

Central Administrative Tribunal Lucknow Bench Lucknow

O.A.257/2006

This, the ²³ day of December, 2008

Hon'ble Mr. M. Kanthaiah, Member (J)

Hon'ble Dr. A. K. Mishra, Member (A)

Zainul Abidin, aged about 40 years son of Gulam Rashid, resident of 411-H, Road No. 6, Semra Colony, Gonda.

Applicant.

By Advocate Sri M.Singh

Versus

1. Union of India, represented by Divisional Railway Manager (P), North Eastern Railway, Gorakhpur.
2. Senior Divisional Mechanical Engineer, Diesel Shed, N.E.Railway, Gonda,.
3. Assistant Personnel Officer, Camp Office, Diesel Shed, N.E. Railway, Gonda.

Respondents.

By Advocate Sri B.B.Tripathi for Sri M.K. Singh.

ORDER

By Hon'ble Mr. M.Kanthaiah, Member (J)

The applicant has filed this O.A. with a prayer to set aside the order dated 3.5.2006 (Annexure No.1) passed by respondent No.1 and direct the respondents to allow the applicant to work on the post of Painter Grade II and to pay him salary in the pay scale of Rs. 4000-6000 along with consequential benefits on the ground that reversion from the post of Painter Grade II to Painter Grade III was issued illegally and without jurisdiction by the respondent No.1, who is not the competent authority.

2. The respondents have filed the counter reply denying the claim of the applicant on the ground that the promotion of the applicant to the post of Painter Grade II was given because of error committed by the Department and also without taking into consideration of availability of the post. They also further stated that the promotion of the applicant was in excess of sanctioned strength and as such they have corrected the same.

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3. The applicant has filed the rejoinder reply, denying the stand taken by the respondents.

4. Heard both sides.

5. The point of consideration is whether the applicant is entitled for the relief as claimed for.


6. The admitted facts of the case are that the applicant was initially appointed as Ancillary Khalasi in Diesel Shed, N.E.R., Gonda during the year 1992 and promoted to the post of Helper Khalasi on 30.10.94 and thereafter he was promoted to the post of Painter Grade III on 1.9.98. Subsequently, he was promoted to Painter Grade II on 1.11.2003 and while he was working as Painter Grade II, the respondent No.1 reverted him to the post of Painter Grade III by order dated 3.5.2006 on the ground that he was wrongly promoted to the post of Painter Grade II. Before passing the impugned order dated 3.5.2006, he issued show cause notice dated 18.11.2005 (Ann.A-2) to the applicant for which the applicant submitted his representation dated 5.12.2006 (Ann. No.3).

7. It is the case of the respondents that due to wrong calculation of vacancies, the applicant was given promotion on the post of Painter Grade II and after noticing the same, the authority has issued show cause notice to the applicant who is junior most incumbent posted on the post of Painter Grade II and thereafter, passed the impugned order dated 3.5.2006 reverting the applicant to the post of Painter Grade III. Thus stated, that there is no illegality in the impugned order. Admittedly, the impugned order was issued by the respondent No.1, who is the appointing authority of the applicant.

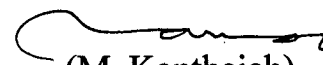
8. The main case of the applicant is that the first respondent is not the competent authority to pass the impugned order reverting the applicant from the post of Painter Grade II to Painter Grade III on the ground of mistake or wrong promotion given to the applicant. In support of it, he relied para 228 (C) of Railway Establishment Code which says that "Except where the appointing authority is the Railway Board or the President, the question whether promotion/appointment of a particular railway servant to a post was erroneous or not, should be decided by an authority next higher than the appointing authority in accordance with the

established principles governing promotions/ appointments .Where the appointing authority is the Railway Board or the President, the decision should rest with the President and shall be final." The applicant also relied on the Railway Board letter dated 20h April, 1985 (Ann. RA-1) wherein it has been held that if an employee is to be reverted after he has served for more than 18 months on a higher post, then the General Manager has to pass the order of reversion with specific reasoning. But in the instant case, no such exercise has been done, as such the reversion of the applicant is illegal and liable to be set aside. There is no dispute from the respondents in respect of issuance of impugned order by respondent No. 1 i.e. DRM (P) and as per para 228 C of the Railway Establishment Code and also letter dated 20th April, 1985 (Ann.RA-1), it is clear that respondent No.1 is not the competent authority for ordering reversion of the applicant from the post of Painter Grade II to Painter Grade III, and as such , the applicant is justified in challenging the impugned order and as such the same is liable to be set aside only on the ground of lack of jurisdiction by the respondent No.1.

9. In the result, O.A. is allowed by setting aside the impugned order dated 3.5.2006 (Annexure No.1) with all consequential benefits. No costs.


(Dr.A.K. Mishra)
Member (A)

HLS/-


(M. Kanthaiah)
Member (J)
23.12.08