

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE SECOND DAY OF FEBRUARY, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri L.H.A.Rege Member(AM)

APPLICATION No.1500/86(T)

K.Keragu Naik,
Chief Clerk, Senior D.O.'S Office,
Southern Railways, Mysore.

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APPLICANT

Vs.

1. The General Manager,
S Southern Railway,
Park Town,
Madras - 3.

2. Chief Personnel Officer,
Southern Railway,
Park Town, Madras.

3. The Divisional Personnel Officer,
Southern Railway, Madras.

Respondents

(Shri. A.N.Venugopal & Shri.M.Sreerangaiah ... Advocates)

This application has come up before the court today.

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

D R D E R

In this application transferred under Sec.29 of the Administrative Tribunals Act, 1985, the prayer is, that the order dated 9.7.1985(Annexure-J) passed by the second respondent, repatriating the applicant to his parent Division and the order dated 12.7.1985(Annexure-K) passed by the third respondent, reverting him to the post of Head Clerk in his parent Division, be quashed; that the applicant be continued in the post of Chief Clerk; that the respondents be directed to include his name in the list, for consideration for the restructured posts

of Chief Clerk and that he be granted all consequential benefits.

2. The salient facts giving rise to this application are as follows: The applicant who belongs to the scheduled tribe was selected for appointment as Office Clerk, on 9.12.1981 (Annexure-A), in the pay scale of Rs.260-400 and was posted in that capacity with effect from 10.12.1981 at Mangalore Station, in Palghat Division of the Southern Railway. He was promoted as Senior Clerk in the pay scale of Rs.330-560, with effect from 20.2.1982 and later, on 27.1.1983, as Head Clerk, in the pay scale of Rs.425-700 against the quota reserved for the scheduled tribes.

3. On 27.7.1983, ^{as was} he among others, directed by the third respondent(Annexure-B), to be in readiness, to appear before the Selection Board, for selection to the post of Chief Clerk, in the pay scale of Rs.550-750 in the Transportation Branch. The Selection Board met on 8.2.1984 and 13.2.1984 but the applicant who appeared before the Board, did not qualify himself to be empanelled for selection to the post of Chief Clerk. However, in accordance with the instructions contained in letter dated 31.8.1984 of the Railway Board(Annexure-I), and in the communication dated 3.3.1984, from the third respondent (Annexure II), the applicant was considered for promotion as ad hoc as Chief Clerk, Operating Branch, against the reserved quota. Pursuant thereto, the second respondent promoted the applicant as Chief Clerk on an ad hoc basis and posted him to the Mysore Railway Division on 21.3.1984(Annexure-E). The applicant resumed duty in this post on 24.4.1984. It was clearly stated in the said Annexure-E, that the Selection Board had recommended the applicant for promotion to the post of

Chief Clerk ad hoc, for a period of six months, in accordance with the instructions in the afermentioned letter dated 31.8.1984 of the Railway Board (Annexure-I) and that his performance would be reviewed on expiry of the trial period of six months.

4. On expiry of the said trial period, a report in regard to the performance of the applicant, was called from the Senior Divisional Operating Superintendent, Mysore (SDOS, for short) under whom the applicant was working. The SDOS commented adversely on him in the said report, stating that he was unfit to hold the post of Chief Clerk and therefore, proposed his reversion and repatriation to his parent Division (Annexure-III). However, the applicant was given a further opportunity, by the SDOS, to show improvement, after communicating to him on 18.12.1984, (Annexure-IV) that his performance hitherto, was far from satisfactory and that he would be given the benefit of extra training and coaching, to enable him to better his performance. It was also made explicit to him therein, that his continuance or otherwise in the post of Chief Clerk, would depend on his performance for the next period of 6 months from 26.11.1984, on expiry of which, a further report on the performance of the applicant was called from the SDOS, who submitted the same on 18.5.1985 (Annexure-P). The said report revealed, that despite coaching and special efforts, the applicant had not shown improvement and that he had not come upto the requisite standard, to be considered fit to discharge his responsibility in the post of Chief Clerk.

5. Taking this assessment into account, the secend

respondent, after seeking approval of the first respondent issued orders on 9.7.1985(Annexure-I), reverting the applicant to the post of Head Clerk, in the pay scale of Rs.425-700 and repatriating him to his parent Division. The applicant was also informed, that he was passed over, on account of his unsatisfactory performances, for consideration for the restructured posts of Chief Clerks. The applicant accordingly was relieved from the post of Chief Clerk on 2.9.1985 afternoon by the SDTS/MYS(Annexure-VII).with instructions to report for duty to the Sr.DTS(O) PGT. Aggrieved by this, the applicant filed a writ petition before the High Court of Judicature, Karnataka, in 1985, which has since been transferred to this Bench and is the subject matter before us.

6. The main grounds urged by the applicant are, that the principles of natural justice have been violated as he was reverted without affording him an opportunity; that his reversion is unlawful and is violative of Articles 14, 16 and 311(2) of the Constitution of India, as no enquiry was held before his reversion; that the reversion attaches a stigma to him and is penal in nature, since it is based on his unsatisfactory performance; that he was granted annual increment in the post of Chief Clerk which implied that his performance in that post was good; that his service record including the post of Chief Clerk was without blemish; that no training or other facility was provided to him in terms of the letter dated 31.8.1974(Annexure-I) of the Railway Board (with particular reference to scheduled caste and scheduled tribe candidates) which implied, that his performance was good; that his promotion to the post of Chief Clerk was regular and his period of training was not extended.

7. Rebutting each of the above contentions of the applicant, learned counsel for the respondents, submitted, that

the respondents were constrained to revert the applicant from the post of Chief Clerk as he had shown no improvement in his performance despite the facilities of training and coaching extended to him. Besides, the applicant was appointed by the second respondent, according to his order dated 21.3.1984 (Annexure-E) purely on an ad hoc basis, as Chief Clerk, for a period of six months, in terms of the letter dated 31.8.1974 (Annexure-I) of the Railway Board, on a clear understanding to the applicant, that his performance would be reviewed on expiry of the trial period of six months. The applicant had not given a good account of himself during the first trial period of six months, as is evident from Annexure-III and even when he was given another opportunity thereafter, to show improvement as can be seen from Annexure-IV.

8. According to counsel for the respondents, the applicant was also afforded the benefit of training and other facilities to show improvement in his performance, but to no avail. Deficiencies in his performance ^{as were} was communicated by the SDOS to the applicant from time to time. Though due sympathy was shown to the applicant as scheduled tribe employee, he failed to make the grade, despite all opportunity and facility afforded to him, in terms of the aforesaid letter dated 31.8.1974 of the Railway Board. The respondents were thus left with no other alternative than to revert the applicant and repatriate him to his original post of Head Clerk in his Parent Division in accordance with the instructions contained in letter dated 31.8.1974 of the Railway Board referred to above.

9. We have carefully considered the rival contentions. In our view, a person appointed to a higher post in an offici-

ating capacity does not acquire any legal right (STATE OF MYSORE v. NARAYANAPPA, (1966)S.C./C.A.1420/66 to hold that post for any period whatsoever and accordingly, there is no reduction in rank within the meaning of Article 311(2), if he is merely reverted to his substantive post (PARSHOTTAMLAL DHINGRA v. UNION OF INDIA; 1958 S.C.36; (1958)S.C.R.36), even though the motive for such reversion be misconduct, inefficiency, unsuitability or the like, (STATE OF BOMBAY v. ABRAHAM, 1962 S.C. 177), and the reversion is made after holding an inquiry to determine his fitness for the post, (STATE OF ORISSA v. RAMNARAYAN, 1961 S.C.177; JAGDISH v. UNION OF INDIA - 1964 S.C. 449).

10. In the light of the Supreme Court rulings cited above, the contention of the applicant, that his reversion is unlawful and that it attaches a stigma to him, and all other contentions fall to the ground. The averment of the applicant that his service record inclusive of his tenure in the post of Chief Clerk was without blemish, does not accord with facts, as is evident from the communications addressed to him by the respondents from time to time, in regard to his unsatisfactory performance in the post of Chief Clerk, (vide: Annexures III to V in particular). The applicant was promoted to the post of Chief Clerk on an ad hoc basis, as aforementioned, and has failed to give a satisfactory account in this post, despite training and other facilities provided to him, taking into account the fact that he was a scheduled tribe employee.

11. In view of the above facts and circumstances of the case, we find that the application is without merit and therefore, dismiss the same. No order as to costs.

Chandrasek
MEMBER(J)

Chandrasek
MEMBER(AM)(R) 2.2.1987