

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
R.A.No. 46/06[in OA 308/06]

Patna, dated 15th January, 2007

CORAM: The Hon'ble Mr. Justice P.K.Sinha, VC

The Hon'ble Mr. S.N.P.N.Sinha, M[A]

Prem Nath Ram, son of Late Baij Nath Ram, Village & PO Jaguli, District Balia[UP], Ex-Station Manager, EC Railway, Shitalpur Railway Station, District Saran.

Applicant

By Advocate: Mr.M.P.Dixit

versus

1. The Union of India through the General Manager, EC Railway, Hajipur.
2. The GM[P], EC Railway, Hajipur.
3. The Divisional Railway Manager, EC Railway, Sonepur.
4. The Sr. DPO, EC Railway, Hajipur.
5. The Sr.DOM, EC Railway, Sonepur.

Respondents

By Advocate: Mr.A.K.Choudhary

ORDER

S.N.P.N.Sinha, M[A]:-

The present review application has been filed against an order of this Tribunal dated 29.8.2006 in OA 308/06. It has been submitted on the applicant's behalf that the order gives no reason for disagreeing or agreeing with the points raised in the OA. The applicant promoted after selection through written test and viva voce and required training cannot be reverted without show-cause notice as has been held by various Courts. The order of the Apex Court in the case of Ram Ujarey vs. Union of India [1999 SLJ SC 43] and that of Punjab and Haryana High Court in the case of Smt. Gurdip Kaur and others vs. State Haryana and others [1999 SLJ 261], of Rajasthan High Court in the case of Lal Mohamad vs. State of Rajasthan & others [2006 ATJ 298] and again of the Hon'ble Apex Court in the case of .A. Hameed vs. State of A.P. [2001 SCC 261] have been cited along with the decision of CAT, Chandigarh Bench in the case of Naresh Kumar vs. Sports Authority of India. The

General Manager himself directed the Divisional authority to issue notice to the affected employees. While reverting the applicant, no notice was issued and he has been directly reverted from the post of Station Manager to that of Pointsman. It is further submitted that an adverse order in an earlier OA 489/99 would not affect the applicant since no notice of the said case was served upon the applicant. The applicant got two successive promotions. Besides, there was no finding of the Tribunal on the merit of the case in OA 489/99, the entire issue was left upon the General Manager for passing speaking order. It was further submitted that the applicant, who was promoted after facing written test and viva voce as well as training, ~~he~~ cannot be asked to appear again for another test for the same post. Order of the Court in P.M.Balan & others vs. Union of India and others[2003 SLJ 96 CAT] was cited.

2. It was submitted on the respondents' behalf that promotion given to the applicant was null and void ab initio. Hence, any subsequent benefit arising out of it would be unjustified. In accordance with the direction of the Railway Board, the post of ASM to which the applicant was initially ~~was initially~~ appointed erroneously, is a selection post. There are two channels for promotion- 25 per cent from Signallers, 25 per cent from categories like Switchmen, Pointsmen, etc. and 50 per cent by direct recruitment. The mode prescribed was departmental test. It was further said that for selection posts, all the eligible optees need to be called. In this case, it was decided at the Zonal level that the said post was non-selection one. Only four persons were called for four posts out of 24 optees. The Zone did not have any authority to change the classification of the post or to narrow the zone of consideration. This Tribunal in OA 489/99 directed the General Manager, EC Railway to take a decision in the matter by passing a speaking order, in case the General Manager comes to the conclusion that the promotions have been given

erroneously, he shall also take action as per para 228[2] [c]& [d] of the Railway Manual. The General Manager, accordingly, considered the matter in detail and quashed the entire selection proceeding held from the stage of calling the optees and ordered that selection proceeding be started de novo so that a fair deal was meted out to all the optees. The corrective action in this regard would consist of withdrawal of promotion order of the candidates. That was to be done after issue of notice to the affected employees. He also directed that officers and staff responsible for these wrong promotions may be taken up for action under para 228 of the Railway Manual.

3. The record of OA 308/06 was perused. It was held by this Tribunal that the process of selection to the post of ASM, as adopted by the Division, was in itself wrong and the process of selection was implemented in a discriminatory and selective fashion by including only four candidates against four vacancies out of 24 optees. It would appear from the order sheet dated 29.8.06 that the citations made by the applicant were mentioned and taken note of in the said order. These are, however, not a part of the pleadings on record but were mentioned in course of argument. The relevant portion is quoted as follows:

“A number of citations have been made on behalf of the applicant, the first being Naresh Kumar¹ vs. Sports Authority of India in which it was held by the CAT, Chandigarh Bench that the reversion in that case from the post of Assistant Director to that of Personal Assistant was arbitrary since ad hoc appointments, if made as per rules, shall be counted towards seniority on regularisation and this cannot subsequently be undone as an administrative error. In another case of Ram Ujare vs. Union of India [Civil Appeal No.5718 of 1998] the Apex court in its

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judgment delivered on 13.11.1998 held that the appellant in that case was appointed as Khalasi and having acquired permanent status according to the service record and subsequently having been promoted as Skilled Fitter and then was reverted on the ground that the period of service rendered by him from 1964 to 1972 [period as Khalasi in earlier posting] could not be counted towards his seniority, so the reversion in this case was arbitrary. Similarly, Jharkhand High Court in WP[S] No.1437 of 2004 held that the termination of the writ petitioner after 15 years of his appointment as Chainman was wrong. In another case, the CAT, Chandigarh Bench in OA No.319 of 2004 in its order dated 23.11.2005 held that any amendment having retrospective operation and having effect of taking away the benefit already available to the employee under the existing rule is arbitrary. It was further held that where seniority is impugned on the ground that it has been drawn up on illegal and invalid grounds, any relief claimed is basically against the Government, so impleading of individual employee is not essential.”

4. In the present RA, the order of the apex Court dated 1.4.2003[2006 [L&S] 866 in Union of India & others vs. Jugal Kishore Samal] was cited on the applicant's behalf. The order is reproduced below:

“1. The above appeals have been filed against the orders of the Central Administrative Tribunals dated 4-5-1995 in the Main OA No.382 of 1990 as well as dated 20-3-1996 in RA No.16 of 1995 rejecting the application for review. The Tribunal below, on a reappreciation of the material placed on record and files stated to have been produced before it, has come to its own independent

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conclusion that till 1980 no adverse entry could be found in the service record, that subsequent to 1980 the entry was with reference to the respondent's punctuality only and the remarks between 1984-85 were only with reference to some unspecified throat trouble and lack of voice clarity. It also observed that proceedings in which some punishment came to be imposed have been set aside and that certain remarks about the respondent's attitude towards his superiors were all not sufficient to deny him the promotion under one time-bound promotion scheme when according to it what remained finally was only a censure. On that view of the matter, the Tribunal while declaring that the respondent was eligible for promotion to the next higher grade under the scheme noticed above from the year of its inception i.e. 1983, directed that the order so promoting him should be issued within thirty days with all consequential financial benefits arising from such promotion which shall be calculated and disbursed within sixty days thereafter. The appellants moved a review application bringing to the notice of the Tribunal that the assumption about the absence of positive or concrete adverse remarks or no justifying material to deny the promotion claimed by the respondent was not justified and in the review application the relevant instances about the adverse entry made in 1987 as well as during the period 1988-89 which were said to have been sustained even by the Appellate Authority were disclosed in support of the claim of the department. In spite of it the Tribunal without adverting to the correctness or otherwise of the said factual details and materials has summarily rejected the review application observing that there is no error apparent on the face of the record. Hence these appeals.

2. Mr Pramod Swarup, learned counsel for the appellants invited our attention to the contents of the review application to contend the relevant facts brought to the notice of the Tribunal were unjustifiably ignored and in the teeth of such materials on record the Tribunal could not have countenanced the claim for promotion and at any rate ought not have directed the promotion as has been done in this case by purporting to reassess and reappreciate the materials as if it were the Appellate Authority. Reliance has been placed by learned counsel for the appellants in support of his claim on a decision of this Court in State of T.N.v.S.Subramaniam wherein it has been indicated that the

Tribunal is not a court of appeal in exercising powers akin to the power of judicial review which alone has been invested with the Administrative Tribunals under the Administrative Tribunals Act, 1985 and that the Tribunal will have no power to reappreciate the materials to arrive at its own conclusion different from that of the competent departmental authority as if it is an Appellate Authority.

3. Per contra, the learned counsel for the respondent while trying to justify the directions of the Tribunal vehemently contended that the Tribunal was well within its rights in going through the materials and relevant records produced by the department before it and arrive at a proper conclusion, if it was found to its satisfaction that there had been no proper consideration of the materials available on record by the authority concerned. It was urged that the claim being of a benefit under a time-bound promotion scheme, in the absence of any concrete materials sufficient to deny promotion under the scheme, the Tribunal was well within its power to direct the grant of promotion from 1983. Reliance was also placed by the learned counsel for the respondent on the decision in U.P. SEB v. Kharak Singh. In our view, this decision does not help either the case of the petitioner or laid down any principle of law such as except that the learned Judges have declined to interfere with the order of the Tribunal directing promotion in the background of facts disclosed therein and noticed by the Tribunal that all the adverse remarks on the basis of which the case of the employee for promotion was denied were set aside and thereby justified the order of the Tribunal without adjudicating or declaring any general or particular proposition or principle of law. The decision next relied upon in Badrinath v. Govt. of T.N. In our view, centres around the peculiar and concrete facts noticed therein from which the Court was able to infer legal bias in the teeth of a specific plea of bias against the committee itself. As a matter of fact, even in the said judgment we find reference to the position of law that it is not the province of the court to promote any employee or officer making an assessment of its own or by issuing a mandamus to promote the officer, except in some rare situation. The learned Judges in the said decision found that the case presented before them fell within the category of 'rare situation', having regard to the patent illegalities noticed and legal bias which were said to have been

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substantiated, vitiating thereby the orders in that case. We do not find any such alarming factual position having been found even by the Tribunal except making an observation that the service record does not contain any substantial and subsisting adverse remarks to deny the respondent his promotion under the scheme which observation itself seems to be contrary to real facts disclosed from records. In our view it is this type of independent exercise undertaken to reappreciate and arrive at one's own conclusion by the Tribunal or courts that have been often frowned upon as not permissible in law. In this case, the Tribunal instead of squarely meeting and answering the grievances pointed out in the review petition about the subsisting remarks which remained on the record of the respondents, but overlooked by the Tribunal when the order in the main OA was passed has chosen to summarily reject the review application. The exercise undertaken by the Tribunal, both in passing order dated 4-5-1995 as also the manner of disposal of the review application, in our view, is seriously vitiated in law and against the well-settled norms or parameters laid down for such Tribunals in dealing with the order of the departmental authorities and cannot have our approval. The Tribunal, in our view, exceeded its permissible limits in straightaway ordering the promotion from the inception of the scheme in 1983. The Tribunal exceeded its permissible limits of powers in not only undertaking its own independent assessment and consideration of the claim for promotion as it affected it but in straightaway ordering that the promotion be accorded with retrospective effect and monetary benefits, without remitting the same for fresh consideration. The orders of the Tribunal dated 4-5-1995 and 20-3-1996 are hereby quashed."

5. It will appear from the above that the Apex Court made reference to the position of law in *Badrinah vs. Government of Tamil Nadu* decision that it is not the province of the Court to promote an employee or officer making an assessment of its own or by issuing a mandamus to promote the officer except in some rare situation. The Apex Court further observed that the exercise undertaken by the Tribunal both in the order on the OA and the RA was similarly vitiated in law as it exceeded its permissible limits of power in not only undertaking

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its own independent assessment and consideration of the claim for promotion but in straightway ordering for promotion to be accorded.

6. It is well settled that the power of review available to the Tribunal has a very limited scope. The provision under Section 114, read with Order 47 of the CPC [along with Rule 1] has been clearly spelt out in the judgment of the Apex Court in the case of Ajit Kumar Rath vs. State of Orissa and others [2000[2] SLJ 108] which is as follows:-

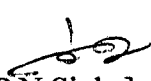
“The power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47. The power is not absolute and it is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”

7. In our order in the OA we have already come to a decision that since the very process of selection for promotion of the applicant and some others was vitiated, his promotion as well as subsequent promotions automatically stood vitiated and illegal. Taking other view on the ground that the applicant had worked for a considerable period on the promoted post and also received subsequent promotion would ^{be a} tantamount to approve an illegal selection procedure, as well would do injustice to all

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those who had to be associated in the selection procedure, being in the selection zone, who were not even called to appear in the test. In the same manner, the prayer that once he had qualified in the selection test, the applicant should not be subjected to another selection test also cannot be accepted, the initial selection process itself being illegal.

8. In view of the aforesaid facts and limitation of this Tribunal in reviewing its own order, as reproduced above in connection with the case of Ajit Kumar Rath, this application is devoid of merit and is dismissed as such.



[S.N.P.N. Sinha]
Member[A]
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[[P.K. Sinha]
Vice Chairman

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