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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

Original Application No.965/95

Dt. of decision: 9-4-1996

Between:

D. Nagesh .. Applicant

and

1. General Manager,
S.C. Railway,
Secunderabad.
2. The Divisional Engineer,
S.C. Railway,
Secunderabad.
3. Asst. Engineer, North,
Kazipet Junction,
S.C. Railway,
Kazipet. .. Respondents

COUNSEL FOR THE APPLICANT : SHRI U. PATTABHI RAMAIAH

COUNSEL FOR THE RESPONDENTS SHRI K. SIVA REDDY

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HON'BLE MR. JUSTICE M.G. CHAUDHARI : VICE CHAIRMAN *hsk*

HON'BLE MR. H. RAJENDRA PRASAD : MEMBER (A) *g/jm*

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O.A.No.965/95

JUDGEMENT

(As per Hon'ble Sri Justice M.G. Chaudhari, Vice Chairman)

Sri U.Pattabhi Ramaiah for the applicant and Sri K. Siva Reddy for the respondents.

2. It is unfortunate that the respondents have not cared to file any reply to the application despite several opportunities being made available to them. In the first instance Notice Before Admission was issued on 23-8-95. No reply however was filed by the respondents. The O.A. was admitted on 27-9-95 with a clear direction that it shall be listed for final hearing immediately below admissions on 31-10-95 and the reply may be filed in the meantime. The respondents did not bother to file any reply by that date. Time was available to them even thereafter till today. Even today no reply is being filed. The learned counsel merely requests for further time; atleast of one week for filing the reply. We see no justification for granting ~~for the time~~ ^{further} for mere asking by the respondent. If they ~~are~~ ^{have} not thought it and desirable to comply with the directions of the Tribunal and filed the Reply within time, they have to thank themselves. Looking to the nature of the matter the earlier Bench had already listed it for

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final hearing, the respondents should have realised that in view of the same it was necessary for them to file the Reply at the earliest. We therefore refuse any adjournment for the purpose of filing the Reply. The application therefore will have to be proceeded with as if the respondents have not ~~decided~~ ^{resisted} the same. Even so we have applied our mind to ~~we apply our mind on~~ the merits of the case. We have also allowed the learned counsel for the respondents to produce before us the order of reversion. Curiously enough the learned counsel for the respondents has been supplied the record by the Department from which the order is being shown to us. It is therefore ^{amazing} that the respondents did not find it convenient to file a Written Statement.

3. The applicant belongs to Scheduled Caste. After a long service in the lower post he was promoted as Permanent Way Mistry in the grade of Rs.1400-2300 under the administrative control of Respondent No.3 on 18-11-93.

4. While he was so working, an order of suspension dt.31-3-95 (Annexure-A1) was issued by respondent No.3 placing him under suspension w.e.f. 1-4-95. A show cause notice was issued to the applicant dt.3-4-95 calling upon him to show cause as to why he should not be reverted to his original post of Senior Gangman (original post) on account of the alleged misbehaviour and unsatisfactory working. The applicant submitted his reply (Annexure A-3). He requested for an opportunity to meet the

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Respondent No.3 (Divisional Engineer-P) to explain the things and prove his innocence. In short, he requested that action for reversion may not be taken. By further notice dt.20-4-95, the applicant was informed that he had not filed his show cause reply within three days in pursuance of the earlier notice and therefore he was given final opportunity to submit his reply.

5. From the order of reversion produced by the counsel for the respondents it appears that the order was passed on 9-5-95 reverting the applicant to the post of Sr. Gangman in the scale of Rs.800-1500 and posted as Sr. Gangman under PWI/N/KZP with immediate effect. Subsequently, by order dt.12-5-95(Annexure-A.7) the order of suspension was revoked with effect from that date..

6. It is at this stage that the applicant has approached the Tribunal by presenting the instant C.A. on 26-7-95. He inter alia prays that the order of reversion be declared illegal and void. He also prays that the order dt.12-5-95 relieving him consequent upon his reversion and directing him to allow him to join duty as Sr. Gangman declared illegal and bad in law.

7. The first submision urged by the learned counsel for the applicant is that the order of reversion amounts to imposing penalty upon him and since no disciplinary

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enquiry was held as contemplated under the Railway Servants (D&A) Rules, 1968, the order of reversion is illegal and bad in law. We think that there is great substance in this submission and it deserves to be accepted. The learned counsel for the respondents submitted that no enquiry was necessary to be held inasmuch as the order of reversion has not been passed by way of punishment but it has been passed administratively. In that connection he submits that applicant was not a P.M.Mistry and he was only promoted on adhoc basis and since the period of 18 months was not over, it was permissible to the authorities of the Railways to terminate his promotion. The order of reversion has been passed in that sense. For this purpose, reliance is placed on Railway Board's Lr.No.E(NG)1-82-PMI-68, dt.28-4-82. That letter clearly states that a person who is appointed to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Disciplinary and Appeal Rules. However, it also contains a note that NFIR had in a P&M meeting with the Railway Board suggested that the procedure for D&A Rules should be followed in cases of reversion falling within the period of 18 months if it is to be on the basis of general unsuitability, but that suggestion was not accepted. It is therefore submitted that by impli-

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cation it makes that the D&A Rules ~~inapplicable~~ where an order of reversion is passed within a period of 18 months from the date of officiating promotion. There is however no factual material placed before us by the respondents to show that the applicant was promoted on adhoc basis or was reverted in accordance with this letter of the Railway Board. The reversion order dt.9-5-95 ordinarily would have referred to him as ad hoc promotee and would have stated that his adhoc promotion was terminated and he was reverted. The order actually however, does not read like that. The material portion of the order reads as follows:

S/o
"Sri D. Nagesh/Durgaiah (SC) while working as

Senior Gangman was promoted as PWM in scale of

Rs.1400-2300 under Office Order..... dt.18-11-1993."

been
The word "promotion" has not/prefixed by the word ("ad hoc").

A plain reading of the order therefore does not give the impression that it was adhoc promotion which was being terminated. The respondents not having produced the letter dt.18-11-93 suffice it to say that the order as it reads cannot be construed to be an order passed within the ambit of the note of the Railway Board which itselfs cannot amount to a provision in law and no such provision has been pointed out.

8. That in all probability an enquiry was contemplated to be held against the applicant under the D&A Rules is clearly reflected from the various orders issued by the respondents. Turning first to the order of suspension dt. 31-3-95 it recites that the order was passed in exercise of the power conferred by Rule (4) of proviso to Rule 5(i) of the Railway Servants (D&A) Rules, 1968. The order of revocation of suspension also refers to Rule 11 of D&A Rules. The order of suspension recites thus "whereas a disciplinary proceeding against Sri D. Nagash S/o Durgashah, DWMII No. A/N/82/T" without however completing that sentence and the order proceeds to say "now therefore". That clearly indicates that the suspension was in contemplation of some enquiry under the rules proposed to be held against the applicant. Moreover, the show cause notice issued did not mainly refer to unsatisfactory work on the part of the applicant as the cause for proposed reversion, but it also refers to the allegation that he has misbehaved on three occasions and his working was unsafe and no independent work could be entrusted to him. The proposed reversion therefore was not simplicitor or innocuous reversion as would be covered by the letter of the Railway Board mentioned above. But it attached a kind of stigma to

the applicant which was required to be proved at an appropriate enquiry after affording him adequate opportunity to show cause against it. All this material therefore does not indicate that the order of reversion was passed simplicitor by way of terminating the adhoc promotion on the ground that the performance was unsatisfactory. It has travelled much beyond that and when it has taken the colour of punishment the manner in which the order is passed without holding proper disciplinary enquiry cannot be sustained in the eye of law. The difficulty is further compounded by reason of the fact that in none of these orders the applicant has been referred to as being on adhoc promotion.

9. Consequently, the order of reversion dt.9-5-95 is illegal and is set aside. The respondents are directed to allow the applicant to resume duty as PWM forthwith at any place where he could be posted conveniently. It is be made clear that if it is not possible to post him at the same place where he was working on the date of reversion, he may be posted at any other place. The applicant will be entitled to all the monetary benefits for the period from the date of reversion until he resumes duty subject to the rules. The

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benefits should be determined by the respondents taking into account the justification or otherwise for the absence of the applicant consequent upon the order of reversion being served upon him. It is made clear that this order will not preclude the respondents from holding a regular disciplinary enquiry against the applicant for any misconduct, if they are so advised including on the grounds that led to the passing of the reversion order which has now been quashed.

9. The O.A. is allowed. No order as to costs.

W. Rajendra
Member (A)

M.G. Chaudhari
(M.G. Chaudhari)

Dt. 9-4-1996
(Open Court dictation)

Arshu
Treas
Dr. G.

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W.A. No. 965/95.

To

1. The General Manager, SC Rly, Secunderabad-
2. The Divisional Engineer, SC.Rly, Secunderabad.
3. The Assistant Engineer, North,
Kazipet Junction, SC Rly, Kazipet.
4. One copy to Mr.U.Pattabhi Ramiah, Advocate, CAT.Hyd.
5. One copy to Mr.K.Siva Reddy, SC for Rlys. CAT.Hyd.
6. One copy to Library.CAT.Hyd.
7. One spare copy.

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25/4/96
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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD :M(A)

Dated: 21 - 4 - 1996

~~ORDER/JUDGMENT~~

M.A/R.A./C.A.No.

in

O.A.No. 965/95

T.A.No. (w.p.)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

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