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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 403/91
T.A. NO:

199

DATE OF DECISION 14.10.1991

Shri S.M.Galande

Petitioner

Shri G.S.Walia.

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri A.L.Kasturey.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman,

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO.403/91.

S.M. Galande,
Assistant Signal Telecommunication
Engineer (T), Balsar,
Western Railway, Churchgate,
Bombay - 400 020.

.. Applicant.

v/s.

1. Union of India, through
General Manager,
Western Railway, Churchgate,
Bombay - 400 020.
2. Chief Signal Telecommunication
Engineer, Western Railway,
Churchgate, Bombay - 400 020.

.. Respondents.

Coram : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.
Hon'ble Shri M.Y. Priolkar, Member (A).

Appearances:-

Applicant by Shri G.S. Walia.

Respondents by Shri A.L. Kasturey.

ORAL JUDGMENT:

Dated : 14.10.1991.

¶ Per : Shri Justice U.C. Srivastava, Vice Chairman ¶

The applicant who is an employee of the Western Railway has challenged the order of reversion from the post of Assistant Signal Telecommunication Engineer (T) to Group 'C' post i.e. Class III Post. The name of the applicant was included in the panel and he was promoted as ASTE (T) against a vacancy of a regular promotion post vide order dt. 19.3.1991. But the applicant took over charge on 25.3.1991. Vide order dtd. 17.7.1991 the applicant came across the letter stating that he was reverted to Class.III post i.e. Group 'C' which is a lower scale post.

2. Aggrieved of the same the applicant has challenged on a variety of grounds that no departmental proceedings were pending against him and the reversion could not have been so passed behind his back and that too without giving him any

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opportunity of making a representation against the same.

3. On behalf of the Railway Administration it was contended that as a matter of fact the conduct of the applicant was under investigation by the Central Vigilance Commission (CVC) and in the said letter vide para (1) it was made clear that a careful note to this effect should be kept so that this fact is not lost sight of while considering the applicant's promotion, retirement, resignation, confirmation etc. The applicant was relieved erroneously on 25.3.1991 i.e. just one day before without obtaining proper DAR/Vigilance clearance from the Divisional Office due to clerical mistake i.e. without ascertaining the facts from the Vigilance Branch of Head Quarters office in view of the letter dt. 22.1.1991 and he assumed the charge on 25.3.1991. Thus according to the respondents they had taken action against the applicant and a charge sheet was issued earlier, but as the same was not communicated to the party concerned. The appointment letter was issued and in pursuance of the same the applicant took charge and the respondents justified their action on the basis of Railway Board's letter dated 21.9.1983 which deals with the promotion of the Railway servants who are under suspension or against whom departmental proceedings/prosecutions have been initiated or are proposed to be initiated or whose conduct is under investigation. Paragraph 2 and 3 reads as under:-

"2. Cases of Railway servants to whom the procedure will be applicable. The procedure given below shall be applicable to:

- (i) Railway servants under suspension;
- (ii) Railway servants in respect of whom disciplinary proceedings for major penalty are pending or a decision has been taken by the competent authority to initiate major penalty disciplinary proceedings;

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(iii) Railway servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to sanction prosecution;

(iv) Railway servants against whom an investigation on serious allegation of corruption, bribery or similarly grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise.

3.1 Procedure to be followed. Such a Railway servant shall not be promoted even if already borne on a selection panel/suitability list till after the results of the proceedings of investigation against him is known. There is, however, no objection to promote him if he is not under suspension or is not proposed to be suspended and the proceedings already initiated or are proposed to be initiated are for the imposition of only a minor penalty.

3.2. Such a Railway servant as aforesaid, if not already borne on a selection panel/suitability list, should be called along with other eligible candidates to appear at the written/trade/suitability test before the selection committee of the selection board. His suitability for promotion as also his position in the selection panel/suitability list should be assessed as in the ordinary course.

3.3 On the basis of position assigned in the selection panel/suitability list, a list of qualified persons should be prepared keeping in view the following:

(a) It should exclude the names of those mentioned in items (i) to (iv) of para 2 above.

(b) It should include the names of those who are not under suspension and against whom disciplinary proceedings for the imposition of only a minor penalty have been initiated or are proposed to be initiated."

.....

The said notification nowhere states that in case a promotion order has already been passed and the promotion has been carried out, there could be interference and without taking any disciplinary proceedings or calling upon the employee concerned to show cause, no reversion order be not passed. On behalf of the applicant a reference has been made to the Supreme Court's decision in *New Bank of India v. N.P. Sehgal*

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and another which has been relied by this Bench of the Tribunal in O.A.7/90 and also to the recent decision of Union of India etc. v. Jankiraman K.V. 1991(2) SCALE 423 where also it has been prescribed that until ~~without~~ proceedings have been initiated and charge sheet is served and not before that and the Supreme Court has reiterated that the sealed cover procedure in the matter of promotion is not to be resorted to unless that stage has been crossed. The same position arises here also. In this case a decision was taken after empanelment of the applicant and the applicant was also promoted. It may be that at the other end a decision was taken to hold an inquiry against him, ~~if~~ ^{and} Before that no clearance was obtained, the applicant joined the said post. The respondents desired to take a decision with regard to the procedure prescribed under law, ~~if~~ the applicant has not been served with a charge sheet and action was taken. It is thereafter the reversion order have been passed. In this view of the matter the reversion order dt. 12.7.1991 deserves to be quashed. However, we make it clear that it will be open to the respondents to take any action in the matter in accordance with law. No order as to costs.



(M.Y. PRIOLKAR)
MEMBER (A).



(U.C. SRIVASTAVA)
VICE CHAIRMAN.