

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 39/2005

Monday, this the 29th day of August, 2005.

CORAM:

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Rajagopalan,
Binder,
Works branch,
Divisional Office,
Southern Railway,
Palakkad. - **Applicant**

By Advocate M/s Santhosh & Rajan

VS

1. Union of India represented by
the General Manager,
Southern Railway,
Chennai-3.
2. The Chief Personnel officer,
Southern Railway,
Chennai-3.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palakkad. - **Respondents**

By Advocate Mr KM Anthru

O R D E R

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant in this case, K.Rajagopalan working as Binder, Works Branch, Divisional Office, Southern Railway, Palakkad, seeks the remedy of declaration from the Tribunal that the proposed reversion which he apprehends is illegal.



2. The facts of the case as revealed from the averments and counters thereto are that the applicant while working as Peon from 21.9.80, volunteered for the post of Binder on 13.7.87. On passing the trade test, he was promoted as Binder(Semi skilled) in Works Branch, Palakkad as per A-1 order dated 17.11.87. In that order, it was made clear that the applicant's continuance in the post would be subject to a review at the end of trial period of six months, the administration reserving its right to revert him earlier, if necessary. The applicant was promoted after his passing the necessary trade-test as Binder-skilled in a work charged post of Binder Grade-I down graded to Binder Grade-III. The relevant promotion order (A-2) issued on 20.9.88 again made it clear that the promotion was a purely temporary and he was liable for reversion on the expiry of sanction for the **work charged** (emphasis supplied). A subsequent promotion as Binder Highly Skilled Grade-II was ordered vide A-3 order dated 15.3.91 which again made it clear that the promotion was purely temporary and he was liable for reversion on the expiry of sanction for the **work charged** (emphasis supplied) post. Again, he was promoted following due procedure as Binder Highly Skilled Grade-I on ad hoc basis against a **work charged** (emphasis supplied) post with an attached liability or reversion on the expiry of sanction for the **work charged** (emphasis supplied) post.

3. While being so, the Senior Divisional Engineer, Coordination, Palakkad under advice from the Chief Engineer, Madras commenced action for reverting the applicant, as Higher Grades were not authorized by the Pay Commission. The applicant challenged the reversion in O.A.718/95 before this Tribunal. His application was



dismissed with a direction to him to seek remedies in the departmental channel. It is pertinent to note here that in the Tribunal order, it was observed that the applicant had been promoted on ad hoc basis against a Work Charged post. The representation made by the applicant dated 16.9.95 remained unresponded. Despite such dismissal by the Tribunal, he was not reverted and was continuing as Binder Highly Skilled Grade-I, which the Department presently attributes to an inadvertent error. This error was detected at the time of pay fixation consequent to the implementation of the recommendations of the V th Pay Commission. This re fixation was challenged by the applicant in O.A.1507/97 before this Tribunal. The Tribunal ordered cancellation of the reduction in pay as the applicant was not reverted prior to such reduction in pay. Vide A-10, his pay was re-fixed at Rs.4500-7000, with the administration reserving the right to revise the erroneous pay drawn by him, if any, in the pre-revised scale by which it should require to refix the pay again in the scale of the V Pay Commission. The applicant was served with a show cause notice (A-11) dated 30.11.2000 against proposed reversion to scale Rs.3050 and he submitted A-12 representation. This was rejected and the third respondent passed A-13 order dated 8.2.2001. This was challenged by the applicant in O.A.111/2002 which was disposed of holding that the authority ordering reversion lacked competence and no retrospective effect should be given to the order of reversion. In consequence, the pay of the applicant was re fixed in the scale Rs.4500-7000 and arrears of pay were to be paid. Subsequently, a show cause notice was issued vide A-16 order dated 6.10.2004. The applicant furnished two reply representations (A-17 and A-18) and A-19



impugned order was passed confirming that his continuing in the promoted grades of Binder Grade-I was not permissible. Subsequently, an order of reversion (R-1) and memorandum of fixation of pay (R-2) followed. The applicant has challenged the A-19 impugned order in this OA

4. The applicant has sought the following reliefs :

- i) to declare that the reversion of the applicant from the post of Binder Highly skilled Grade I in Rs. 4500-7000 to the post of Binder Skilled in Rs3050-4590 as illegal and,
- ii) direct the respondents to continue him in the post of Binder Highly skilled Grade I in Rs4500-7000

5. The respondents oppose the OA with certain contentions. Their first contention relates to the nature of promotion given to the applicant. All the three promotions ie., Binder Grade III, Binder Grade II Binder Grade I were purely on an adhoc basis and temporary against work charged posts with the attendant liability of reversion at the end of specified period or on expiry of sanction for such work charged posts. Secondly, the applicant has accepted the promotion on these terms and now he cannot turn around to question the nature of the procedure. Thirdly, the impugned reversion now was ordered after following the prescribed procedure. Fourthly, it is an admitted mistake on their part not to have reverted him at the appropriate time. After such reversion his pay has been duly fixed. Fifthly, no evidence was made available by the applicant for classifying his post as coming



under Artisans post. There is no sanctioned work charged post of Binder in any of the three skilled grades. Besides as per the order issued by the Principal Chief Engineer, Southern Railways, there is only one work charged post of Binder in the grade Rs. 3050-4590.

6. We heard Shri T.A. Rajan, learned counsel for the applicant and Shri K.M.Anthru, learned counsel for the respondents, carefully considered the arguments and perused the documents

7. The following points are formulated for consideration:

- What is the nature of the posts to which the applicant was promoted
- Was the post of binder categorisable as an artisan's post, and if so, does such a categorization sustain the case of the applicant for promotion?
- Does the applicant get any right to be regularized in the post due to efflux of time?
- Was the reversion of the applicant illegal?

8. As to the question what is the nature of the posts to which the applicant was promoted, it is a matter of record(A-1, A-2 and A-3) that the posts have the following characteristics, viz, they were temporary and adhoc in which he was asked to officiate, the posts were bulk-sanctioned and he was liable to be reverted on expiry of the sanction therefor. In the reply statement, the learned counsel for the respondents has averred that at the time of first promotion, a work charged post of Binder Grade I in scale Rs.1320-2040 was vacant, the applicant was proposed for promotion as Binder Grade III in the next higher grade of Rs.950-1500/3050-4590 by down grading that work



charged post sanctioned in the higher grade. The respondents would also contend that as per the order from the Principal Chief Engineer, Southern Railway, a list of non gazetted work charged posts of PGT Division for 1.10.2003 to 31.1.2004 carrying concurrence of the appropriate authorities was communicated in which item 27 relates to Binder with only a single grade of Rs.3050-4590. Vide R-4 memorandum relating to the continued operation of non gazetted work charged posts during the beginning of the year 2004, no sanction for the work charged post of Binder in any of the three categories was given. Vide R-5, which is an extract of Book of Sanction of Palghat Division for the year 2003, only one permanent post(Revenue post) of Binder in the grade Rs.2610-3540. The only counter argument of the applicant is that the sanction for the post of Binder in these Annexures was obtained without considering the different grades of Binder and as such they are not applicable to the facts of this case. This counter does not carry weight because it is up to the employer to ask for sanction of work-charged posts. The only argument he can advance is that his long continuance for over ten years would ipso facto prove that it is not a work charged post. He has not shown any basis/rule to sustain this contention. Another important point is that by the very fact of the applicant accepting the posts with conditions attached thereto, he would not be entitled to disown the same to his advantage later. The most important aspect about this case is that this Tribunal itself decided in OA 718/95 filed by this applicant that he was promoted on Ad-hoc basis against a work charged post. It is therefore apparent that the posts to which he was promoted were adhoc and temporary carrying with them the liability of reversion.



9. As regards the question whether this post is an artisans post, the applicant contends it is a skilled Artisan post. To sustain the contention, he argues that the Railway Board prescribed three grades of pay in pursuance of the recommendations of the V Pay Commission for the artisan staff (vide A-20) and the Railway Board has restructured the post of artisans on the basis of percentage of distribution. But, this by itself does not make the post of Binder as an artisan category as pointed out by the respondents. The second argument of the applicant is that even if the post of Binder is treated as an isolated post, he is entitled to be continued in the present grade based on his seniority and as per Railway Board's order dated 21.7.88 (A-21). This is actually a letter from the Railway Board to the Railway Administration requesting them to restructure miscellaneous isolated categories, an indicative list furnished not including the post of Binder and the endorsement in the body of A-21 is from the CPO for collecting details of such isolated posts. By no stretch of imagination, this can be considered to be a final order in respect of categorization of Binders as artisans. The applicant contends that the pay scale of artisans were revised in consultation with the Ministries concerned. The applicant has produced A-22 which is the seniority list of Artisans staff under Senior DSO/Stores/Pgt. and the sixth category relates to a Binder. Besides, he has produced a memorandum (A-23) dated 31.12.90, dealing with the subject or reclassification of Artisans posts which mention inter-alia the category of Binder in Madurai Division. Respondents would counter that the listing of the post of Binder under the Artisans staff was for the limited purpose of providing some



promotional prospects for isolated categories of limited employee population and in any case, these relate to some other department, A-23 dealing with Operating Branch and A-24 with Engineering Department and as such have no relevance to the present case. Besides, even in these Annexures, there are no multiple grades of Binders, which is a point harped upon by the applicant. The above points fail to establish the contention of the applicant to categorize Binders as artisans. According to the respondents, no other document/order has been produced by the applicant to sustain this claim. Quite independent of such failure, the important point to be noted is that sanction for operation of work-charged posts is to be obtained from the Principal Chief Engineer and that alone sustains the continuance or otherwise of such posts. The applicant has not been able to reasonably prove that the Binder post is under the category of Artisans for the purpose of relief he is after and such categoriasaion would sustain his case of retention.

10. As to the question whether the applicant gets any right to be regularized in the post by passage of time, the contention of the applicant is that the sheer passage of time that he was allowed to continue in the promoted post would make the promotion regular. According to him, the post of Binder HS-I is a regular post and no periodical sanction was necessitated and sanction sought so far was misconceived. This is countered by the respondents that the posts of Binder -II and I are work charged posts on ad hoc basis as evidenced by A-3 and A-4. Besides, this Tribunal in their order in O.A.718/1995 makes a confirming reference to this position. The subsequent O.A.s



filed by the applicant seeking other reliefs, do not contain any reference to the regular nature of the promotion. The applicant contends that by virtue of orders of the Railway Board if an employee is continued in the post for more than 18 months, he can be reverted to a lower post only on following the procedures relating to disciplinary proceedings. The respondents contend that the said order is not applicable to the applicant's case. The copy of such an order has been produced, by neither of them making it difficult to arrive at a conclusion on this point. The only counter point available to this argument remains the conditions contained in the orders of promotion which make such promotion reversible. The long span of continuation in the promoted post is attributed to fortuitous circumstances initially due to an inadvertent error on the part of the administration, followed by an array of three O.A.s filed by the applicant seeking different reliefs on this issue. The respondents point out that in a similar case this Tribunal had held that when sanction for work charged posts ceases, the incumbent cannot claim continuation against non-existent post. Hence, the obvious conclusion here is that his long stay in the post does not make it a regular post.

11. As to the question whether the reversion of the applicant was illegal, the application has no case that the impugned order is the product of an incompetent process. As already mentioned, he has filed three different O.A.s seeking different reliefs. The spate of OA-s filed by him underline the common feature that his promotion was ad hoc and temporary and when the administration tried to undo the same by re-fixation of pay that alone was challenged i.e., the re-fixation of pay



without prior order of reversion. The OA's dealt with the procedural aspects relating to re fixation of pay without preceding reversion and retrospective fixation. The respondents accordingly followed the procedures, by issuing a show cause notice, accepted the representations, considered the same, issued first a reversion order followed by refixation order. In the representation filed by him(A12) the main grounds taken by the applicant relate to the absence of reversion order prior to the re fixation of pay. The subsequent OA dismissed the retrospective re-fixation of pay. The present reversion order followed by a re fixation of pay operating prospectively. All these underline the fact that the present impugned order has been passed after following due procedure

12. In short, it is found that,

- the applicant has not been able to reasonably prove that the Binder post is under the category of Artisans for the purpose of relief he is after and such categorization would not sustain his case for retention,
- that the posts to which he was promoted were of ad hoc and temporary nature carrying with them the liability of reversion,
- that his long stay in the post does not make it a regular post and
- the present impugned order has been passed after following due procedure



13. In view of the above findings, the OA is dismissed with no order as to cost.

Dated, the 29th August, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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