

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO.14/92

this the 30th day of May, 2000

HON'BLE MR. D.C.VERMA, MEMBER(J)
HON'BLE MR. A.K. MISRA, MEMBER (A)

Ahmad Husain Adhanani s/o late Quzi Mohd. Zubair Adhami r/o Rakiya Peer Jalil Golaganj, Lucknow presently posted as Junior Accounts Assistant (CGO) in the office of Senior Divisional Accounts Officer, Northern Railway, Lucknow.

....Applicant

By Advocate: Sri A. Moin

Versus

1. Union of India, through Secretary Railway Board, New Delhi.
2. Financial Advisor and Chief Accounts Officer, Northern Railway, Baroda House, new Delhi.
3. Senior Divisional Accounts Officer, Northern Railway, Hazratganj, Lucknow

...Respondents

By Advocate: Sri. A.K. Chaturvedi

ORDER

A.K. MISRA, MEMBER (A)

Applicant in the present O.A. has prayed that impugned order of reversion dated 13.12.1991 (Annexure 1 to the OA) be quashed. Further prayer is that directions may be issued to the respondents to allow the applicant to continue to work on the post of Clerk Grade I (Junior Accounts Assistant) and pay him salary of the said post. ~~to be done~~

A. Moin

The applicant also prays that the order dated 21st September, 1994 (Annexed as Annexure 4 to the amended O.A.) be quashed and applicant be promoted as Junior Accounts Assistant (Clerk Grade I) w.e.f. 1.11.90 with all other consequential benefits.

2. Learned Counsel for the parties have been heard and pleadings on record have been perused.

3. The applicant was appointed on the post of Clerk Grade II on 10.3.82 in pursuance of written test and interview conducted by Railway Service Commission and was posted at Workshop Accounts Office, Northern Railway, Jodhpur. The applicant has been working since August, 1986 in the office of Senior Divisional Accounts Officer, Northern Railway, Lucknow (Respondent No. 3). The applicant passed apprentice REM II-A examination in 1990. He was promoted as Clerk Grade I (JAA) in the pay scale of Rs. 1200-2040 under 20 point cycle against vacant post 15 point w.e.f. 1.11.90 by an order dated 13.12.91. Subsequently, by an order dated 13.12.91 issued by the respondent No. 3, the applicant was reverted as Clerk Grade II w.e.f. 1st November, 1990 i.e. from the date on which the applicant had been promoted as Clerk Grade I. Thus the reversion order dated 13.12.1991 was given retrospective effect from 1.11.90. The case of the applicant is that he was promoted as Clerk Grade I (JAA) w.e.f. 1.11.90 against a vacant post, after

passing the apprentice REM II-A examination. The applicant has stated that he was reverted w.e.f. 1.11.90 by order dated 13.12.91 without giving him any opportunity of being heard and without initiating ~~or~~ any disciplinary proceedings. Accordingly, it has been submitted on behalf of the applicant that his reversion is in violation of article 311 of the Constitution of India and is also in flagrant violation of the principles of natural justice. The applicant contends that he should be given back his promotion as JAA (Clerk Grade I) w.e.f. 1.11.90 on this limited ground alone. It has also been brought to our notice that reversion of the applicant is in violation of rules (6) and (9) of the Railway Servants (Disciplinary and Appeal) Rules 1968, as major penalty of demotion has been imposed against him without assigning any reason and offering him an opportunity of hearing. It is contended that his reversion has also resulted in a reduction in his pay scale, involving financial loss to him. Further the applicant's representation dated 23.12.91 is still pending. Further it is stated that in spite of the pendency of the applicant's petition in this Tribunal and in spite of his representation dated 23.12.1991, the respondents passed a fresh promotion order dated 21.7.94 whereby the applicant was promoted as Clerk Grade I (JAA) w.e.f. 1.7.94. According to the applicant, the fresh promotion order dated 21.7.94 promoting him from 1st July 1994 should not have been passed during the pendency of his petition in this Tribunal. The applicant has stated that while passing the fresh promotion order, the reversion order dated 13.12.91 has not been cancelled. The applicant however,

M. H. M.

claims his promotion as Clerk Grade I (JAA) w.e.f. 1.11.90 and therefore, he did not join as JAA in consequence of the promotion order dated 21.7.94. Since the applicant was not inclined to join as JAA in consequence of the promotion order dated 21.7.94, the respondents issued a letter dated 7.9.94 asking the applicant to join as JAA within 3 days or to ~~refusal~~ ^{convey} of promotion. In this letter, it was stated by the respondents that if the applicant fails to join within 3 days, he will be debarred from promotion for a period of one year. It was also mentioned in this letter that he cannot be given promotion prior to 1.7.94. Since the applicant did not join, he was debarred from promotion as Clerk Grade I (JAA) for the period of one year by letter dated 21.7.94 issued by the respondent No. 3. The letter dated 21.7.94 debarring the applicant for one year from promotion as JAA has also been challenged.

4. On behalf of the respondents, it has been stated that the present O.A. is premature in as much as the applicant moved the representation dated 23.12.91, ^{and} filed the present O.A. on 8.1.1992 without waiting for statutory period of 6 months as prescribed under section 21 of the AT Act, 1985. The respondents have stated that applicant was promoted as Clerk Grade I initially w.e.f. 1st November, 1990 on the basis of assignment of wrong seniority to the applicant in the panel of Clerks Grade II (Accounts Clerk) who had already passed the Indian Railway Establishment Manual (Appendix II A), Examination. Subsequently however, in accordance with guidelines issued by the Dy. Chief Accounts Officer (G), Northern Railway, New Delhi on 18.11.91, the correct seniority of the applicant as Clerk Grade II was assigned. On redetermining the seniority of the applicant, he became junior to three clerks Grade II



namely Mulai Ram, Jaishankar Mishra and Ashwani Kumar. Since the applicant's seniority was ~~not~~ determined in accordance with guidelines dated 18.11.1991 issued by the Dy. Chief Accounts officer, Northern Railway, New Delhi, he had ~~to be~~ reverted. It has been conceded by the respondents that the reversion of the applicant was not by way of punishment and no disciplinary proceedings whatsoever were initiated against the applicant. Accordingly, it has been contended that Rule 6 and Rule 9 of the Railway Servants (Discipline ~~and~~ and Appeal) Rules, 1968 will have ~~no~~ applicability nor article 311 of the Constitution of India will be applicable. The reversion of the applicant was in consequence of the correction of his seniority . It has been stated that revised panel of seniority was circulated to every body which was not challenged or objected to by the applicant. Further the respondents ~~re~~stated that since the seniority of the applicant is Clerk Grade II has been brought down below three other clerks and since those three clerks have not been impleaded as parties to the present O.A, the OA is liable to be dismissed for non-joinder of parties.

5. In the Supplementary CA filed on 16.2.2000 under M.P. No. 486/2000, it has been stated that on 8th July 1999, the applicant submitted an application requesting that he may be considered for promotion as Clerk Grade I (JAA). In response to his application the applicant was promoted by order dated 23rd July, 1999 as JAA and was posted under Senior Accounts Officer (Stores and workshop), Lucknow



against an existing vacancy. The promotion order of the applicant has been filed as Annexure SCR-2 to the supplementary counter. The applicant also joined on 28th July, 1999 as JAA. A copy of the applicant's joining report is also annexed as SCR-3 to the Supplementary Counter.

6. In the Counter Affidavit and Supplementary Counter Affidavit filed on behalf of the respondents, it has nowhere been stated that an opportunity of hearing had been given to the applicant before reverting him w.e.f. 1.11.90 by order dated 13.12.91. On the contrary, in the Supplementary Counter filed under MP No. 3223/98 dated 17.12.98, it has been stated on behalf of the respondents that in a case of reversion where no disciplinary proceedings have been initiated, there was no occasion of giving an opportunity of hearing to the applicant as provided in Article 311 of the Constitution of India.

7. In view of the foregoing discussions, there appears to be no dispute that no opportunity of hearing was given to the applicant before passing the order of reversion dated 13.12.1991 reverting him w.e.f. 1.11.90. Since the applicant was reverted without allowing him an opportunity of hearing, the principles of natural justice have clearly been violated. In the case of Ram Chandra Gupta Vs State of U.P. and Ors. reported in 2000(18) LCD-171, the Hon'ble High Court of Allahabad (Lucknow Bench) while dealing with the question of cancellation of license of stamp vendors held that orders affecting the Civil rights of persons can be passed by the competent authority only after affording an opportunity of hearing to the persons



concerned. Like wise in the case of Shobh Nath Gautam Vs State of U.P. and ors. reported in 2000(18) LCD-174, the Hon'ble High Court of Allahabad held that since no opportunity of hearing was given to the petitioner by the respondents before passing the impugned order of termination of service, the principles of natural justice had been violated. In the case of State of U.P. and Ors. Vs. Ramadhar Ram and Ors. 1999(17) LCD-796, it was held by the High Court of Allahabad that the requirement of natural justice has to be read in situations when the statute is silent on the point. It was further observed that omission to impose the requirement of hearing in the statute under which the impugned action is being taken, does not exclude hearing. On the contrary, the requirement of hearing has to be read in the statute particularly when the party concerned is adversely affected. In the case of Shravan Kumar Jha and Ors Vs State of Bihar and Ors 1991 Supp(1) SCC page 330 while dealing with the question of cancellation of appointment of certain teachers who had been given appointment by an authority not competent to appoint teachers, the apex court noted that the petitioners ~~were~~ have not been given an opportunity of hearing before cancelling their appointments. Since no such opportunity was afforded, the Hon'ble ^{Supreme} ~~High~~ court set aside the order of cancellation and directed that the petitioners be given an opportunity of hearing and thereafter a finding be recorded as to whether the petitioners were validly appointed.

7(a). Since no opportunity of hearing was given to the applicant to this O.A., we are of the opinion that the principles of natural justice had been violated while passing the order of reversion dated 13.12.91 reverting the applicant w.e.f. 1.11.90. Therefore, the reversion order dated 13.12.91 passed in the case of applicant reverting him w.e.f 1.11.90 is quashed. In the light of the decisions cited in the preceding paragraphs, the respondents are directed to give an opportunity of hearing to the applicant and thereafter to pass appropriate orders as considered proper.

8. As already stated the applicant has been promoted as JAA (Clerk Grade I) w.e.f. 23.7.99 and is working as JAA and is also drawing the salary of the said post. As regards, the claim of the applicant that the impugned order dated 21.9.94 be quashed and he be promoted as JAA w.e.f. 1.11.90, it is seen that before issuing the order dated 21.9.94 debarring the applicant from promotion as JAA for a period of one year, a notice dated 7.9.94 was given to the applicant by the respondent No. 3 stating that there is no question of promoting the applicant prior to 1.7.94 and directing the applicant to join on promotion as JAA within 3 days or to convey refusal of promotion. It was further stated in this notice that in case of failure to join within 3 days, the applicant will be debarred from promotion for a period of one year. Since the applicant did not join on promotion, he was debarred from promotion for a period of one year by order dated 21.9.94 issued by respondent No. 3. In our considered opinion, no interference is called for in so far as the order dated 21.9.94 debarring the applicant from promotion for one year is concerned because the applicant was debarred from promotion



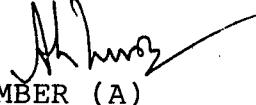
after a notice was issued to him.

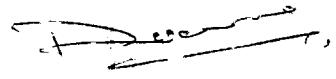
9. As regards the applicant's claim that he should be promoted as JAA (Clerk Grade I) w.e.f. 1.11.90, the same cannot be allowed in view of the fact that the applicant has at no stage challenged the redetermination of his seniority, although the revised panel of seniority was duly circulated to all concerned.

10. Although in paragraph 7 (a), we have quashed the reversion order dated 13.12.91 reverting the applicant w.e.f. 1.11.90 in the light of the decision of the Apex Court in the case of Shravan Kumar Jha Vs State of Bihar 1991 Supp(1) SCC page 330 and in the light of the other decisions, we considered it necessary to direct that in consequence of setting aside the reversion order dated 1.11.90, the applicant will not be allowed to rejoin as JAA (Clerk Grade I) w.e.f. 1.11.90. The Supreme Court in State of U.P. Vs Girish Bihari and Ors. 1997 SCC(L&S) 1072 has observed that in the case of Shravan Kumar Jha (Supra) while the apex court directed that an opportunity of hearing be given to the Assistant Teachers whose appointment had been cancelled, the apex court did not grant any relief in terms of actual appointment in pursuance to the appointment letters issued to those teachers. Accordingly, while the reversion order dated 13.12.91 passed in the case of applicant to the present O.A. has been quashed, the applicant will not be entitled to any relief by way of reinstatement as JAA w.e.f. 1.11.90 in consequence of quashing the reversion order.



11. The O.A. is disposed of as above in accordance with the directions given in paragraph Nos. 7(a), 8, 9 and 10. Cost easy.


MEMBER (A)


MEMBER (J)

LUCKNOW: DATED 30th May 2000
HLS/-