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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA No. 220/1993 : Date of order: 01.08.1995

U.D.Khan : Applicant

Versus

Union of India and others : Respondents

Mr.J.K.Kaushik : For the applicant

Mr. Manish Bhandari : For the respondents

CORAM:

Hon'ble Mr. C.P.Sharma, Member (Administrative)

Hon'ble Mr. Rattan Prakash, Member (Judicial)

O R D E R

(PER HON'BLE MR. C.P.SHARMA, MEMBER (ADMINISTRATIVE))

In this application under Section 19 of the Administrative Tribunal's Act, 1985 Shri U.D.Khan has prayed that order dated 29.3.1993 (Annexure A-1) treating the applicant's promotion order dated 11.5.1992 (AnnexA-5) as defective and consequently reverting him may be quashed with all consequential benefits.

2. The applicant's case is that he was initially appointed as a Trade Apprentice at Railway Power House, Western Railway, Ajmer on 1.11.1957. In course of time he earned further promotions and w.e.f. 1.1.1984 he became Junior Electrical Foreman Scale Rs.700-900/ Rs.2000-3200 under the restructuring scheme. The next higher post in the channel of promotion was that of Senior Electrical Foreman Scale Rs.2375-3500 (RP) which is a non-selection post and is filled up on the basis of seniority-cum-suitability. On the post of Junior

Electrical Foreman the applicant's name is at serial No.32 in the seniority list dated 7.7.1992 (Annexure A-2). There were five persons senior to the applicant in the said list. The first two persons senior to the applicant were offered promotion as Senior Electrical Foreman but they refused. Promotion was therefore offered to the next lower person in the seniority list. Thereafter there was a vacancy for the post of Senior Electrical Foreman at Sabarmati. Instead of asking for the options from the two persons who were immediately senior to the applicant, the applicant was asked for his option verbally. Because of his domestic circumstances the applicant refused to accept this promotion vide a letter dated 11.2.1992 (Annexure A-4). Thereafter a new post of Senior Electrical Foreman was created with posting at Abu Road. His two immediate seniors were asked to give their options and since they refused, the applicant was promoted as Senior Electrical Foreman and was posted at Abu Road. According to the applicant, his promotion was on a regular basis. The applicant joined the promotion post.

3. Further according to the applicant, the applicant's promotion vide order dated 11.5.1992 as Senior Electrical Foreman has been declared as defective and he has been debarred from promotion for a period of one year upto 11.2.1993. He has accordingly been ordered to be reverted vide an

order dated 29.3.1993 (Annexure A-1). The applicant's case is that the so-called debarring period of one year was also over on 11.2.1993 but still he has been reverted by order dated 29.3.1993, with a view to extending special favours to some junior persons. Since he had been promoted to the post of Senior Electrical Foreman on a regular basis as per his turn according to the rules, his reversion would amount to a punishment which cannot be inflicted without following the procedure established by law. He has however been reverted without any prior notice. If there was any error in the order promoting the applicant, it was on part of the respondents.

4. The respondents in the reply have stated that since the applicant had refused to accept his due promotion vide his letter dated 11.2.1992, he became ineligible to get promotion within a period of one year from the date of refusal. Therefore, the promotion given to the applicant was erroneous and this happened for the bonafide reason that the applicant's refusal letter could not be brought to the notice of the authorities while passing the order of promotion. They have averred that the administration has an authority to recall an erroneous order by exercising its power under Para-228 of Railway Establishment

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Manual. Further according to them the applicant was given promotion on the post of Senior Electrical Foreman w.e.f. 1.3.1993 under the restructuring scheme and therefore the applicant continued on the post and in the scale of pay. With effect from 1.3.1993 the applicant is entitled to get all benefits including benefit of increment and seniority but he is not entitled to get any other benefit from the earlier date as the promotion in pursuance of the order dated 11.5.1992 was only on officiating basis which could not be counted for the purpose of determining seniority. Therefore according to them this application has virtually become infructuous. Since the applicant's promotion was only on officiating basis, as is clear from the order dated 11.5.1992 (Annexure A-5), he has no legal right to take any benefit from such promotion and he was not required to be given any notice before reversion. (A) vested right would have been created in favour of the applicant only on the basis of a legal and justified order.

5. During the arguments, the learned counsel for the applicant referred to a judgment of Delhi High Court in Smt. Savitri Devi Vs. Municipal Corporation of Delhi and others, 1979 (2) SLR 541 wherein the High Court examined the true nature of an appointment granted on adhoc basis. The High Court held that on the facts of that case the promotion was in fact officiating in nature

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rather than adhoc. Thus according to the learned counsel for the applicants mere description of the nature of appointment of promotion would not be a determining factor for ascertaining the true nature of such promotion. Next he cited the judgment of Chandigarh bench of Tribunal in Chunni Lal and others Vs. Union of India and others, AFR 1988(2) CAT 46 wherein the Tribunal has held that reversion without notice was violative of principles of natural justice. In this case the promotion of the applicant was on regular basis and therefore his reversion without following the principles of natural justice was illegal.

6. We have heard the learned counsel for the parties and have gone through the material on record as also the judgments cited before us. In the order dated 11.5.1992 (Annexure A-5) the promotion of the applicant has been described as "स्थानावरून नवपसं कार्य करी हेतु पदेवन्नत" ~~का~~ " This mean that the promotion was officiating and as a sort of working arrangement. The fact that the applicant had refused promotion earlier is borne out by Annexure A-4 dated 11.2.1992. Still however by order dated 11.5.1992 promotion was granted to the applicant which has been rightly held by the respondents to be erroneous in nature. Question now is whether the applicant should have

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been given an opportunity of being heard before recalling the order dated 11.5.1992 and debarring him from promotion for a period of one year in view of his refusal given earlier. In this connection Para 228(II) of Indian Railway Establishment Manual Vol.I 1989 Edition is relevant. This provides for procedure for cancellation of erroneous promotions granted in officiating and substantive capacity. As far as applicant's case is concerned, the order of promotion dated 11.5.1992 itself provides that in the promotion was not even 3 officiating nature but was a sort of working arrangement. Considering the nature of the promotion granted to the applicant, we are of the view that he had not acquired any vested right to hold that post. In these circumstances, it was not necessary for the respondents to follow the procedure of giving a prior show cause notice to the applicant for reverting him. The respondents have themselves stated in the reply that since the applicant has been granted promotion as Senior Electrical Foreman w.e.f. 1.3.1993 on the basis of restructuring, the applicant's application itself has also become largely academic in nature. In the circumstances, the application is dismissed with no order as to cost.


(RATTAN PRAKASH)
MEMBER (J)


(O.P. SHARMA)
MEMBER (A)