

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.18/2001

Date of order: 05-07-02

Nan Singh, S/o Sh.Ganesh Singh, R/o Ratan Singh Hotelwala
Top Dadahra, Ajmer, at present employed as Welder.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager (Estt), Western Railway, Ajmer Division, Ajmer.
3. Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer.
4. Chief Bridge Inspector, Western Railway, Ajmer Division, Ajmer.

...Respondents.

Mr.Shiv Kumar, Counsel for applicant

Mr.S.S.Hasan, Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The sole point which requires our consideration in this case is as to whether the directions issued by this Tribunal In O.A No.348/95 decided on 15.12.99, Nian Singh Vs. UOI & Ors, have been complied with.

2. In order to decide the matter in controversy, it will be relevant to notice few relevant facts which are necessary for determination of the case in hand.
3. The applicant was initially appointed as Gangman on 29.3.76 and subsequently he was appointed as Welder in the pay scale Rs.950-1500 after undergoing the training. Subsequently

the Divisional Personnel Officer, Western Railway, Ajmer Division, Ajmer, issued letter dated 3.5.95 mentioning that the applicant was not eligible to participate in the selection therefore, he was reverted and posted as Khallasi under Chief Bridge Inspector, Western Railway, Ajmer. The applicant challenged the decision of the respondents authorities by filing O.A No.348/95 which was allowed by this Tribunal vide its order dated 15.12.99, thereby quashing the impugned order of reversion dated 3.5.95 with further direction that the departmental authorities are not precluded to proceed against the applicant further and pass proper order after giving showcause notice/opportunity of hearing to the applicant.

4. Since the entire case hinges around the direction given by this Tribunal in O.A No.348/95 decided on 15.12.99, it will be relevant to reproduce the operative portion of the aforesaid order, which reads as under:

"We, therefore, allow this O.A and quash the impugned order of reversion dated 3.5.95. This order does not preclude the departmental authorities to proceed against the applicant further and pass proper order after giving showcause notice/opportunity of hearing to the applicant."

5. The respondents authorities, in order to comply with the aforesaid direction of the Tribunal, issued the impugned order dated 22.9.2000 (Annex.A1) wherein it was stated that there is a proposal for deleting the name of the applicant from the panel of Welder category and the order was meant for the information of the applicant.

6. The case of the applicant is that the action of the respondent authorities is not in conformity with the direction issued by the Tribunal in the aforesaid O.A inasmuch as the authorities concerned has taken the decision without

issuing show cause notice/opportunity of hearing to the applicant as was specifically observed by this Tribunal. Thus, according to the applicant, the action of the respondents' authorities cannot be supported in law and the impugned order dated 22.9.2000 (Annex.A1) issued by the respondents deleting the name of the applicant from the Welder category be declared as illegal, arbitrary and the same may be quashed.

7. The respondents' authorities have contested the case by filing reply affidavit. In the reply affidavit, it has been categorically stated that the respondents did pass the order dated 22.9.2000 (Annex.A1) in which it is stated that there is a proposal for deleting the name of the applicant from the panel of Welder category but against the said order, the applicant did not submit any representation before approaching this Tribunal.

8. We have heard the learned counsel for the parties.

9. The learned counsel for the respondents has argued that Annex.A1 has been issued in pursuance with the direction of this Tribunal in O.A No.348/95 dated 15.12.99, the relevant portion has been reproduced hereinabove, in which it was stated that there was a proposal for deleting the name of the applicant from the panel of Welder category and as such this proposal can be treated as a show cause notice. According to the learned counsel for the respondents, the applicant has not submitted any representation to the departmental authorities and as such he was rightly reverted to his substantive post of Khallasi.

10. We are of the view that the submissions made by the learned counsel for the respondents deserve out right rejection. Admittedly, while issuing the direction in the aforesaid O.A, this Tribunal has categorically stated that the departmental authorities are not precluded to proceed against

the applicant further and pass proper order after giving show cause notice/opportunity of hearing to the applicant.

11. We have carefully perused the contents of Annx.A1, the decision vide which it was stated that the applicant was not eligible for the post of Welder category under 25% rankers quota and hence the proposal for deleting his name was made. No doubt the communication was addressed to the applicant but it was only for his information. There is nothing in the impugned order (Annx.A1) to indicate that the opportunity of hearing was given to the applicant to submit his representation, if any, against the proposal and the time within which period he was required to submit his representation against the proposed decision. Reading of the impugned decision make it clear that no show cause notice/opportunity whatsoever was given to the applicant rather the departmental authority has taken the proposed decision ex-parte without hearing to the applicant. The matter can also be looked into from another angle. Even if we accept the contention of the learned counsel for the respondents that the impugned order Annx.A1 is considered to be a show cause notice as alleged, it was incumbent upon the authorities concerned to pass a final order in case no representation was filed by the applicant confirming the so called decision taken vide the show cause notice. The learned counsel for the applicant has fairly conceded that no such order has been passed by the authorities concerned. The ^{Object} principle of show cause notice is to put the other side to note so that he can answer the cause by submitting an explanation and controverting the contention raised against him. Admittedly, this opportunity of submitting explanation has been denied in the instant case. Needless to say that affording of opportunity where the impugned action involves civil

consequences is not a mere formality and before such action is taken, the affected person is entitled to be heard as has been firmly established by number of decisions of the Apex Court and is no longer res-integra. In the instant case, the order deleting the name of the applicant from the panel of Welder category and thereby reverting him to the post of Khalasi involves civil consequences and such order cannot be passed without giving opportunity to the applicant to show cause against the proposed action. It was, under these circumstances this Tribunal has given the direction to the departmental authorities to proceed against the applicant further and pass proper order after giving show cause notice/opportunity of hearing to the applicant. Since the respondents authorities have failed to issue show cause notice/opportunity of hearing to the applicant pursuant to the direction issued by this Tribunal in O.A No.348/95 dated 15.12.99, the impugned order dated 22.9.2000 (Annex.A1) is hereby quashed and set aside. It is, however, made clear that it will be open for the authorities concerned to proceed further with the matter in terms of the direction issued by this Tribunal in O.A No.348/95 dated 15.12.99 after giving proper show cause notice/opportunity of hearing to the applicant and pass proper order thereafter.

12. For the reasons stated above, this application is allowed with no order as to costs.


(M.L. Chandan)

Member (J).


(H.O. Gupta)

Member (A).