

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 53/2000

Date of Decision: 2nd March 2004

Shri Manish Ranjan

Applicant.

Shri R.P. Saxena.

Advocate for
Applicant.

Versus

Union of India and others

Respondent(s)

Shri V.S. Masurkar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N. Bahadur, Member (A)

Hon'ble Shri. S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? No
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No
- (3) Library. yes

J. Jain
(S.L. Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 53/2000

the 2nd day of March 2000

CORAM: Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Manish Ranjan
Assistant Traffic Controller
O/o Asstt. Operations Manager
Western Railway
Nandurbar (Maharashtra)

... Applicant.

By Advocate Shri R.P. Saxena,

V/s.

1. Union of India through
The Divisional Rail Manager
Western Railway,
Mumbai Central.
2. Senior Divisional
Operations Manager
Western Railway
Mumbai Central.
3. Assistant Operations Manager
Western Railway,
Nandurbar.

... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

¶ Per Shri S.L.Jain, Member (J) ¶

This is an application under Section 19 of the Administrative Tribunals Act 1985 to set aside the order dated 1.11.1999 alongwith costs.

2. The applicant joined Western Railway as Assistant Station Master on 4.3.1996. For promotion to the post of Assistant Traffic Controller (Rs. 5500 - 9000) an examination was conducted on 7.11.1998, which was followed by a viva-voce test on 4.4.1999. As a result of Selection Board held on 5.4.1999, a panel for promotion to the said post was published vide order dated 12.4.1999, which includes the name of

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the applicant at serial No.9. He was promoted to the said post vide order dated 28.4.1999. He was relieved on 5.5.1999 and resumed the charge of the promoted post on the same day. On 1.11.1999 he received an impugned order by which he had been reverted to the post of ASM - Chlk scale of Rs. 4500 - 7000 under SS - NDB. He submitted a representation on 20.11.1999 and 22.12.1999 which are not replied. The ground for reversion was he was undergoing a punishment of withholding of next increment for a period of one year without future effect.

3. The grievance of the applicant is that when he was promoted during the currency of withholding of increment for a period of one year without future effect, he cannot be reverted in absence of provision in the Rules. Instructions contained in Railway Board letter/circular dated 4.3.1965 is applicable in his case. The impugned order is against the Railway Board instruction dated 4.3.1965 which cannot be acted upon as capricious and unwarranted, no notice was served on him before reversion which is the requirement for natural justice.

4. The learned counsel for the applicant relied on the Board's confidential letter No. E(D & A) 64 RG 6 - 7 dated 4.3.1965 which was addressed to the General Managers, All Indian Railways and others, which specify that " In cases where such irregular promotions come to notice, no specific action as such need to be taken against the employee so irregularly promoted, but suitable entries should be made in their Service Registers incorporating

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the penalty ordered to be imposed but not actually undergone". It is true that it is in respect of the promotion of the employees who were promoted while undergoing the penalty. A Perusal of the same also makes it clear that when an employee is penalised he should not be promoted, if the penalty has already become effective. This letter was for the actions already undertaken in respect of promotion, it has no future effect. Further it is not the Railway Board Circular but only a confidential letter which has no force of law. Hence the applicant is not entitled to get any relief or agitate his right in accordance with law.

5. The respondents have explained that the case is of mistake - the promotion was ordered by the Head quarters, while the punishment was imposed at Nandurbar, was not based on service record of the applicant. Hence this mistake occurred. The facts appears to be true one.

6. The learned counsel for the respondents relied on 1998 SCC (L&S) 1121 State of M.P. and another V/s. I.A. Qureshi and the Boards instruction regarding non-eligibility of promotion during currency of punishment and argued that even during cesure which is a minor penalty, a person cannot be promoted while the applicant was undergoing the penalty of withholding of increment was not entitled for promotion. We agree to the said contention of the learned counsel for the respondents, but in the present case the question is whether the promotion which was ordered can be called for by the impugned order and whether the applicant can be promoted or nor?

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7. The fact is that the applicant has joined the promotional post on 5.5.1999 and the impugned order was served on 1.11.1999.

8. The learned counsel for the applicant relied on 1999 (1) SC SLJ 381 Ram Ujarey V/s. Union of India and others, for the proposition that if no opportunity to show case is given, the impugned order of reversion is liable to be quashed. He further relied on ATR 1986 CAT 245 K. Manappa V/s. Central Board of Excise and Customs and another for the said proposition and argued that if a person is promoted and occupy the said chair he acquires a right to hold certain post. Hence reversion from such post without giving him an opportunity to show case is liable to be quashed.

9. The learned counsel for the applicant relied on JT 1994 (5) SC 253 Bhagwan Shukla V/s. Union of India and others for the proposition that reduction of pay of employee without his being given opportunity of being heard is violation of principle of natural justice.

10. The learned counsel for the applicant relied on 1995 (2) AISLJ 192 O.P. Gupta V/s. Council for Scientific and Industrial Research decided by CAT Chandigarh, which laid down the proposition that if a promotion is given after conscious decision cannot be treated as erroneous and cannot be withdrawn.

11. In the present case the respondents did not issue any notice to the applicant to show cause for his reversion which was required in view of the above proposition of law laid down by the Apex Court.

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12. The respondents may issue show cause notice to the applicant and decide the matter in accordance with law. The learned counsel for the respondents states that the applicant was promoted to the promotional post with effect from 1.3.1999.

13. In the result the OA deserves to be allowed and is allowed, the respondents are entitled to issue show cause notice to the applicant and decide the matter in accordance with law. In the result order dated 1.11.1999 Exhibit (A) issued by Western Railway vide No. E/T/839/3/1 Vol. VII O.O. No. E/T/I - 102 is quashed and set aside. No order as to costs.

S.L.J.
(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

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