

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 594 of 2001

Tuesday, this the 1st day of July, 2003

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. V. Sivasankaran,
Retired Supervisor (Works),
Office of Executive Engineer (Construction),
Southern Railway, Podanur,
Residing at: 'Thushara', Kottapadam,
Industrial Estate PO, Olavakkode,
Palakkad.Applicant

[By Advocate M/s Santhosh & Rajan]

Versus

1. Union of India, represented by the
General Manager, Southern Railway,
Chennai.

2. The Chief Personnel Officer,
Southern Railway, Chennai.

3. The Chief Project Manager,
Construction Office,
Southern Railway, Egmore, Chennai.

4. The Chief Engineer (Construction),
Southern Railway, Chennai.Respondents

[By Advocate Mr. P. Haridas]

The application having been heard on 1-7-2003, the
Tribunal on the same day delivered the following:

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The applicant, while working as Gangman from 11-3-1968,
was transferred to the construction unit as a Lascar. He was
promoted to the post of Roneo Operator with effect from
7-7-1973. Thereafter a selection was conducted for the post of
Works Mate in the scale of pay of Rs.260-400 from among regular
Class IV employees of the Engineering Department including
Construction Reserve employees. The applicant having come out

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successful in the selection was promoted to the post of Works Mate in the scale of pay of Rs.260-400 by order dated 6-12-1980 (Annexure A2). He was allowed to continue in the post of Works Mate in the scale of pay of Rs.260-400 even after three months. While so, he was promoted on adhoc basis to the post of Works Mate (Works Maistry) in the scale of Rs.380-560 with effect from 1-1-1984 as per order dated 30-11-1983 (Annexure A3). While the applicant was working as Works Mate (Works Maistry) in the scale of pay of Rs.380-560 (revised scale of pay of Rs.1400-2300), the 3rd respondent by order dated 12-3-1992 (Annexure A5) reverted the applicant from the post of Works Maistry to the post of Works Mate in the scale of pay of Rs.1200-1800. The applicant challenged Annexure A5 order in OA No.430/92. By a common judgement dated 25-8-1993 (Annexure A6), the Tribunal disposed of the OA No.430/92 and other connected cases with the following directions:-

".... It is submitted by both sides that there is no risk of actual reversion for applicants for the time being. Applicants will be allowed to continue in the construction wing, enjoying the advantages which they now enjoy. In the event of authorities proposing to enforce Annexure-D, then it will be considered whether the applicants should be reverted or retained, having regard to the vacancy position then, and after affording an opportunity to them to put forward their respective cases. They can challenge Annexure-D, if it is decided to implement it."

2. On the basis of the above said judgement, the applicant was allowed to continue as Works Maistry. Many of the persons similarly situated like the applicant retired, while working as Works Maistries, without any reversion and have received the terminal benefits accordingly. The present grievance of the applicant is that by the impugned order dated 11-4-2000 (Annexure A7) the applicant was reverted from the post of Works Maistry in the scale of pay of Rs.4500-7000 to the post of Works Mate in the scale of pay of Rs.3050-4590 without giving him any notice or an opportunity to show cause against such an

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action. Feeling that the reversion of the applicant at the fag end of his career as he had only a few more months to retire on superannuation without issuing a notice not to achieve any public interest is arbitrary, irrational and wholly unjustified, the applicant made Annexure A9 representation praying that he may not be reverted and at least may be allowed to retire voluntarily with effect from 31-3-2000 without reversion. Respondents denied his prayers by Annexure A-10 order dated 30-6-2000 stating that retrospective voluntary retirement is not permitted.

3. Aggrieved, the applicant has filed this application seeking to set aside Annexure A7 and A-10 orders, to declare that reversion of the applicant is illegal, to declare that he is deemed to have continued as Works Maistry (Supervisor/Works) till the date of his superannuation and to direct the respondents to refix the pension and retirement benefits of the applicant treating him as retired from the post of Works Maistry as also to direct the respondents to grant arrears with 18% interest from 1-7-2000 till the date of payment.

4. Respondents in the reply statement seek to justify the impugned orders on the ground that a policy decision having been taken that deputationists in the Construction Organisation would not be given more than one adhoc promotion, the applicant who was holding the post of a Senior Gangman in the scale of pay of Rs.2750-4000 was first given adhoc promotion to the post of Works Mate in the scale of pay of Rs.260-400 and then to the post of Works Maistry in the scale of pay of Rs.380-560 and that as this was considered irregular, the impugned orders were issued in the interests of service.

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5. The applicant has filed a rejoinder refuting the averments made in the reply statement. It has been contended by the applicant in the rejoinder that he was confirmed on a Construction Reserve post as Roneo Operator, the scale of pay of which, though was Rs.210-270 initially, but now revised to 3050-4590 and therefore he has virtually been given only one adhoc promotion to the grade of Rs.4500-7000. Therefore, even a policy decision is to be implemented, it does not call for the reversion of the applicant.

6. Respondents in their additional reply statement have stated that though the applicant was promoted on adhoc basis as Works Maistry in the year 1984, he has been given lien as Senior Gangman in Guntakkal Division and for reduction of posts in the Construction Organisation it is permissible to repatriate or to revert those who are officiating on higher posts depending on the policy decision taken and the vacancy position.

7. The applicant in the additional rejoinder has stated that since he has been confirmed on a Construction Reserve post of Roneo Operator, there was no requirement of granting any lien in the open line or in the Guntakkal Division and he has not been informed of granting such a lien.

8. We have gone through the entire materials placed on record and have heard the learned counsel on either side at considerable length. The sole question that calls us for determination is whether the impugned Annexure A7 order of reversion of the applicant from the post of Works Maistry, which he has been holding from 1984 onwards, without giving him

a notice is justified and whether the reply Annexure A-10 given to the applicant's representation is a speaking order and a tenable order.

9. Facts which are beyond dispute are that the applicant had been regularised on the post of Roneo Operator which, though originally was in the scale of pay of Rs.210-270, was revised to the scale of pay of Rs.3050-4590. Further, it is an admitted case that from the year 1984 onwards the applicant has been working as Works Maistry, the present scale of pay of which post is Rs.4500-7000. It is borne out from the records that when the applicant was sought to be reverted by Annexure A5 order dated 12-3-1992 from the post of Works Maistry in the scale of Rs.1400-2300 to that of Works Mate in the scale of Rs.1200-1800, the Tribunal directed that if any reversion be necessary it should not be done without giving the applicant a notice and an opportunity to make a representation. It is also a fact, which is not disputed, that before issuing Annexure A7 order reverting the applicant from the post of Works Maistry to that of Works Mate, no notice in terms of the judgement of the Tribunal in OA No.430/92 was given. For that reason alone, the impugned order is liable to be set aside, especially when the applicant was reverted without notice when he had only two months to reach the date of his superannuation.

10. Even if there is a policy that two adhoc promotions should not be given, can the respondents be permitted to revert the applicant after he has continued in the promoted post for more than one and a half decade? It is well settled that person officiating on a higher post on adhoc basis can be reverted, but it is not without any reservation. To revert a person who has been holding a post on adhoc basis for a long time, a conscious decision should have been taken. Such a

decision is wanting in this case. Reversion of the applicant is sought to be justified solely on the ground that a policy decision was taken that nobody should be given more than one adhoc promotion. It is permissible for the Railway Administration to make policy decisions and to implement it. Apart from a sentence that such a policy decision was taken, the said policy decision has not been placed before us for consideration. However, the contention that the applicant was holding the post of Senior Gangman in the scale of Rs.2750-4400 and therefore he is entitled to be given only one promotion to the next higher grade of Rs.3050-4590 does not appear to be tenable because the substantive post which the applicant holds in the Construction Organisation on a Construction Reserve post is that of a Roneo Operator in which he has been confirmed as per Annexure A-16 order dated 17-1-1981. It is not in dispute that the scale of pay of the post of Roneo Operator has now been enhanced to Rs.3050-4590. The only adhoc promotion, therefore, which the applicant enjoyed, was that to the next higher grade of Rs.4500-7000. Therefore, even if it is in implementation of the policy decision, alleged to have been taken not to give more than one adhoc promotion, the applicant, who was substantially holding the post of Roneo Operator in the revised scale of Rs.3050-4590, was rightly promoted to the post of Works Maistry in the scale of pay of Rs.4500-7000 on adhoc basis. The promotion of the applicant, therefore, cannot be treated as irregular warranting its reversion.

11. In the light of what is stated above, we find that the impugned orders are unreasonable and wholly unjustified. Accordingly, we set aside the impugned Annexure A7 and A-10 orders with all consequential benefits to the applicant. Respondents are directed to make available to the applicant the difference in the pay scales of Rs.4500-7000 and Rs.3050-4590

which was paid to him during the period after his reversion treating that his reversion never did take place, to work out the terminal benefits as if he has retired from service on superannuation while working in the post of Works Maistry in the scale of pay of Rs.4500-7000 and to make available to him the difference terminal benefits with interest at 6% per annum from due date till the date of payment. The above directions shall be complied with within a period of two months from the date of receipt of a copy of this order.

12. The Original Application is disposed of as above with no order as to costs.

Tuesday, this the 1st day of July, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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