

(10) (41)  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH  
J A I P U R .  
...

ORIGINAL APPLICATION NO.355/95

Date of order:30.9.96

Suraj Narain Modi : Applicant

Versus

The Union of India and others : Respondents

Mr.P.V.Calla, counsel for the applicant  
Mr. H.K.Kapoor, CLA, Departmental representative  
for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)

In this application under Section 19 of the Administrative Tribunals Act, 1985 Shri Suraj Narain Modi has prayed that order dated 25.5.1995 (Annx.A-1) by which the earlier order of promotion dated 22.5.1995 was cancelled and the applicant was posted back to his original post held by him before passing of the order dated 22.5.1995 may be declared illegal and the respondents may be directed to allow the applicant to work on the post on which he was promoted vide order dated 22.5.1995. He has sought a further direction that the Note Annexure A-2 dated 26.5.1995 recorded in office file No.EW.839/1/15 Pt.-48 dated 26.5.1995 in the office of C.W.M.Ajmer on 26.5.1995, copy of which was addressed to the applicant may be declared to be illegal and the respondents may be restrained from operating the letter dated 16.6.1992, which has been referred to <sup>in</sup> Annexure A-2.

2. The facts of the case, as stated by the applicant are that he joined the railways on the post of Clerk

91

42

through Railway Recruitment Board on 27.12.1971 in scale Rs. 110-180 (Revised Scale Rs. 950-1500). The applicant got promotions to the posts of Senior Clerk Scale Rs. 1200-2040, Head Clerk Rs. 1400-2600 and Chief Clerk Scale Rs. 1600-2660. The next post to which the applicant can be granted promotion is Office Superintendent scale Rs. 2000-3200. The post of Chief Clerk is a selection post, whereas that of Office Superintendent is filled up on the basis of seniority and after judging the service record, subject to the availability of vacancy. There are 33 posts of Office Superintendent. If the policy of reservation is applied, 5 posts out of 33 can be occupied by scheduled caste candidates and two can be occupied by scheduled tribe candidates. The remaining 26 posts should be available for general category candidates. Already 10 candidates belonging to scheduled castes and scheduled tribes are working as Office Superintendent and thus there are only 20 posts occupied by General Category candidates. Thus all the three vacant posts should go to the general category candidates. The applicant filed an OA, No.196/95 before the Tribunal praying that the respondents should be directed not to accord any promotions to the members of scheduled caste and scheduled tribe communities in the post of Office Superintendent scale Rs. 2000-3200. An interim direction was issued by the Tribunal on 10.5.1995 (Annx. A-5) by which a direction was issued to the respondents not to make any promotion on the post of Office Superintendent from amongst scheduled caste/scheduled tribe candidates in excess of the quota prescribed. (The learned counsel for the applicant stated during

Q

R  
(13)

the arguments that the subsequent development, after the filing of the OA, is that the said OA No.196/95 has since been disposed of by the Tribunal with a direction to the respondents to follow the judgments of Hon'ble Supreme Court on the subject of filling up vacancies by reservations. A copy of the said order of the Tribunal has since been placed on record by the learned counsel for the applicant).

3. The further case of the applicant is that after scrutiny of the service record and on the basis of the seniority of the Chief Clerks, the case of the applicant was considered for promotion on the post of Office Superintendent and he was promoted on the said post on temporary and adhoc basis subject to the decision in OA No.196/95 (Annexure A-6). After the applicant was granted promotion vide order dated 22.5.1995 as aforesaid one Shri Dinesh Chand Goyal senior to the applicant in the post of Chief Clerk was promoted vide order dated 24.6.1995 on the ground amongst others that juniors to the applicant have been promoted earlier and by way of outcome of the disciplinary proceedings initiated against him, only a minor penalty has been imposed upon him. The applicant has also referred to the case of one Shri Ramapati Tiwari who was also promoted to the scale Rs. 2000-3200, was reverted without any valid reason and he filed an OA before the Tribunal, No.229/95. The operation of the order of reversion passed in Shri Tiwari's case was stayed by the Tribunal and he has been allowed to work

Q

13

(94)

-: 4 :-

on the higher scale of Rs. 2000-3200. The applicant's justification for making a reference to the case of Shri Tiwari is that Shri Tiwari's case is very much similar to that of the applicant.

4. The applicant has also drawn attention to a note dated 25.5.1995 at Annexure A-2. Despite availability of vacancies to be filled in by general category candidates, the applicant has been reverted soon after his promotion. The applicant is an Office bearer of Non S.C. and S.T. Railway Employees Association, Ajmer. When the applicant and other member of the association met respondent No.2 i.e. Chief Works Manager, Western Railway, Ajmer personally, the latter visited the room of respondent No.3, the Senior Personnel Officer (W), Western Railway, Ajmer. Thereafter respondent No.2 got Note Annexure A-2 prepared. Respondent No.3 informed the members of the association that he would act according to the instructions of the Railway Board and not as per the orders of the Tribunal. The applicant's case, therefore, is that the order of reversion Annexure A-1 and the Note dated 26.5.1995 (Annex.A-2) are illegal and contrary to the view taken by Hon'ble the Supreme Court. According to him, the authorities who have passed the order have no legal authority to cancel the promotion order dated 22.5.1995 and the reasons given in Annexure A-2 deserve to be deprecated. When an order in favour of an employee is issued, a right is vested in him to enjoy the benefit of the said order. The applicant was rightly promoted to the post of Office Superintendent and the reasons

Q

now given by the authorities for cancelling the said order are not convencing. The post in question is required to be filled up by general category candidates in view of the position explained above.

5. The respondents have not filed a detailed reply but they have only filed a reply to the prayer for interim relief incorporated in the O.A. In their reply to the prayer for interim relief, the respondents have stated that the application has been filed without exhausting the alternative remedy available to the applicant to challenge the order of reversion. They have added that the applicant has already been relieved and has joined back his earlier post. (In any case the Tribunal had not granted any interim relief to the applicant.)

6. During the arguments, the learned counsel for the applicant stated that the post of Office Superintendent scale Rs. 2000-3200 is required to be filled up on the basis of seniority subject to scrutiny of service record and that once the applicant had been appointed on the said post, he had acquired a right to continue on the said post. In any case, no reasons have been given in Annexure A-1 for cancelling the promotion orders and the reasons recorded in Annexure A-2 dated 26.5.1995 are highly objectionable and these amount to contempt of the Tribunal. The post of Office Superintendent which the applicant held has been down-graded but still three posts of Office Superintendent are available

15  
(16)

which as explained by the applicant in his OA are required to be filled up from amongst general category candidates. The applicant is a general category candidate and he is the senior most person who now stands not promoted and therefore deserves to be promoted. All persons senior to the applicant have already been promoted. Reverting the applicant without giving him an opportunity of being heard is in violation of principles of natural justice.

7. We have heard the learned counsel for the applicant and Shri H.K.Kapoor, departmental representative for the respondents and have gone through the material on record.

8. In the order Annexure A-1 by which the promotion orders Annexure A-6 dated 22.5.1995 were cancelled, no detailed reasons have been given.

Annexure A-2 dated 26.5.1995 reads asunder:-

"The subject regarding promotion of OS vide this office letter of even no. dtd. 22.5.95 was discussed with CPO(ADM) over telephone on 22.5.95. He instructed that CAT's orders normally should be fully complied with but whenever CAT's decisions are against the existing Railway Bd's policy or HQ's orders, before implementing them necessary guidance should be obtained from H.Q. In this case CAT's orders are not in conformity with Railway Board's orders vide their letter No.89-E(SCT)/49/SY(PT) dated 16.6.92 further clarified vide their letter No.E.(SCT)220/0 Vol.IV dt. 1.9.93/9.9.93. Since guidance has not been obtained in this case the orders issued are hasty and improper. Accordingly the orders issued on 22.5.95 have been cancelled vide this officeletter of even No.dtd.22.5.95."

Undoubtedly, the language used in Annexure A-2 is rather brusque and it may create an impression that the respondents have no regard for the orders of the Tribunal. However, question arises whether there is anything seriously objectionable in it from the

Q

(47)

-: 7 :-

legal point of view and whether this note constitutes a contempt of the Tribunal. The sum and substance of this note is that before implementing the orders of the Tribunal instructions of the headquarters or the Railway Board may be sought. We do not see anything objectionable as far as the substance of this note is concerned. This appears to be an internal note recording the policy of the department. Still the respondents were expected to use restrained language in a note/communication of this nature and not create impression of the type referred to above. However, the note Annexure A-2 by itself does not afford any ground for relief to the applicant, nor does it, in our view, constitute contempt of the Tribunal.

8. Question now is whether the applicant's reversion was justified or not. Order Annexure A-6 dated 22.5.1995 shows that the applicant's promotion was on a temporary and adhoc basis. The post which the applicant held has been down-graded. Although the applicant has taken serious objection to the down-gradation of the post and it has been alleged by the learned counsel for the applicant that it has been done merely to deprive the applicant of his promotion of the post of Office Superintendent, we do not find any legal ground to hold that the respondents are not entitled to downgrade a post, if they so choose to do. There is no material to suggest that this has been done only with a view to depriving the applicant of the promotion granted to him on the said post. The rights of the applicant could be said to have been affected if he had been promoted on the said post on a regular basis. That

Q

is not the position here. Three vacancies, stated to be required to be filled up by general category candidates have not been filled up. It is not the applicant's case that any person junior to the applicant in the general category has been promoted to the post of Office Superintendent and the applicant has been left out. The respondents can choose to keep a vacancy unfilled. As long as the applicant had been promoted purely on temporary and adhoc basis, he had not acquired any right to hold the post. He could be aggrieved only if after reverting him a person junior to him has been appointed to the post of Office Superintendent. In these circumstances, we cannot grant any relief to the applicant against his being reverted from the post of Office Superintendent to which promotion was granted to him on temporary and adhoc basis. We further hold that since the promotion granted to the applicant was on adhoc temporary basis, there was no question of violation of principle of natural justice in down-grading the post or reverting him to the lower post.

9. As already stated above, the applicant's earlier CA No.196/95 has already been decided by order dated 31.7.1996 of which a copy has been taken on record. If and when the respondents choose to fill up the vacancies of the post of Office

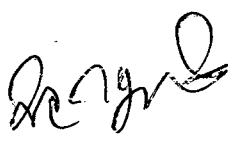
*Q*




18  
19  
-: 9 :-

Superintendent they must keep in view the directions given in the order of the Tribunal dated 31.7.1996.

10. The O.A. is disposed of accordingly with no order as to costs.

  
(RATAN PRAKASH)  
MEMBER (J)

  
( O.P. SHARMA )  
MEMBER (A)