

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman

Hon'ble Mr. M.S. Mukherjee, Administrative Member

M.A. No. 131 of 1997

Union of India & Ors.  
(Railway Claims Tribunal)

-vs-

Sri T.K. Mullick

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Applicants  
Represented by : Mr. R.N. Das, counsel  
Mr. P.K. Arora, counsel

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Respondent  
Represented by : Mr. S.S. Mukherjee, counsel  
Mr. M.R. Sanyal, counsel

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O.A. No. 136 of 1997

Sri T.K. Mullick, s/o Sri A.N. Mullick, aged about 42 years working for gain as Confidential Assistant at Railway Claims Tribunal, Calcutta Bench, residing at Deshbandhu Park, PO & Vill : Sonarpur, P.S. Sonarpur, Dist. - 24-Parganas (South) - Pin - 743 369.

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Applicant  
Represented by: Mr. S.S. Mukherjee, counsel  
Mr. M.R. Sanyal, counsel

-vs-

1. Union of India, service through the Chairman, Railway Claims Tribunal, 2, Rajpur Road, Delhi-110054 ;
2. The Chairman, Railway Claims Tribunal, 2, Rajpur Road, Delhi - 110 054 ;
3. The Registrar, Railway Claims Tribunal, 2, Rajpur Road, Delhi-110 054 ;
4. The Vice-Chairman, Railway Claims Tribunal, 2, Esplanade East, Calcutta-700 060 ;
5. The Additional Registrar, Railway Claims Tribunal, 2, Esplanade East Cal.-700 069 ;
6. The Assistant Registrar, Railway Claims Tribunal, 2, Esplanade East, Cal-700 060.

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Respondents  
Represented by: Mr. R.N. Das, counsel  
Mr. P.K. Arora, counsel

Heard on : 5.6.1997

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Order on : 27.6.1997

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O R D E R

A.K. Chatterjee, VC

The petitioner, a Senior Stenographer in S.E. Railway in the scale Rs.1400-2600/- was transferred to Railway Claims Tribunal in its Calcutta Bench by an order dated 22.1.90 in the same capacity and scale. The Railway Board by an order dt.2.8.95 upgraded five posts of Sr. Stenographer to scale Rs.1640-2900/-, one of which was allotted to Calcutta Bench and this benefit was extended to the petitioner. He alleges that on 1.10.96, he requested the Additional Registrar of the Tribunal for showing some compassion to a Peon, which, however, <sup>misled him</sup> ~~rejected~~ and the petitioner was threatened with dire consequences. A couple of days thereafter, a letter was issued by the said officer calling upon the petitioner and two other members of the staff to attend an enquiry into their alleged bad behaviour. The petitioner attended the enquiry but relation with the said official soured further over some aspersion alleged to have been made against the petitioner. The petitioner was served with the impugned order dt.19.11.96 reverting him to his previous scale, which, according to the petitioner, was made in malafide exercise of the power. He, therefore, prays for quashing the impugned order and other appropriate reliefs.

2. The respondents in their reply contend, inter alia, that the petitioner holds substantive post in SE Railway where he retains his lien in the post of Stenographer in the scale Rs.1400-2600/-. His appointment to the Tribunal <sup>was</sup> by way of transfer on specific condition undertaken by him and he was given the higher scale of Rs.1640-2900/- as a temporary measure on an adhoc basis by way of local arrangement without any suitability test. By the impugned order, he was restored to his substantive post in the scale Rs.1400-2600/- for

administrative reasons, which does not affect his seniority nor does it constitute a demotion.

3. An interim order was made when the application was filed on 4.2.97 to the effect that his pay shall not be reduced from the pay scale of Rs.1640-2900/-.

4. The respondents have filed a Misc.Application, which is also under disposal for vacating and/or modifying the interim order on the ground that the petitioner did not place correctly all the facts and relevant documents for consideration of the Tribunal before the interim order was filed.

5. The petitioner has also filed a reply to the Misc.Application denying the allegation made against him.

6. We have heard the Ld.Counsel for both the parties and perused the records before us.

7. The bone of contention of the petitioner is that he was promoted to the higher scale of Rs.1640-2900/- as C.A. as evident from the order dt.22.12.95 and, therefore, his reversion to the lower scale of Rs.1400-2600/- by the impugned order cannot but be regarded as a reduction in rank and as such a punishment, which could not be imposed save by a disciplinary proceeding. It was also urged that such reversion offends the principle of natural justice as no opportunity was given to him to show any cause before the action was taken. Now, the respondents have clearly made out a case that the petitioner holds a substantive post of Sr.Stenographer in SE Railway and retains his lien there and he was appointed to the upgraded post in the scale Rs.1640-2900/- on an adhoc basis temporarily by way of local arrangement without any suitability test and thus, nothing stood in the way to revert him to his substantive grade for administrative reason. No rejoinder has been filed to the reply of the respondents controverting the statement of facts made

therein. Therefore, it can be held on the basis of record before us that the petitioner was no doubt given the appointment to the upgraded post on an adhoc basis temporarily and retained lien in the substantive post of Sr. Stenographer in S.E. Railway. The Ld. counsel for the petitioner has of course stated that he was absorbed in the Tribunal but this contention can be easily dismissed as no order was produced in this regard. Thus, what requires adjudication is whether the petitioner could be reverted to his substantive grade as done by the impugned order. Since the appointment was made on an adhoc basis temporarily as a local arrangement, obviously the petitioner cannot claim to have any vested right to continue in such post, nor can the so called reversion be said to be a reduction in rank or punishment for the simple reason that he was holding the post temporarily on an adhoc basis by way of local arrangement. As such, the impugned order cannot be challenged on the ground that it was made without drawing up any disciplinary proceeding.\*

8. The next ground urged on behalf of the petitioner to challenge the order is that it was made in malafide exercise of the power because the petitioner had taken up the case of a Peon with whom according to the petitioner, the Addl. Registrar did not behave properly. We are not satisfied that there was any malafide intention behind the impugned order because it was made with the approval of the Vice-Chairman of the Tribunal against whom the petitioner had nothing to allege atleast till the date on which the impugned order was passed. Therefore, we are unable to uphold the petitioner's contention that the impugned order was passed in malafide exercise of the power. In this connection, it is pertinent to refer to certain observation of the Supreme Court in R.S. Sial vs. State of Uttar Pradesh & Ors., A.I.R. 1974 SC 1317, in which their Lordships had referred to an earlier decision Union of India v. R.S. Dhaba, AIR 1969 N.S.C. 21 with approval and observed that it might be taken

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to be well settled that even though mis-conduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influenced the Government to take action under the express~~ed~~ or implied terms of the contract of employment or under the statutory rules, nevertheless if a right exists to terminate the service, the motive operative on the mind of the Government is wholly immaterial and the same rule holds good in case of reversion of a Government servant from a higher post to a lower post, which he holds in a substantive capacity. In the case on hand, as the petitioner was holding the upgraded post admittedly on an adhoc basis, the authorities had ~~never~~ right to revert him to the lower grade which <sup>was</sup> the substantive post held by him. In the case of such reversion, there is also no question of giving any opportunity to the concerned incumbent of being heard and consequently it cannot be successfully urged that the natural justice was denied to the petitioner in the present case.

9. The Ld. Counsel for the petitioner has then contended that the impugned order reverting him to the lower grade was passed by an Assistant Registrar, who had no authority to make such an order. We find no substance in this contention as a reference to the order will show, which has also been pointed out already, that this order was made with the approval of the Vice Chairman. Thus, the order was only issued and communicated under the signature of the Assistant Registrar but having been made with the approval of the Vice-Chairman, no procedural irregularity can be said to have vitiated the order.

10. For reasons indicated above, we see no merit in the O.A.

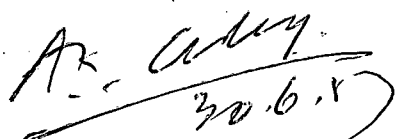
11. Regarding the Misc. Application, which was filed for vacating and/or modifying the interim order, suffice it to say that since the O.A. itself is being dismissed, no further order need be

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passed on the Misc.Application except vacating the interim order.

12. On the aforesaid premises, the O.A. No.136 of 1997 is dismissed and the interim order made on 4.2.97 stands vacated. The M.A. is thus disposed of. No order is made as to costs.

  
( M.S. Mukherjee )  
Member (A)

  
( A.K. Chatterjee )  
Vice-Chairman