

(AB)

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH  
LUCKNOW.

O.A.No.113/92

Buddhoo Lal                        :::::: Applicant

Vs.

Union of India &  
Others.                        :::::: Respondents.

Hon.Mr.Justice R.K.Verma, V.C.  
Hon.Mr. K. Obayya, A.M.

(By Hon.Mr. K. Obayya, A.M.)

The applicant who is an employee in the Northern Railway under Deputy Controller of Stores (D.C.S.), Lucknow, has approached this Tribunal raising a grievance against reversion order and prayed that the order dated 9-8-91, - Annexure 1 - reverting him from the post of clerk to the post of Senior Khalasi, be set aside.

2. The applicant joined the service of the Railways as Khalasi and in due course by order dated 1/8/82 he was promoted as Senior Khalasi. According to the applicant he appeared at Selection against  $33 \frac{1}{3} \%$  quota for promotion as Junior Clerk, and having been declared successful he was promoted as Junior Clerk on 25-1-85. The respondents, however, deny that the promotion was a regular promotion. The applicant was only allowed to officiate as clerk on temporary basis with no right to the post and liable to be reverted.

3. It is contended by the applicant that ever since his promotion, he was attending to duties regularly and his work was found to be satisfactory without any complaint. During the period 9-6-89 to 18-8-89 shortage of non-ferrous scrap received from T.M. work shop, Kanpur, was noticed. The applicant was in charge of receipt, safe keeping, sealing the wagons, etc. Disciplinary proceedings were initiated against the applicant for alleged carelessness, misconduct and want of devotion to duty, and violation of rule 31 of Railway service Conduct Rules 1966. Charge sheet dated 16/11/89 was served. On denial of the charges regular enquiry proceeded. The enquiry officer recorded a finding that the charge against the applicant is established. The disciplinary authority, accepting the report, passed punishment order dated 9/8/91 reverting the applicant to the post of Senior Khalasi, placing <sup>him</sup> at the bottom in the time scale (Rs.775-1025). The applicant has preferred an appeal on 4/9/91 against the punishment order, but the appeal was not decided.

4. The impugned order is assailed on several grounds that the shortage was due to the defective procedure of unloading at Kanpur and that the applicant could not have removed the material single-handedly and that there is discrimination, as no punishment was imposed on others responsible for handling and safe-keeping of the material.

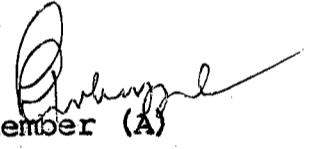
5. The respondents have opposed the case and in their reply it is pointed out that the applicant was

responsible for the shortage as he received the scrap from Kanpur, recorded the weightment and kept the scrap in the Wagon. Regarding the others who were not punished, it is stated that the applicant himself stated that he had no suspicion on the line Khalasis, hence the charge had to be dropped against them. It is also stated that the applicant was only a temporary clerk and his reversion is to his substantive post as Senior Khalasi.

6. The Counsels of the parties were heard. The learned Counsel for the applicant Shri J.P. Mathur urged that the impugned order cannot be sustained as the applicant who is appointed to a Class III post cannot be reverted to Class IV Post. His further submission was about discrimination, that others who were responsible along with the applicant for the safe keeping of the scrap were let free, while the applicant was singled out for punishment. The learned Counsel for the respondents Shri A.K. Chaturvedi justified the punishment order as in the enquiry the applicant himself stated that he had no suspicion on anybody-else. Being responsible for handling of the scrap, it was rightly held that the applicant was negligent of duties, misconduct and failed to follow the procedures laid down for safe-keeping of the material. After arguing the case at some length both the counsels were in favour of the appeal preferred by the applicant, against the order of the disciplinary authority to be disposed of by the appellate authority, and urged that suitable directions in that regard be issued.

(A9)

7. We have considered the matter. It is an admitted position that the appeal of the applicant preferred on 4/9/91 has not been disposed of by the appellate authority. Even otherwise, as laid down under section 20 of A.T.Act, 1985, available statutory remedies have to be availed before one approaches the Tribunal. For these reasons, we consider that the application can be disposed of by suitable directions and accordingly we direct the appellate authority to consider the pleas taken in the appeal preferred by the applicant and other relevant matters and dispose of the appeal within a period of 3 months from the date of receipt of a copy of this judgement. The application is disposed of as above with no order as to costs.

  
Member (A)

  
R.K. Varma  
Vice-Chairman.

Dated: 28th May, 1993, Lucknow.

(tgk)