

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1023 OF 1996.

Date of Decision: 15.01.1998.

Lal Bahadur Singh, Applicant.

Shri G. S. Walia, Advocate for
Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri V. S. Masurkar, Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. M. R. Kolhatkar, Member (A).

(1) To be referred to the Reporter or not? *NO*

(2) Whether it needs to be circulated to *NO*
other Benches of the Tribunal?

R. G. Vaidyanatha

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1023 OF 1996.

Dated this Thursday, the 15th day of January, 1998.

CORAM :

HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Lal Bahadur Singh R.,
Chargeman Grade-A,
Western Railway's Diesel,
Loco-Shed at Bandra,
Western Railway,
Mumbai - 400 050.

,.. Applicant

(By Advocate Shri G.S. Walia)

VERSUS

1. Union Of India through
The General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

... Respondents.

2. Divisional Railway Manager,
Western Railway,
Bombay Division,
Bombay Central,
Bombay - 400 008.

3. Divisional Mechanical Engg.
(Diesel),
Western Railway's
Diesel Loco-Shed,
Bandra,
Mumbai - 400 050.

(By Advocate Shri V.S. Masurkar)

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: ORAL ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed by the applicant challenging his reversion and for further consequential reliefs. The respondents have filed reply. We have heard the learned counsels appearing for the applicant and respondents.

2. Few facts that are necessary for the disposal of the O.A. are as follows :

The applicant joined the railway service on 15.01.1973. By order dated 29.10.1993 the applicant's promotion as Chargeman Grade-B was regularised and he was promoted as Assistant Electrical Foreman. From 1991 till 29.10.1993 the applicant was working on adhoc basis as Chargeman Grade-B. After promotion as Assistant Electrical Foreman, the applicant has been continuing to work with no complaints. It is alleged in the application that the applicant has now come to know that he is likely to be reverted but subsequently he has been reverted to the grade of Chargeman -'B' on adhoc basis by order dated 04.10.1996. The applicant is challenging the correctness and illegality of the order of reversion dated 04.10.1996. It is stated that this order is illegal and contrary to the principles of



natural justice. It is stated that the applicant's regularisation as Chargeman Grade-B vide order dated 29.10.1993 was as per the restructuring order by applying the modified selection procedure in an existing vacancy. Therefore, it is alleged, that as on 29.10.1993 the applicant was working on regular basis as Chargeman Grade 'B'. On these allegations, the applicant is challenging the legality of reversion order dated 04.10.1996 and wants consequential reliefs.

3. The respondents have filed a reply opposing the application. It is stated that the order dated 04.10.1996, so far as reversion is concerned, has become effective from the date of its issue. It is stated that the order of promotion dated 29.10.1993 was issued erroneously. According to the respondents, there was no vacancy of Chargeman Grade 'B' in the restructured post. Therefore, the applicant's promotion was adhoc from 1991 and even in 1993. Since the applicant was on adhoc promotion in the lower scale, he could not have been given another promotion on adhoc basis on 29.10.1993 and therefore, the order of promotion was erroneous and bad and accordingly, it

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has been cancelled by order dated 04.10.1993.

4. The short point for consideration is whether the impugned order of reversion dated 04.10.1990 is sustainable in law or not?

5. Admittedly, no show cause notice has been issued to the applicant on the question as to why the applicant should not be reverted. Therefore, there is violation of principles of natural justice. We do not want to say that in every case of reversion or in every case of administrative order principle of natural justice should be followed. It all depends upon the facts and circumstances of each case. Here is a case where the applicant was promoted in October 1993 and three years after working in the promotional post, he has been reverted. Reversion, apart from loss of monetary benefit, also amounts to humiliation, which entails further consequences, when a official has worked for three years in the higher post. Therefore, in the facts and circumstances of this case, we hold that the impugned order of reversion is in violation of principles of natural justice and is liable to be struck down. In the



impugned order dated 04.10.1996 the reasoning given for reverting the applicant is that he was holding the post of Chargeman Grade 'B' on adhoc basis and he is again promoted on adhoc basis as Assistant Electrical Foreman and this amounts to double adhoc promotion which is contrary to law and therefore, it was cancelled by the department. We are not prepared to appreciate the argument of the learned counsel for the respondents that applicant's post of Chargeman Grade-B was on adhoc basis on 29.10.1993. The order itself clearly says that the applicant's promotion as E.L.C. on adhoc basis is regularised with effect from 01.03.1993. Therefore, consequent upon restructuring, the applicant has been regularised in the post of E.L.C. with effect from 01.03.1993. The Learned Counsel for the respondents pointed out that there was no vacancy in the restructured post to be categorised as E.L.C. and hence he could not have been confirmed as per the restructuring order. The restructuring order clearly says that all existing vacancies and the restructured posts should be filled up by modified selection procedure. When the applicant was working on adhoc basis in the post of E.L.C. from 1991, how can it be said that there is no post of E.L.C. on 29.10.1993 ? What is more,

even in the reversion order dated 04.10.1996, the applicant is again continued in the post of E.L.C. but on adhoc basis. Therefore, two years prior to the restructuring order and the order of promotion dated 29.10.1993 and three years after that order, the applicant is continued in the post of E.L.C. Therefore, if there was no post of E.L.C., the applicant should have been reverted to the still lower post of Mistry but on the other hand, he is continued in the post of E.L.C. on adhoc basis. This clearly shows that there was post of E.L.C. right from 1991 and even on 01.04.1993 when the restructuring cadre came into force and it was in existence, his adhoc promotion was regularised on 29.10.1993. Therefore, the assumption made in the order of reversion dated 04.10.1996 that the applicant was holding the post of E.L.C. on adhoc basis cannot be accepted in view of the clear order dated 29.10.1993 stating that the applicant's post of E.L.C. has been regularised and there was a existing vacancy in which the applicant was working since 1991.

6. No doubt, in the impugned order there is a mention that one post of Assistant Electrical

Foreman is reduced. It is true that it is not shown as the ground for reversion, but the fact is mentioned in the impugned order. The Learned Counsel for the respondents also contended that when there is no post at all, the promotion of the applicant to the post of Assistant Electrical Foreman was erroneous and it was rightly cancelled. We do not want to express any opinion on this disputed fact. Since the impugned order of reversion is passed in violation of principles of natural justice and ^{that to} three years after the promotion of the applicant, we feel that the question should be left open and it is open to the respondents to issue show cause notice to the applicant on this point and after giving an opportunity to him of being heard, pass appropriate order according to law.

7. Another defect highlighted by the Learned Counsel for the applicant that the order of promotion was passed by the Divisional Railway Manager and the order of reversion is also passed by the Divisional Railway Manager and he submitted that this is contrary to the procedure prescribed in the Indian

Railway Establishment Manual. He invited our attention to para 228 which refers to cancellation of erroneous promotions. In para 228 (ii)(c) it is clearly provided that erroneous promotions should be cancelled by an authority higher than the appointing authority. Now, in the present case, the D.R.M. is the appointing authority who issued the promotion order dated 29.10.1993, then, even if the order is erroneous, it should be cancelled by an authority higher than the D.R.M., as mentioned in the rules. Our conclusion on this point is fortified by a judgement reported in 1973 SLJ 197 [Advid Bhu V/s. Delhi Administration & Others] when the Delhi High Court by interpreting identical rule ~~in fixation of seniority~~ held that the order of reversion issued by the appointing authority is illegal and it should be issued only by a higher authority.

8. Even though we have come to the conclusion, the order of reversion is bad, Rightly or wrongly, the order has been given effect to and the applicant has already been reverted. Now we are giving liberty to the respondents to pass fresh order according to law. Therefore, the question of reinstating the

applicant in the original promoted post does not arise. However, in the impugned order dated 04.10.1996 there is a direction that over payment made to the applicant shall be recovered immediately. However, by an interim order we have stayed this operation of the order regarding recovery of over-payment made to the applicant.

This is not a case where the applicant has been promoted due to fraud or due to his misconduct or misleading the department. It is nobody's case. According to the respondents, by mistake or otherwise, erroneous order of promotion is issued. Even if the order of promotion is liable to be set aside on the ground of erroneous promotion, when the applicant has already worked in a higher post, the direction regarding recovery is not sustainable in law; therefore, irrespective of the question of reversion, we hold that this direction in the impugned order for recovery of over-payment made to the applicant, requires to be quashed, particularly when the applicant has admittedly worked in the promoted post. However, we leave the question whether the applicant should be reverted or not to the department to decide after hearing the applicant.

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9. The Learned Counsel for the respondents made a grievance that though the Court has granted amendment, the amendment has not been carried out in the copy of the respondents. He pointed out that in his copy of the O.A. corresponding amendment has not been carried out but in the Court's ^{record} reference, the amendment has been carried out. The Learned Counsel for the applicant assures the Court that he will carry out necessary amendments in the copy of the O.A. given to the respondents or he will send an amended copy of the O.A. to the respondents within a week.

10. In the result, the O.A. is allowed in the following terms :-

(i) The order of reversion dated 04.10.1996 is quashed. It is hereby declared that the applicant was working as E.L.C.(Diesel) in the grade of Rs. 1400-2300 on adhoc basis and it came to be regularised by the order dated 29.10.1993. However, the question whether his promotion as Assistant Electrical Foreman (Diesel) was rightly made or erroneously made, is left

open. The respondents are directed to give show cause notice to the applicant on this point and after hearing the applicant, pass a speaking order either of confirming the promotion or reverting the applicant, as they deem fit.

- (ii) The direction of the respondents directing recovery of over payment to the applicant in the promoted post is hereby set aside. Even in case of reversion, the applicant will not be liable to refund any of the payments received by him in the higher post, where he has actually worked.
- (iii) It is open to the respondents to issue show cause notice and take appropriate action within a period of four months from the date of receipt of a copy of this order. If no such action is taken, then the applicant shall be reinstated in the original promoted post of Assistant Electrical Foreman (Diesel) on the expiry of four months from the date of receipt of the copy of this order.
- (iv) There will be no order as to costs.

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M.P. No. 308/97 no longer survives,
since we have passed the final order today and
accordingly disposed of.

Copy of this order be given to the
parties expeditiously.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

R.Vaidyanatha

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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(1)

CNETRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

C.P. 24/98 in
Original Application No.1023/96

Tribunal's order

Dated: 22.1.1999

Shri G.S.Walia, counsel for the applicant.

Shri V.S.Masurkar, counsel for the respondents.

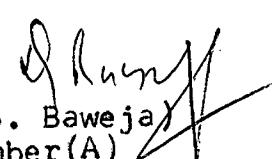
2. C.P. 24/98 has been filed by the applicant stating that the respondents have committed contempt of the order passed by the Tribunal dated 15.1.1998. The respondents have filed reply and have produced some documents.

3. After hearing both sides and perusal of the record we find that the respondents have not complied with the direction given by this Tribunal in the order dated 15.1.1998. Prima facie we find that the concerned authority has ignored the order of the Tribunal and his order may amount to contempt. This Tribunal has already given a direction that there were no two adhoc promotions and that the first promotion as ELC(Diesel) was regular promotion. In spite of the order, the concerned authority by order dated 12.2.1998 stated that both the promotions were adhoc and therefore the second adhoc promotion is not sustainable. The administration issued a second order dated 30.7.1998 in partial modification to the order dated 12.2.1998. In this order it is admitted that the first promotion is regularised with effect from 29.10.1998 as per the judgement of the Tribunal and it is further added that the order of reversion of the applicant from AEF(DL) still stands. This clearly shows that the respondents have not complied the order of the Tribunal.



4. We feel that in the facts and circumstances of the case, without initiating any action for contempt, an opportunity to be given to the respondents to implement the order of the Tribunal. We direct the competent authority to issue fresh show cause notice to the applicant on the question whether he should be reverted from the post of AEF(Diesel) as mentioned in the operative portion of the judgement dated 15.1.1998. After the applicant gives his reply, the competent authority to pass appropriate speaking order whether the promotion is to be confirmed or he should be reverted. We repeat that the competent authority to proceed on the basis that the applicant's first promotion as ELC(Diesel) was regularised with effect from 29.10.1998 as per the order of the Tribunal.

5. In the result, we direct the competent authority to issue show cause notice to the applicant and after the applicant gives his reply, then to pass an appropriate order within three months from the date of receipt of this order, in the light of the observations made above and earlier order of Tribunal dated 15.1.1998. C.P. 24/98 is disposed of accordingly. No costs.


(D.S. Bawejah)
Member(A)


(R.G. Vaidyanatha)
Vice Chairman