

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 341/93

Date of Decision: 28.7.1999

I.M.Khan

Applicant.

Advocate for  
Applicant.

Versus

G.M., Western Railway, Bombay.

Respondent(s)

Shri V.S.Masurkar

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Bawej, Member (A)

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

(1) To be referred to the Reporter or not? *✓*

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? *✓*

*D.S.Bawej*  
(D.S.BAWEJA)

MEMBER (A) *✓*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

OA.NO.341/93

Wednesday this the 28th day of July, 1999.

CORAM ; Hon'ble Shri D.S.Baweja,Member(A)  
Hon'ble Shri S.L.Jain,Member(J)

Ibrahim Mohammed Khan  
R/o.Gondivali Gauthan,  
Azad Road, Bhangar Chawl  
Andheri (East),Bombay. .... Applicant

V/S.

The General Manager,  
Western Railway,  
Churchgate,Bombay .... Respondent

By Advocate Shri V.S.Masurkar

O R D E R (ORAL)

(Per : Shri D.S.Baweja, Member(A))

This application has been filed by the applicant seeking the relief of setting aside the order of reversion from the post of Driver as per the orders dated 5.3.1993 and 31.3.1993 with a further prayer of reinstating him as Driver with consequential benefits.

2. The applicant was initially appointed as Khalasi on 9.3.1981. The applicant subsequently appeared for the selection for the post of Driver and was declared successful as per order dated 2.7.1990. The applicant was given promotion as a Driver as per order dated 8.7.1992 and was posted under the General Manager, at

Headquarters' Office of Western Railway. The applicant has been reverted as per order dated 5.3.1993 posting him back as Khalasi Helper on Bombay Central Division. This order was subsequently modified as per letter dated 31.3.1993 changing his place of posting on the Bombay Central Division. Feeling aggrieved by this reversion, the present application has been filed by the applicant on 15.4.1993.

3. The applicant has challenged the reversion mainly on two grounds. First being that the reversion of the applicant could not be done without following the procedure under Discipline and Appeal Rules. The second is that applicant has been reverted on account of malafide action of Assistant Secretary.

4. The respondents have filed a written statement contesting the claim of the applicant. The respondents have submitted that the work of the applicant was not found satisfactory inspite of several opportunities being given to him to improve his working by way of written communications. The applicant had submitted his explanation for his unsatisfactory work but the same was not found correct. The respondents have submitted that the reversion of the applicant was ordered on account of unsatisfactory work within a period of 18 months as admissible as per the Railway Board's order dated 9.6.1965. As such there is no illegality committed and it was not necessary to go through the procedure under Discipline and Appeal Rules.

5. The applicant has not filed any rejoinder reply.

6. As per the order dated 20.7.1999, it was provided that in case the applicant or his counsel is not present on the next date of hearing, the matter will be heard and decided based on the pleadings on record. This order was passed because the counsel **earlier** was not present on several dates. Keeping in view the order dated 20.7.1999, we have heard Shri V.S.Masurkar, counsel for the respondents on merits.

7. As indicated earlier, the applicant has challenged his reversion order mainly on two grounds. The first ground is that the reversion could not be effected without following the procedure as laid down in the Discipline and Appeal Rules as reversion amounts to punishment. The respondents have contested this stating that reversion had been effected on account of unsatisfactory work before completion of 18 months of period and the same is admissible in terms of Railway Board Circular dated 9.6.1965. From the pleadings of the respondents in written statement, we note that several communications were sent to the applicant with regard to his unsatisfactory work before his reversion. The applicant has not filed any rejoinder reply and therefore there is no rebutting of this submission of the respondents. Keeping in view the provisions of the Railway Board **brought on record** Circular dated 9.6.1965 and the fact that the work of the applicant was not satisfactory inspite of repeated warnings, we do not find any illegality in the action taken by the respondents.

8. The second ground is that the reversion order has been passed on account of malafide action of Assistant Secretary. The submissions with regard to malafide are very vague. The applicant has not even disclosed the name of the Assistant Secretary. The Assistant Secretary has not been also made as a party respondent by name. If any malafides <sup>are</sup> is alleged against an officer, it is incumbent on the part of the applicant to make him a party respondent so that he can have an opportunity to counter the allegations <sup>regard</sup> made by the applicant with/to malafides. Even otherwise also we find that the pleadings made <sup>by</sup> of malafides are too sketchy to have <sup>even</sup> any suspicion of malafides. Therefore, we do not find any substance in this contention.

9. In the result of the above, the OA. is dismissed as devoid of merits. No order as to costs.

*S.L.JAIN*

(S.L.JAIN)  
MEMBER (J)

*D.S.BAWEJA*  
(D.S.BAWEJA)  
MEMBER (A)

mrj.