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Date of Decision: 28/8/2000

OA 538/96

Dharampal Singh, retired Sr. Supdt., Loco Foundry Shop,
Loco Workshop, Ajmer, r/o 44/26 Nai Basti, Ramganj, Ajmer.

... Applicant

V/s

1. Union of India through General Manager, W/Rly.,
Churchgate, Bombay.
2. Chief Works Manager, Loco Workshop, W.Rly., Ajmer.
3. Sr. Personnel Officer (W), Ajmer.

... Respondents

CORAM:

HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

HON'BLE MR. N. P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. N. K. Gautam

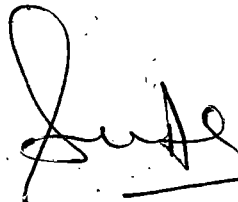
For the Respondents

.. Mr. Manish Bhandari

O R D E R

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

In this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order, at Annexure A/1, and to direct the respondents not to recover Rs. 325/- from the applicant as over payment. Further directions are also sought for making payment to the applicant of his retiral benefits including pension at the rate of Rs. 2900/- p.m.

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2. The applicant was given ad hoc promotion due to leave vacancy for 46 days vide order at Ann.A/2 but he was reverted vide order dated 31.8.96, at Ann.A/1, only on the ground that he was not entitled to the said promotion because of pending vigilance case against him.

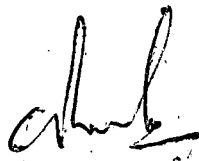
3. The case of the applicant has been that neither any DAR case nor any vigilance inquiry was pending against the applicant before/during the said ad hoc promotion. In the reply it is stated by the respondents that the fact that DAR case/vigilance inquiry was pending against the applicant has not come to the knowledge of administration at the time of granting him ad hoc promotion. Therefore, the applicant was promoted due to over sight and when the matter had come the knowledge of administration, the applicant was reverted back to his original post of Junior Shop Superintendent.

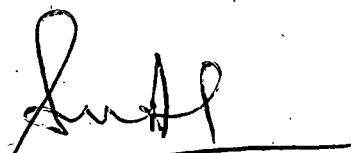
4. Heard the learned counsel for the parties and also perused the whole record.

5. The respondents have failed to establish the fact of pending vigilance case against the applicant by convincing/reliable documentary evidence. Even ~~it~~ if it is taken for granted that a vigilance case was pending against the applicant, ~~the~~ mere pendency of vigilance case does not de-bar the applicant for consideration of promotion. If the applicant is under suspension or any criminal case or DAR case is pending against him, in such a situation only the case of the applicant is required to be kept under sealed cover. It is also the settled principle of law that even promotion by mistake or over sight can be corrected only after observance of principles of natural justice. In the instant case, admittedly the applicant was reverted all of a sudden without following the principles of natural justice and the grounds on which the applicant was reverted does not hold good for reversion of the applicant. In Laxmi Chand V/s Union of India, 1998 (37) ATC 599, it was held by this Tribunal that if the government employee, who

was promoted earlier, was reverted subsequently on the ground that he had been promoted by mistake, order involves civil consequences and such an order cannot be passed without applying the principle of audi alteram partem. Admittedly, in the instant case, the impugned order was passed without following the principles of audi alteram partem. Therefore, the same is liable to be set aside on this count alone.

6. We, therefore, allow this OA and set aside the impugned order of reversion dated 31.8.96 (Annexure A/1). The applicant has already been retired. Therefore, if due to set aside of the order dated 31.8.96 (Ann.A/1) the applicant is entitled to any financial benefit, he shall be entitled to. No order as to costs.


(N.P. NAWANI)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)