

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

Tuesday the 16th day of May 2000 (16-5-2000)

PRESENT

The Hon'ble Shri D.V.R.S.G.DATTA.RAYULU, MEMBER(J)
and

The Hon'ble Shri S.MANICKAVASAGAM, MEMBER(A)

O.A.No. 419/91

Bhabhuti Prasad .. Applicant

Vs.

1.Union of India through the
Divisional RailwayManager, North Eastern
Railway, Ashok Marg, Lucknow
2.The Divisional Mechanical Engineer(Diesel)
GondaShe , North Eastern Railway, Gonda .. Respondents

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Mr.J.F.Mathur .. Advocate for the applicant

Mr.K.B.May .. Advocate for the respondents

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Order: Pronounced by the Hon'ble Shri S. MANICKAVASAGAM
MEMBER (A)

The applicant joined the department as Diesel Khalasi (DK for short) (Rs. 196-232) with effect from 11.4.1983. He was appointed on compassionate grounds. When the post of Daftry fell vacant the applicant applied for the said post and after undergoing the process of selection he was appointed as a Daftry in the Ministerial cadre by an order dated 6.2.1984, carrying the pay scale of 200-250. While the applicant was working as a Daftry from 1984, by the impugned order dated 9.9.1991 the applicant was informed that his appointment as Daftry stands cancelled and that he has been reverted to work as DK. By this time the pay scales have been revised, viz. DK - Rs. 750-940, Daftry: Rs. 975-1025. It is therefore the case of the applicant that he ~~has~~ been reduced in rank but also has been subjected to ~~xxx~~ reduction of pay as well without any notice and the action of the respondent amounts to punitive measures and liable to be set aside. It is under these circumstances the applicant has come before this Tribunal praying for a direction to quash the impugned order dated 9.9.1991 and for retention in the Daftry post with consequential benefits.

2. The respondents have filed a detailed reply resisting the claim of the applicant. It is averred that the applicant was working as a DK and that his normal channel of promotion to the grade of Khalasi Helper (Rs. 200-270). It is further averred that the grade of Daftry (Rs. 200-250) is controlled by the Managing Department and as per the rules envisaged by the Managing Department the senior peon alone can be promoted as a Daftry and hence appointment of the applicant as Daftry is against the rules. The respondents have stated that the OA is liable to be dismissed as devoid of merit.

3. We have heard the counsel for both sides and perused the records.

[Signature]

4. It may be noted that the applicant was initially appointed on compassionate ground to the post of DK, which is a non-ministerial post. The regular line of promotion as stated in the reply is Khalasi Helper etc. Similarly the post of Daftry is a ministerial grade post for which the feeder category is the senior peon. But the fact remains that the applicant within one year of his appointment as DK was considered for selection to the post of Daftry and was appointed to the post which is in the ministerial grade. It is not as if the respondents woke up to the reality immediately after the applicant was allowed to continue in the and said post/for nearly for seven years the respondent had allowed him to continue in the post of Daftry. Even thereafter, had the respondents felt that the appointment of the applicant to the post of Daftry was not in accordance with the rules, they ought to have put the applicant on notice before referring him to the post of DK. But this was not done. By a simple letter dated 9.9.1991 the applicant was reverted to the post of Khalasi which resulted in not only reduction in rank but also reduction in his pay. This action of the respondent in our view is arbitrary and cannot be sustained.

5. We further find that the applicant has been allowed as Daftry to continue/for more than 7 years from 1984 and by virtue of his continuance for longer periods the applicant derives a vested right for continuance in the post and this cannot be taken away from him by issuing the impugned order. Further the accrued rights of the applicant are to be protected. Further transfer from non-ministerial to ministerial line cannot be termed as/very serious matter. Such things do happen in various departments. In this case we notice that the applicant was posted to the ministerial ^a ~~from~~ ^{Cadre} non-ministerial line after a due process of selection and he continued in the said post for 7 years. Under the given facts and circumstances the applicant cannot be reverted and the impugned action of the respondent is not only arbitrary but also violative of Art.14 of the Constitution. Therefore the applicant succeeds

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and the following orders are passed:-

6. The impugned order dated 9.9.1997 is quashed.
7. The interim order is made absolute.
8. The OA is allowed to the extent indicated above with no order as to costs.

S. Anickavasam
(S. ANICKAVASAM)
MEMBER (A)

16/5
(D.V.R.S.G. DATTAPREYULU)
MEMBER (J)

16.5.2000

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