

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

PRE DELIVERY JUDGEMENT IN OA.NO. 635/2001 -

Hon'ble Vice Chairman / Member (J) /

Member (A) may kindly see the above judgement for
approval / signature.

A. - .

~~V.C.~~ / Member (J) / Member (A)

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

I agree

Hon'ble Member (A)

Sh

mrj.

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 635/2001

Date of Decision : 23-04-2003

C.S.Satheesan Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.S.Sanghvi, Member (J)

The Hon'ble Shri Shankar Prasad, Member (A)

- (i) To be referred to the reporter or not ? ~
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ↗

(A.S.SANGHVI)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.635/2001

Dated this the 23rd day of April 2003.

CORAM : Hon'ble Shri A.S.Sanghvi, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

C.S.Satheesan,
Electrician Gr-I (Group C),
under Asstt.Elec.Engineer
(Maint.), Central Railway,
Kalyan.

...Applicant

By Advocate Shri S.N.Pillai

vs.

1. Union of India
through the General Manager,
Central Railway, C.S.T.,
Mumbai.

2. The Divisional Railway Manager,
Central Railway, Mumbai Division,
CST, Mumbai.

3. Shri Sambhaji K.Ghorpade,
Wireman Gr.II in the O/O
AEE (M) Kalyan,
Central Railway, Kalyan.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri A.S.Sanghvi, Member (J)}

The applicant who was promoted as Electrician Gr.I in the scale of Rs.4500-7000 is aggrieved by the subsequent reversion order dated 16.8.2001 reverting him to the post of Painter Gr.II in the scale of Rs.4000-6000. His grievance is that he has been

illegally and unreasonably reverted to the post of Electrician Gr.II. His first contention is that he has not been given any opportunity of being heard prior to the issuance of the reversion order. He also claims that he is senior to Shri Sambhaji K. Ghorpade, Respondent No.3 and inspite of his being senior, his seniority is also altered to his disadvantage without assigning any reason and without giving him any opportunity of being heard. According to him, by the impugned order dated 16.8.2001 while the Respondent No.3 was promoted to Electrician Gr.I, he has been reverted to the post of Electrician Gr.II. According to him, his date of appointment to the post of Painter is 8.1.1997 while that of Respondent No.3 Shri Ghorpade's is 27.7.1997. He was selected and appointed to the post of Painter Gr.II on 8.1.1997 and had continued to work on that post till he was appointed on the post of Electrician Gr.I. He was never intimated about his reversion from Painter Gr.II to Gr.III w.e.f. 10.2.1997 and subsequent re-promotion to Gr.II w.e.f. 22.8.1997. He was also paid full pay and allowances applicable to the post of Painter Gr.II during the aforesaid period of reversion from 10.2.1997 to 22.8.1997. His date of appointment to the post of Painter Gr.II therefore requires to be reckoned as 8.1.1997 and not 22.8.1997. The respondents, according to the applicant, have subsequently modified the panel dated 18.4.2000 vide order dated 14.8.2001 and reverted him to the post of Electrician Gr.II without affording any opportunity of being heard prior to his reversion. According to the applicant, the panel was already operated and he was given promotion to the post of Electrician Gr.I and hence he should not

have been reverted without assigning any reason. He has, therefore, prayed for quashing and setting aside the order dated 16.8.2001 and restoring his promotion to the post of Electrician Gr.I with all consequential benefits.

2. The respondents in their reply have contended inter-alia that the applicant was reverted as Painter Gr.III from Painter Gr.II in the year 1997 as his promotion to the post of Painter Gr.II was found to be erroneous. According to them, the Respondent No.3 was senior to the applicant as he was appointed on 30.12.1975 while the applicant was appointed on 18.11.1986. The Respondent No.3 was appointed as Painter Gr.III on 8.1.1992 while the applicant was appointed on 13.9.1993. The applicant was, however, promoted as Painter Gr.II by order dated 8.1.1997 and he had taken over the charge of the promoted post on 8.1.1997. However, when it was found that the seniority of the Respondent No.3 was ignored by mistake and he had been overlooked and superseded without any reason though he had also passed the trade test, the applicant was reverted and the Respondent No.3 was promoted vide order dated 10.2.1997. The respondents have denied that applicant was not informed about his reversion order. They have also denied that he was paid the salary of Gr.II during this period. They have maintained that Respondent No.3 was senior to the applicant all throughout and since this error had crept in while preparing the panel for promotion to Grade I, the panel was also rectified and the appointment by way of promotion to Gr.I of the applicant was also cancelled and he was reverted

to the post of Painter Gr.II. The respondents have maintained that the promotion given to the applicant was by mistake and to rectify that mistake, the necessary orders were passed reverting the applicant to the post of Gr.II and promoting the Respondent No.3 to the post of Gr.I. According to them, there was no need to hear the applicant prior to his reversion as this was purely an administrative mistake which could have been corrected at any time. They have prayed that the OA. be dismissed with cost.

3. We have heard the learned counsel for both the parties and carefully considered the rival contentions.

4. It is an uncontested position that the applicant was empanelled for the post of Electrician Gr.I and while operating the panel he was also given the promotion to the post of Electrician Gr.I. The respondents have, however, reverted him by a composite order of promotion to Respondent No.3 and reversion of the applicant on 16.8.2001. It does appear from the facts narrated in the reply as well as from record that due to some inadvertance the official respondents had ignored the seniority of Respondent No.3 and on account of overlooking of the seniority and eligibility of Respondent No.3 for further promotion, the applicant had come to be promoted. It appears that right from 1997 this error had continued though in 1997 the respondents maintained that they had reverted the applicant to the post of Painter Gr.III and given promotion to Respondent No.3 to the post

of Painter Gr.II. It can not be disputed that Respondent No.3 having joined the service much prior to the applicant is senior to the applicant. The Respondent No.3 had come to be promoted to the semi-skilled grade on 1.5.1987 while the applicant was promoted only on 10.9.1992. The Respondent No.3 had been promoted to semi-skilled Gr.III on 8.1.1992 while the applicant had come to be promoted on 13.9.1993. For promotion to the skilled Gr.II the applicant was promoted vide order dated 10.10.1996 and he took over the charge on promotion on 8.1.1997. The Respondent No.3 had also cleared the Trade Test for the said post but some how the administration had overlooked his seniority and superseded him without any reason. It is the say of the respondents that realising this mistake committed by the administration an Office Note on 24.1.1997 was put up and ultimately orders were passed reverting the applicant to the post of Painter Gr.III and promoting the Respondent No.3 to the post of Painter Gr.II. The applicant, according to the respondents, stood reverted w.e.f. 10.2.1997. The applicant has, however, disputed this position. He has contended that he has never served with any order of reversion and he was also not physically reverted from the post of Painter Gr.II. He has maintained that he was paid the salary of Painter Gr.II. He has in fact tried to challenge that order on the ground that the same was never made known to him and the same was never implemented.

5. The respondents have contended that the applicant can not agitate his reversion in the year 1997 by way of this OA. in the year 2001. According to them, the issue is barred by limitation and the applicant having failed to agitate this question within the period of limitation, the same cannot be allowed to be raised in this OA. Apart from the fact that the issue is not open for agitation in this OA., we find that the relief prayed by the applicant in this OA. is not against his reversion in the year 1997 but against the reversion vide order dated 16.8.2001. We, therefore, do not deem it fit to enter into the question of his reversion in the year 1997.

6. So far as the question of reversion of the applicant vide order dated 16.8.2001 is concerned, there is no denial of the fact that no show cause notice was given to the applicant prior to the issuance of the impugned order. Shri Dhawan, learned counsel for the respondents submitted that there was no need for issuance of the show cause notice as applicant's promotion was erroneous and to rectify the erroneous promotion of the applicant and give justice to Respondent No.3, the impugned order was passed. According to him, even if the show cause notice had been given, the result would have been the same and therefore the impugned order is not required to be interfered with. We are unable to appreciate the submissions made by Shri Dhawan. When the applicant was promoted after his empanelment in the select list, a right was created in his favour to hold the promotional post. When that right was sought to be snatched away, the

principle of natural justice required that he should first be heard and only after hearing him necessary orders may be passed. In the case of Ram Ujarey vs. Union of India reported in 1999 (1) SCC 685 as well as in the case of N.K. Durga Devi vs. Commissioner of Commercial Taxes, Hyderabad & Ors. - 1997 (11) SCC 91 and in the case of Karnah Singh vs. State of Punjab & Anr. 1994 Supp (3) SCC 724, the Supreme Court has in unequivocal terms laid down that in the absence of opportunity of being heard afforded to the appellants therein, the order of reversion passed against them is bad. In the case of Ram Ujarey, the applicant was given two promotions on passing Trade Test and was reverted on the ground that he got promotion because of wrong seniority. No opportunity of show cause was given to him. The Supreme Court held that the reversion was bad. It was observed by the Supreme Court that the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade test, could not have been legally reverted two steps below and brought back to the post of Khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and therefore, promotion order would be cancelled. In a situation of this nature, it was not open to respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him. In the case of N.K.Durga Devi (supra) the reversion

of promotee was ordered and notional seniority was granted to a junior. The Supreme Court held that the said order of appellant's reversion was bad. in the case of Karnah Singh also the Supreme Court has laid down that in the absence of any finding against the applicant and in the absence of not affording opportunity, the reversion was bad. Recently in the case of Jaswant Singh & Ors. vs. State of M.P. & Ors. - 2002 SCC (L&S) 1128, the Supreme Court while dealing with a case of cancellation of appointment without affording any opportunity of hearing to the appellant held that the order of cancellation was bad. The Supreme Court held that the principle of natural justice was not observed.

7. These decisions are squarely attracted to the facts of the instant case. Even if the applicant was not entitled to be promoted, he could not have been reverted from the post of Electrician Gr.I by the respondents without affording an opportunity of being heard to him. The decision that the applicant was not senior and was not entitled to be empanelled and as such not entitled to be promoted was clearly an unilateral decision on the part of the respondents. Since the decision and the subsequent action to issue the order of reversion to the applicant has violated the principle of natural justice, the same deserves to be quashed and set aside. To that extent, we allow this OA. and quash and set aside the order dated 16.8.2001 qua the applicant and direct the respondents to restore him as Electrician Gr.I. It will be open to the respondents to take any action they deem fit after affording an opportunity of show cause

as to why he should not be reverted so far his promotion to the post of Electrician Gr.I is concerned. The applicant will be entitled to all the consequential benefits of the restoration to the post of Electrician Gr.I. The OA. stands disposed of with this direction. No order as to costs.

Shankar Prasad

(SHANKAR PRASAD)

MEMBER (A)

A. S. Sanghvi

(A. S. SANGHVI)

MEMBER (J)

mrj.