

RESERVED

117
B/C

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

(1) T.A. 1165/87
(W.P. 3335/82)

(2) T.A. NO. 1507/87
(W.P. NO. 324/84)

(3) T.A. NO. 1225/87
(W.P. NO. 5741/83)

A.P. Srivastava

Petitioner

versus

Union of India & others

Opp. Parties.

Shri P.N. Bajpai

Counsel for Applicant/
Petitioner.

Shri B. K. Shukla

Counsel for Respondents.

Coram:

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

In the above three applications filed by the same applicant, different reliefs have been claimed. In T.A. No. 1165/87 the petitioner has prayed for issue of certiorari quashing the order dated 9.7.82 reverting the petitioner to one scale below and withholding the seniority for a duration of three years and mandamus directing the respondents not to revert the petitioner in pursuance of the aforesaid order dated 9.7.82 and treat him still continuing in the same post and scale of Rs 425-640. In T.A. No. 1225/87 he prayed for quashing the order dated 3.9.83 and for a mandamus commanding the

respondents to hold the fresh selection for the posts of Station Masters Grade Rs 550-750 and Grade Rs 455-700 under the restructuring scheme after considering the case of the petitioner vis-a-vis his juniors. In T.A. No. 1507/87 the petitioner has prayed for issuance of a certiorari quashing the entire disciplinary proceedings right from the stage of issuing chargesheet appointing Enquiry Officer and recording of prosecution witnesses after summoning the original from the respondents and for a mandamus commanding the respondents not to initiate disciplinary proceedings against the petitioner pertaining to the incident of 17.5.1979 for which he has already been punished.

2. The petitioner, admittedly, attained the age of superannuation in the year 1988 during the pendency of this case. He started as a Clerk in the office of Loco and Carriage Superintendent as a permanent employee in the year 1948 and after confirmation he was promoted to the post of Assistant Station Master at Railway Station Aishbagh, Lucknow. On 12.5.79 he was served with a charge sheet under the signatures of Divisional Safety Officer, N.E. Railway, Lucknow. The charges against the applicant were that while functioning as Assistant Station Master on duty at the West Cabin/ASH from 16.00 to 24.00 hours the petitioner refused to allow to the movement of engines/ and from ASH and Loco Shed and obstructed the movement in contravention of Appendix 'F' (Correction slip No. 1 dated 21.11.1977) para II Note No. (ii) below para (g) to the Station working Rules No. LGN/

Correto
Lal
30/4/1991

162 dated 7.9.1976 of Aishbagh JNC and thus he violated the G.R. 179 for not obeying the lawful orders prescribed in the Station Working Rules and further disobeyed the orders given by SM/ASH on 9.5.1979 and failed to maintain the devotion to duty and behaved in a manner which was unbecoming of a Railway Govt. servant. The applicant denied the charges. The enquiry proceeded. The applicant appointed ~~the~~ defence Assistant also. As a result of the enquiry report the respondent No. 3 passed the order reverting the applicant as stated above. The applicant refuted the charge sheet and he stated that as a matter of fact he acted under the directions of respondent No. 2 and had not violated any rules. The enquiry officer held the applicant responsible for disobedience and that is why he was awarded ~~with~~ the above penalty. The impugned order of reversion was stayed by the High Court with the result that it never came into effect at all. The applicant was removed from service against which he filed another case. The applicant has challenged the order on variety of grounds including that the order has been passed without application of mind and with malafide intention and the applicant was denied opportunity to defend himself and that the petitioner has not disobeyed any order, and he has acted in accordance with the order given by his officer.

3. On behalf of the respondents the action of reverting the applicant has been justified and it has been contended that the applicant having been removed from service this application becomes infructuous. It is true that the punishment order did not come into effect but the grievance

of the applicant is that the punishment order has been passed by the Divisional Safety Officer who is the head of Safety Division and the applicant was working under the direct control of Operating Deptt. and thus the order is without jurisdiction. Thus, according to the respondents it has been contended that at Zonal level the Chief Operating Superintendent is the Head of Operating Department and he is assisted by Sub-Heads viz. Chief Freight Traffic Superintendent, Chief Passenger Traffic Superintendent, Chief Traffic Safety Superintendent. At Divisional level the Senior Divisional Operating Superintendent is the head of the Operating Department. He is assisted by Divisional Safety Officer. Thus, the Divisional Safety Officer is a competent authority to exercise control over working of all Transportation staff for the purposes of disciplinary action and as such the orders of reversion of the petitioner is legal and valid.

Reference has been made to the Railway Board Circular dated 22.10.84 in this behalf. The only document which has been filed by the respondents is the letter which was sent by the Railway Board to the General Manager with reference to the query regarding the disciplinary authority of the staff of the Operating Department and it was stated in the letter that the writ petitions challenging in the case of Operating staff may be contested and may be pointed to the High Court that Safety Officers, as distinct from Commercial Officers, belong to operating side and there should be no objection to their taking disciplinary action

against Operating staff like SMs, ASMs, etc. who perform train passing duties. The letter is only in reply to a particular letter and it does not confer any power on the Divisional Safety Officer to take disciplinary action against ASMs who belong to the other side. May be that subsequently powers have been given but no document has been produced indicating that the said authority was entitled to take disciplinary action. Even otherwise, this renders the entire proceedings void and the action has been taken by the authority who is not competent and even otherwise the Enquiry Officer held that the applicant cannot be held responsible but the disciplinary authority was to defer from the finding of the enquiry officer, he was to record reasons and show cause should have been given to the applicant to represent the case by him. The same having not been done, vitiates the enquiry proceedings, as has been observed in the case of Narain Misra vs. State of Orissa (1969 SLR 557) and it is on this ground that the punishment order dated 9.7.82(Annexure No. 1) stands quashed. Accordingly this application deserves to be allowed and the reversion order dated 9.7.82 is quashed. It is a different matter that because of the subsequent orders it may have become infructuous but in case the subsequent order goes this order automatically will go out.

4. In T.A. No. 1225/87 the applicant has challenged the promotion order. According to the

AMV
X
X

to the respondents
applicant he ranks senior in the seniority list of
Assistant Station Master working in the N.E.Railway. The
applicant ranked at serial No. 15 whereas the other
respondents are below him. Under the restructuring scheme
a number of posts of Station Master grade Rs 550-750 were
to be filled up from the category of Asstt. Station
Masters grade Rs 425-700 on the basis of seniority maintained
by the respective Divisions. While promoting respondents
5 to 18 the case of the applicant was not considered
though he was senior to them. In this application, the
applicant has challenged the order dated 3.9.83 promoting
in the grade of Rs 550-750
the respondents 5 to 18/ and the order dated 3.9.83
promoting the respondents 19 to 29 to the post of Station
Master in the grade of Rs 455-700. Under the restructuring
scheme it was directed that various cadre under different
Departments pertaining to group C and D posts may be
restructured with reference to the sanctioned cadre
strength as on 1.8.1983. The scheme further provided that
for the purpose of promotion existing selection promotion
will be modified and selection will be on the basis of
scrutiny of the service record and without any written
examination. The applicant who was promoted to the post
of Assistant Station Master in the year 1953 in the grade
of Rs 425-640 w.e.f. 29.6.1963 and was confirmed on the
said post with effect from 1.4.1964 and he was at serial
No. 15 in the seniority list and was entitled to the
benefit of promotional post but he was not promoted
because of the punishment of reduction of rank vide
order dated 9.7.82 against which he filed representation which
was stayed and despite the interim order the
punishment was taken into account for not promoting
him and giving him a particular grade.

5. The respondents have opposed the application and have pointed out that because of serious accident the petitioner was charged of misconduct and removed from service ultimately. While the petitioner has pointed out that this Tribunal has allowed the application and quashed the removal order though subsequent to his retirement but according to the respondents the S.L.P. has been admitted and is pending. It has been stated by the respondents that as the applicant's name was considered but as he was undergoing penalty for major punishment his name was excluded from promotion. It has been further stated that he was not promoted in the grade of Rs 550-750 as Station Master. Besides the order of reversion, disciplinary proceedings against the petitioner was also pending, so he was not promoted against which he has filed another T.A. in which he has challenged the Memo of charge sheet itself.

6. It appears that the respondents admittedly took into consideration that the applicant has already been reverted. The reversion order was stayed by the High Court. So far as the applicant is concerned he could not have been treated as reverted in view of the operation of the interim order. The respondents should have considered the case of the applicant for time being, may be due to the note that he is being promoted but the same shall be subject to final orders passed in the writ petition or in case the interim order is vacated and consequences to follow. But the respondents committed an error in not

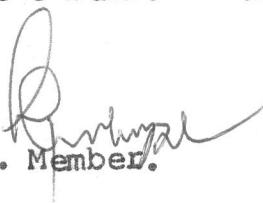
promoting the applicant. It is a different matter that the applicant may not have been promoted to the higher post in view of pendency of the disciplinary proceedings but so far as earlier one is concerned he should not have been deprived of the same. The respondents are directed to consider the case of the petitioner for the benefit of restructuring scheme for seniority taking as if there was no punishment order against him and he could be, on the relevant date, when the proceedings re-started later on, the benefit of promotion with effect from that date will not be given to the applicant because of pendency of disciplinary proceedings, except that he was to be considered and the result was to be kept in sealed cover. The respondents are directed to re-consider the case of the applicant in view of the above observations and in case the applicant is entitled to one or two promotions he may be given promotions and obviously is deemed to be in continuous service.

7. In T.A. No. 1507/87 the petitioner has challenged the removal order which was passed after holding the departmental enquiry. The applicant was chargesheeted because of his act of omission and negligence, and due to accident. The applicant denied the responsibility and the proceedings were pending. Petitioner filed writ petition which was transferred to this tribunal but no interim relief

Chancery
L.W.
30/4/83

was granted with the result that the writ petition was pending but at the same time no further action, it appears was taken on this application. The applicant has attained the aged of superannuation. Even if the benefit of superannuation would have been given to the applicant if the proceedings not having been culminated into proceedings against retired persons, this application becomes infructuous making the entire proceedings against the applicant also infructuous.

8. The above three applications are disposed of in the manner indicated above. No order as to costs.


Adm. Member.


Vice Chairman.

Shakeel/

Lucknow: Dated: 19.10.92