

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 11th DAY OF MAY, 1987

Present : Hon'ble Shri Ch.RAMAKRISHNA RAO

MEMBER (J)

Hon'ble Shri L.H.A. REGD

MEMBER(A)

APPLICATION No.1844/86(F)

J.Francis,
Works-mate, Office of the
Executive Engineer,
Dn.Scheme, Southern Railways,
Bangalore City.

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APPLICANT

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The Divisional Personnel Officer,
Dn. Office, Southern Railway,
Bangalore City.

The Chief Personnel Officer,
H.Qrs. Office,
Southern Railway,
Madras - 3.

The Senior Divisional Engineer,
Southern Railway,
Bangalore City. ..

RESPONDENTS

(Sri M.Srirangaiah ... Advocate)

This application has come up before the court today.

Hon'ble Shri L.H.A. Rego, Member(A) made the following :

ORDER

In this fresh application filed under Section 19 of the Administrative Tribunals Act 1985, the applicant has challenged the impugned order dt.11.11.1986(Annexure H) passed by Respondent (R2) terminating his present cadre as also the other impugned order dt.14.11.1986 (Annexure-J) passed by R1 reverting him to his substantive grade as Caretaker. The applicant has further prayed, that the respondents be directed to regularise him as Works Mate, as he was continuing in that post, for more than 4 years and to grant him such other relief, as deemed just and expedient ^{4R} in the circumstances of the case.

2. The factual background in so far as it is relevant to the questions to be decided in this case, is as follows. The applicant was initially engaged as a Casual Labourer in the Southern Railway in 1972 and was later absorbed as a Caretaker w.e.f.29.7.1980 in the grade of Rs.196-232. He was thereafter promoted as Progress Chaser, on an ad hoc basis, in the grade of Rs.260-400, w.e.f.13.6.1981 according to Annexure-A.

3. According to the order passed by R1 on 2.11.1982 (Annexure-B), the applicant was however promoted from the post of Progress Chaser(ad hoc), in the grade of Rs.260-400 to that of Works Mate in the grade of Rs.380-560, purely on an ad hoc basis. The applicant states, that he has since been working continuously ⁴ in this post and refers to three certificates awarded to him ⁱⁿ 1982 and 1986 for meritorious service.(Annexures C,C1 and C2).

4. In the year 1983, applications were invited from volunteers for the post of Works Maistry, in the grade of Rs.380-560 in response to which, the applicant is said to have submitted his application on 13.4.1983(Annexure D) in the prescribed pro-forma. The applicant however was not called for the interview, but was continued as Works Maistry, on an ad hoc basis.

5. The respondents state, that applications as above, were invited for the post of Works Masitry (also known as Works Mate) in the grade of Rs.380-560, only from Class III Artisans and Ballast Train Checkers, as other categories of staff such as, Care-takers from the Engineering Branch were not eligible. Accordingly, the applicant who was holding the substantive post of Caretaker, was not considered for selection, to the post of Works Maistry.

6. The applicant states, that some of the persons (24 in number) who were working as Work Maistries in other Divisions, on an ad hoc basis, have been regularised on 30.9.1983

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according to Annexure E. He therefore requested the respondents, through a written representation, through R3, on 22.1.1986, to regularise his services as Works Maistry similarly. R3 is said to have recommended this request of the applicant on 25.4.1986 (Annexure G) but his case was not considered favourably, even though he had continued in the post of Works Maistry, for over 4 years. By his impugned order dated 11.11.1986 (Annexure H), R2, terminated with immediate effect, the ad hoc promotion of the applicant to the post of Works Maistry, as it was irregular, and contrary to the avenue chart. Pursuant to this order, R1 by his impugned order dt. 14.11.1986 (Annexure J), reverted the applicant from his ad hoc appointment, in the post of Works Mate, to his substantive grade as Caretaker, with immediate effect.

7. The applicant submits, that despite the above impugned orders, he is continuing in the post of Works Mate. But aggrieved by the said orders, he has approached this Tribunal for redress.

8. The learned counsel for the applicant contends, that his client having continued in the post of Works Mate for over 4 years, has acquired a right, as to merit consideration of his case, for regularisation in that post and therefore, he should not have been reverted; that he had served meritoriously in this post, as borne out by the certificates awarded to him, which should have been taken into account, so as not to revert him; that it was discriminatory and violative of Article 14 of the Constitution, that while he was reverted, persons in other Divisions, in a similar situation like him, have been regularised; that having served for more than 4 years in the post of Works Maistry, he could not have been reverted, without prior notice, which is opposed to the principles of natural justice.

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9. The learned counsel for the respondents sought to rebut each of these contentions on the grounds, that the applicant was not considered for regularisation in the post of Works Maistry, as he held a substantive post of Caretaker, which was not in the feeder channel for promotion, to the post of Work Maistry; that as the ad hoc promotion of the applicant, to the post of Works Maistry was irregular on this account, the applicant was reverted to his substantive cadre, according to Annexure I; that the normal avenue of promotion was from the posts of Gangmen / Watchmen/Pumpers/Gatemen/Gatekeepers/Trolleymen to Keymen to Gangmates and thence to the post in the post of Works Maistry; and that ad hoc promotion, granted to the applicant in the post of Works Maistry, does not confer a right on the applicant, for regularisation in that post.

10. As for the assertion of the applicant, that he was still continuing in the post of Works Maistry, in spite of the above two impugned orders, counsel for the respondent pointed out, that the applicant proceeded on leave, w.e.f. 14.11.1986 i.e., from the very date, he was reverted and has not reported for duty to date, on grounds of illness.

11. As regards the contention of the applicant, that a number of persons in other Divisions, similarly circumstanced like him, have been regularised in the post of Works Maistry, counsel for the respondents, repudiated the same, stating that R2 has on 31.10.1986, ^{re}cancelled his earlier order dt. 30-9-1983 (Annexure E), as is seen from his letter dt. 11.11.1986 (Annexure I).

12. We have duly examined the rival contentions and the record placed before us. It is apparent, that the applicant was appointed as Works Maistry, purely on an ad hoc basis, which did not confer on him any right for regularisation. When a person

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is appointed to a higher post in an officiating capacity, he does not acquire any legal right to hold that post, for any period whatsoever. Accordingly there is no "reduction in rank", within the meaning of Article 311(2) of the Constitution, if he is merely reverted to his substantive post, as held in PARSHOTTAM LAL DHINGRA VS UNION OF INDIA A 1958 SC 36. The order of reversion of the applicant to his substantive post, has not resulted in penal consequences to him. The post of Works Maistry, was not in the avenue chart of promotion(feeder channel) from that of Caretaker, which post, the applicant held in a substantive capacity in his parent cadre. These two cadres were thus not the same and were not interchangeable.

13. We must however express our surprise, as to how R2 could be so remiss, in regularising on 30.9.1983(Annexure E) as many as 24 persons, in the post of Works Maistry, similarly circumstanced as the applicant, even though the cadres were different and in rectifying the mistake as long as after three years. We cannot but depurate such negligence on the part of R2, leading to avoidable litigation as in this case.

14. In the light of our discussion above, we find that the application is devoid of merit and we therefore dismiss the same. No order as to costs.

Under signature
1.5.87
MEMBER (J)

Under signature
1.5.87
MEMBER (A)

AM.

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 15-7-87

Review Application No. 90/87 /86()
In Application No. 1844/86(F)

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Applicant

J.Francis V/s. Divl. Personnel Officer, S.Rly., B'lere & ors.

To

1. Sri.J.Francis,
Work-mate,
Office of the Executive Engineer,
Dn. Scheme,
Southern Railways,
Bangalore City.
2. Sri.K.Sridhar, Advocate,
No.36, 'Vagdevi',
Shankarapark,
B'lere- 4.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN

Review APPLICATION NO. 90/87

Please find enclosed herewith the copy of the Order/~~146XXXXX~~
passed by this Tribunal in the above said Application on 10-7-87.

Encl : as above.

H. Lee
SECTION OFFICER
(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 10TH DAY OF JULY, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri L.H.A. Rego, Member (A)

REVIEW APPLICATION NO. 90/1987

Shri J. Francis,
Work-mate, Office of the
Executive Engineer,
Dn. Scheme, Southern Railways,
Bangalore City.

..... Applicant

(Shri K. Sridhar, Advocate)

v.

1. The Divisional Personnel Officer,
Dn. Office, Southern Railway,
Bangalore City.

2. The Chief Personnel Officer,
Head Quarters Office,
Southern Railway,
Madras-3.

3. The Sr. Divisional Engineer,
Southern Railway,
Bangalore City.

..... Respondents.

This application having come up for hearing to-day,
Vice-Chairman made the following:

O R D E R

In this Review Application made under Section 22(3)(f) of the Administrative Tribunals Act, the applicant has sought for a review of an order made by a Division Bench of this Tribunal consisting of one of us (Shri L.H.A. Rego Member (A) and Hon'ble Shri Ch. Ramakrishna Rao, Member (J) dismissing his application No.1844/86. In that application, the applicant had challenged his reversion from the post of Works Meistry to

the post of Caretaker. On a detailed examination of all the contentions urged by the applicant, the Bench had rejected every one of them. But shri K. Sridhar, learned counsel for the applicant contends that every one of them were erroneous and justifies a review.

2. We find that in making this Review Application there is a delay of 30 days. On this short ground itself this application is liable to be rejected. But we do not propose to do so, and proceed to examine the case on merits.

3. Shri Sridhar, is really asking us to re-examine the order as if we are a court of appeal. In a review this Tribunal cannot reexamine its order as a court of appeal and come to a different conclusion. On any view this Review Application is liable to be rejected. We, therefore, reject this Review Application at the admission stage, without notice to the Respondents.

Sd —

Sd —

Vice-Chairman 10/7/87

Member (A) 10-7-987

"True copy"

bsv/Mrv.

Hari
SECTION OFFICER (D)
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE