-2 at page 28 of the paper book wherein the name of the applicant has been indicated at Sl. No.2 and that of the respondent No.5 at Sl. No.5. Thus, the applicant was admittedly senior to the said respondent on the feeder post. He has also contended that applicant was promoted against the vacancy after due selection and the promotion has made on regular basis and the only condition indicated therein that it will depend on the decision in respect of communal break-ups. He has also contended that no notice whatsoever has been given to the applicant prior to take resort to the reversion of the applicant. There was no substantial argument from the side of the respondents in the absence of the reply.

6. We have considered the rival submissions put forth on behalf of both the sides. We find that the admitted position of this case is that the applicant is admittedly senior to the private respondent and came to be promoted to the post of Chief Typist



after facing the requisite selection. She was also admittedly promoted on regular basis. We have no reason to disbelieve the version of the applicant that the cadre is of 4 posts where there can be no reservation in respect of the ST category. Otherwise also the applicant was senior to the private respondent. The impugned order of reversion does not indicate any reason whatsoever except that the word officiating has been used whereas there is no such rider in the order through which the applicant was promoted. We may construe her promotion as on regular basis and even if one is promoted to officiate after due selection one acquires a vested right to hold the post and cannot be reversed in an un-ceremonial way. Otherwise also by now the difference between the judicial order and the administrative order has been withered away as regards the applicability of principle of natural justice and it is well settled that if any order visits the employee with civil consequences, a pre-decisional hearing is a must and we are supported of this view from a celebrated decision of the Apex Court in the case of **H.L.Trehan v. Union of India and others AIR 1989 SUPREME COURT 568**, wherein their Lordships of the Supreme Court have held as under: -

"11. xxx It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Art. 14 of the Constitution."



Keeping in view the aforesaid proposition of law, we have no hesitation in holding that impugned orders cannot be sustained as the same have been issued offending and violating the Article 14 of the Constitution of India.

7. Adverting the matter from yet another angle as per the decision in R. K .Sabharwal's case quite earlier to the passing of the impugned order, it was settled by the Apex Court that the reservation shall be on the post based roster and as per the post based system, the post of ST falls only at point no. 14 and in a cadre of 4, no ST point can be there. In this view of the matter, even on merits, the case of the applicant deserves acceptance and, therefore, we hold that the action of the respondents is ex-facie illegal, arbitrary and contrary to the principle of natural justice and the same does not meet the scrutiny of law.

8. In the premises, the impugned order of reversion in respect of the applicant passed on 31.7.96 at Annexure A-10 as well as the order dated 12.6.96 in Annexure A-8 are hereby quashed and set aside. The applicant shall be entitled to all consequential benefits as if the impugned orders were never in existence. No costs.


(M K Misra)
Administrative Member


(J K Kaushik)
Judicial Member

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