

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 22/12/2000

OA 254/94

Vijai Pal Singh son of Shri Dori Singh by caste Rajput, aged about 39 years, resident C/o 198 LB, Railway Colony, Gangapur City, Distt. Sawaimadhopur (Rajasthan) and presently Inspector of Works, Sawaimadhopur, Kota Division, Western Railway, Sawaimadhopur (Rajasthan).

.... Applicant

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Chief Engineer (Establishment), Western Railway, Churchgate, Bombay.
3. The Senior Divisional Engineer (Establishment), Kota Division, DRM Office, Western Railway, Kota (Rajasthan).

.... Respondents

Mr. S.D. Sharma, Counsel for the applicant.
Mr. M. Rafiq, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial).
Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL))

In this OA filed u/s 19 of the Administrative Tribunals Act, applicant has challenged the order of reversion dated 18.5.94 at Annexure A-1 on the ground that impugned order is abundantly illegal, arbitrary, unfair, mala fide and without jurisdiction. It is also stated that applicant

...2/-

was promoted on ad-hoc basis and joined his duties in pursuance of order of promotion dated 12.11.93 on the post of I.O.W. Grade-I but before cancellation of ad hoc promotion, the minimum requirement of principles of natural justice have not been given to the applicant. Therefore, impugned order reverting the applicant is against the principles of natural justice. It is also stated that minor penalty is not a bar for the promotion and before promoting the applicant on ad-hoc basis, the entire ^{record}/of the applicant was considered. Therefore, the impugned order reverting the applicant without giving an opportunity of hearing was abundantly illegal and applicant is entitled to the relief sought.

2. Applicant was initially appointed as Inspector of Works Grade-III on 14.9.83. He was promoted on ad-hoc basis as ~~I.O.W.~~ Grade-II on 26.12.88. Thereafter applicant was regularly selected on the post of I.O.W. Grade-II on 26.2.91. The respondents then prepared a provisional panel for the post of I.O.W.-I effective from 17.6.91. In this panel, the persons junior to the applicant were included but the case of the applicant was not taken into consideration. Therefore, applicant filed representation but instead of disposing of representation of the applicant, the applicant was promoted on the post of I.O.W. Grade-I on ad-hoc basis vide order dated 12.11.93 and in pursuance of the order dated 12.11.93, applicant joined ^{duties}/accordingly. It is stated that applicant was reverted back on the post of I.O.W. grade II vide order dated 18.5.94 which is abundantly illegal. Therefore, applicant filed this OA for the relief, as above.

3. Reply was filed. In the reply, it is stated that

seniority to the applicant was correctly assigned and no person junior to the applicant was placed in the panel of Inspector of Works Grade-I. It is also stated in the reply that applicant was promoted purely on ad-hoc basis on the post of Inspector of Works in the scale Rs. 2000-3200 vide order dated 12.11.93 but later on it was noticed that applicant was undergoing a penalty of with-holding of increments w.e.f. 1.1.93 for three years vide imposition of Penalty No. E/ENG/308/5/373 dated 25.8.92 for one year and Penalty No. E/EG/308/5/373 dated 14.6.93 for two years respectively. It is stated that as per instant rules, employee who is undergoing penalty of with-holding of increments is not eligible for promotion and, therefore, the order issued dated 12.11.93 was cancelled by the impugned order and for correction of error, no notice/opportunity of hearing is required to be given. It is specifically mentioned in the reply that as per provisions given in Para 320 of Indian Railway Establishment Manual, an employee who undergoing a penalty of with-holding of increments is not eligible for promotion. Therefore, for correcting the mistake, competent authority had passed the impugned order which is perfectly legal & valid and applicant is not entitled to any relief, sought for.

4. Rejoinder to the reply has also been filed by the applicant reiterating the facts stated in the OA, which is on record.


5. Heard the learned counsel for the parties and also perused the whole record.

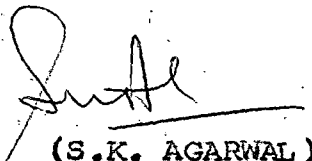
6. On perusal of averments made by the parties, it is not disputed that applicant was promoted on the post of I.O.W. Grade-I purely on ad-hoc basis vide order dated 12.11.93 and thereafter, he joined ~~he~~ duties in pursuance of order dated 12.11.93. It is also evident that applicant was given Memorandum of charge-sheet No. E/Engg/308/5/372 dated 15.7.92 for imposing minor penalty and in pursuance of this charge-sheet, a penalty of with-holding of increment was imposed upon the applicant w.e.f. 1.1.93 for three years was imposed upon the applicant vide Notice No. E/ENG/308/5/373 dated 25.8.92 for one year and Notice No. E/EG/308/5/373 dated 14.6.93 for two years respectively. It is clear that as per provisions contained in Para 320 of Indian Railway Establishment Manual, the employee who is undergoing penalty of with-holding of increment is not eligible for promotion. It is a settled principle of Law that a person promoted on ad-hoc basis cannot insist for a pre-decisional notice as the promotion of the applicant was purely on ad-hoc basis as stop-gap arrangement only. Therefore the impugned order of reversion of the applicant cannot be said to be ~~in~~ any violation of principles of natural justice. It is also a settled principle of law that if a mistake has been committed, the same may be rectified. The Hon'ble Supreme Court of India in Collector of Thanjavur Vs. S. Rajagopalan & others, SLR 2000(2) 552, held that it is for the authorities to consider the punishment imposed during the relevant period at the time of considering the promotion. In this case Hon'ble Supreme Court has followed the views of Union of India & Others vs. K.V. Janki Raman. 1991(4)SCC 109. In the instant case, respondents have cate-

gorically stated that penalty ~~must~~ imposed upon the applicant ~~as~~ had escaped notice of the Department while making ad-hoc promotion of the applicant. Admittedly, the promotion of the applicant was not a promotion made in regular process of selection but it was only a stop gap arrangement and respondents have denied this fact that the minor penalty imposed upon the applicant were taken into consideration while promoting the applicant on ad-hoc basis. Therefore, in view of the provisions given in Para 320 of Indian Railway Establishment Manual, ^{against these provisions,} and a mistake is committed / the same can be rectified and in our considered view for correction of mistake in the facts and circumstances, as mentioned above, no notice is required and it cannot be said to be case of violation of principles of natural justice.

7. Therefore, in our considered view, we do not find any infirmity, illegality in the impugned order of reversion and this OA is devoid of any merit and is liable to be dismissed.

8. We, therefore, dismiss this OA with no order as to costs.


(A.P. NAGRATH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (B)