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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Tr.67/88

Keshav Shankar Joshi,
Bodharam Bldg, R.No.14,
Shastri Nagar,
Sanmitra Housing Society,
Dombivli(West),
Dist.Thane 421 202.

.. Applicant

vs.

1. Union of India
2. The General Manager,
Central Railway,
Bombay V.T.

and two others. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.
2. Mr.V.G.Rege
Advocate for the
Respondents.

JUDGEMENT:

(Per U.C.Srivastava, Vice-Chairman)

Date: 23-8-1991

Writ Petition No.1964 of 1984

filed in the High Court of Judicature at Bombay
is transferred to this Tribunal and renumbered as
Tr.67/88. In it the applicant has prayed that the
order dated 7th November,1983 passed by the Chief
Personnel Officer(Mech.) reverting the applicant
from the post of Shop Superintendent to the post
of Chargeman 'A' be quashed and set aside; to issue
a Writ or Mandamus or a Writ in the nature of Mandamus
or any other appropriate Writ, order or direction
to the respondents 1 and 2 to withdraw and/or cancel
the order dated 7th November,1983 reverting the
applicant from the post of Shop Superintendent to
the post of Chargeman 'A'; issue appropriate order
or direction to respondents 1 and 2 to pay the
applicant arrears of salary being the difference

between the pay and allowances admissible to him in the post of Chargeman 'A' and pay and allowances admissible to him in the post of Shop Superintendent for the period from the date of his reversion till judgment.

2. The facts that emerge from the pleadings of the parties are as follows:

The applicant started his service as apprentice and after completion of his apprenticeship he was appointed as Chargeman 'C' in the grade of Rs.205-280 in wood trade. In February, 1966 he was promoted as Chargeman 'B' and in the year 1973 he was further promoted as Chargeman 'A'. On 2-2-1980 the applicant was appointed as Shop Superintendent. The respondents have stated that in order to fill up the vacant post as no person from the panel of Assistant Superintendent was available on 2-2-1980 the applicant was promoted as Shop Superintendent as a temporary measure. In the said order it was mentioned that the arrangement has been made in the exigencies of service purely as a temporary measure and will not confer on him prescriptive right for continued officiating in the grade or in the event of permanent/temporary vacancies occurring at later date or continuity in the present grade. He is liable to be reverted at any time with prior notice on the grounds of general unsuitability or if his/their working is reported upon adversely.

3. According to the respondents the applicant's performance as Shop Superintendent was not upto the mark. On 21-3-1980, 16-12-80, 11-3-81, 15-7-82 and 20-9-1983 warning letters were issued to ~~for~~ ended 31-3-81, 31-3-82, 31-3-83 and 31-3-84 him and ~~for~~ the year 1984 adverse remarks were entered in the C.R. and the same was communicated to the applicant. The respondent No.3 who originally belong^{ed} to this particular

department was sent on deputation to R.I.T.E.S. after his return was posted as Shop Superintendent reverting the applicant to the substantive post of Chargeman 'A' in the month of November, 1983 which post he continuously held till 4-5-1984 when he sought voluntary retirement. The next promotional post is Assistant Shop Superintendent from the post of Chargeman 'A' and thereafter Shop Superintendent. As ~~there was no~~ post of Asstt. Shop Superintendent in the trade of Machinist (Wood) is not available in Matunga workshop the applicant was straightway promoted to the post of Shop Superintendent on ad hoc basis. The applicant submitted representation against adverse remarks but the same was rejected and after rejection it was communicated to him on 23-7-1984 and 6-9-1984. The applicant did not submit any representation as has been alleged by him. On behalf of the applicant it was contended that the reversion is bad in law, violation of principle of natural justice and violation of article 309 of the Constitution of India and the respondents had no legal right to revert the applicant inasmuch as he worked as Shop Superintendent and absorbed and has been reverted on extraneous consideration.

4. It is to be noticed that after the repatriation of respondent No.3 the applicant was ~~repa**ri**at**~~ reverted, and he did not challenge the same. It is only when respondent No.4 has been posted who is junior to the applicant the applicant has challenged the reversion order. The applicant was appointed temporarily on adhoc basis. His reversion order has been not by way of punishment as ~~xxxx~~ such there is no question of applicability of Article 311(2) of the Constitution of India giving an opportunity to the applicant. On behalf of the applicant it was contended that mandatory requirement of para 212 of the Railway Establishment

Manual has been violated in reverting the applicant.

Under Rule 212 of the Indian Railway Establishment Manual, non selection posts have to be filled by the promotion of the senior most suitable railway servant., suitability being determined by the competent authority to fill the post on the basis of record of service and/ or a departmental test as may be considered necessary.

The rule also lays down that a senior employee may be passed over only if he has been declared unfit for holding the post. It is also stipulated that the declaration of unfitness should ordinarily be made some time before the promotion of the railway servant is considered. According to sub-rule (b) of Rule 212 whenever a senior railway servant is passed over in filling a non-selection post by promotion, the authority making the promotion shall record briefly the reasons for such supersession.

5. Learned counsel contended that applicant's post being non selection post whenever applicant is declared unfit he could have been passed over. The order of reversion does not indicate any reason as to why he was superseded. The counsel had also made reference to the Railway Board's letter dtd. 21.5.1956 which contended that after 18 months he should have been regularised. The said letter reads as follows:

"The Board, therefore, desire that with immediate effect the performance of every Railway servant officiating in a higher grade should be adjudged by a competent officer before the expiry of 12 months of total officiating service, and if the performance is not satisfactory either the Railway servant may be reverted on the ground unsuitability or he may be warned that his work is not quite satisfactory, but that he is being permitted to draw his increment in the expectation that his performance will improve during the next six months for which he will continue to be under observation. At the end of the extended period of

six months, i.e. of a total officiating service of 18 months, either the person should be declared suitable for retention in the grade or should be reverted because he is unsuitable. Any person who ~~xi~~ ~~xx~~ is permitted to continue to officiate beyond 18 months cannot in future be reverted for unsatisfactory work without following the procedure prescribed in the discipline and appeal rules.

The final assessment of the performance of each Railway servant officiating in higher grades at present for a total period of over 12 months should be made ~~within~~ within the next six months and action taken as indicated in the previous para, in respect of Railway servants officiating in higher grades for 18 months."

6. Learned counsel for the applicant contended that after 18 months the applicant should not have reverted and for reverting certain procedures should have been followed.

7. On behalf of the respondents it was contended that the applicant was issued warning from the very beginning and that his annual confidential record was also not good even though he was continued and he found unsuitable ultimately he had to be reverted and respondent No.4 was appointed in his place. So far as the ruling regarding 18 months is concerned the obviously the applicant's appointment was adhoc, temporary and applicant cannot claim benefit of the same. But in view of

8. But in view of the fact that notwithstanding the warning and bad ACR the applicant was allowed to continue and there appears to be no communication of reason in reverting him, as such the reversion order in this circumstance should not have passed. In this connection a reference is also invited to the Full Bench decision of the C.A.T. in Jetha Nand and others v. Union of India & Ors.

wherein it was held has been held that in connection with circular dtd. 9-6-1965 it was held that the same will only apply in the case of railway servants who was selected or empanelled for the said promotional post. In the said case the applicant was granted two opportunities to clear the selection post until then he will not be reverted.

9. In the instant case we are also of the view that the applicant should be given atleast two opportunities to improve and without improving he should not be reverted and until he is not given two opportunities he shall not be reverted and if reverted he should be placed back on the original position and the question of reversion should be considered after giving two more opportunities.

We are ~~const~~^{rained} to pass this order in view of the facts of this particular case though it has also been decided by the full Bench. The application is disposed of with this observation.



(M.Y.PRIOLKAR)
Member(A)



(U.C.SRIVASTAVA)
Vice-Chairman