

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order: 17.7.2000

OA 365/99

V.G. Vyas S/o Shri Kanhaiya Lal Vyas aged about 58 years, at present working on the post of Executive Engineer (Construction), Western Railway, Ajmer, resident of 4, Chandra Nagar, Beawar Road, Ajmer.

.... Applicant.

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Chief Project Manager, Jaipur Unit of the Western Railway, Opposite Railway Hospital, Jaipur.

.... Respondents

Mr. P.V. Calla, Counsel for the applicant.  
Mr. U.D. Sharma, Counsel for the respondents.

CO RAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)  
Hon'ble Mr. S. Bapu, Member (Administrative)

ORDER

( PER HON'BLE MR. S. BAPU, MEMBER, (ADMINISTRATIVE) )

In this application, the applicant challenges the order dated 28.7.99 of respondent no. 1 reverting him from the post of Executive Engineer to Assistant Engineer with immediate effect. The applicant has prayed for quashing the aforesaid reversion order and for directing the respondents to allow the applicant to work on the post of Executive Engineer.

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2. It is the case of the applicant that he was promoted to the post of Executive Engineer by order dated 10.8.98 and was given posting at Mumbai but he did not join. Subsequently, by order dated 7.4.99, earlier order dated 10.8.98 was partially modified and applicant was given posting at Ajmer, the place where he was working and he took the charge. A few days later, impugned order dated 28.7.99 was passed reverting the applicant to the post of Assistant Engineer for the following reasons "reversion to AEN is ordered as a major penalty. DAR case was pending against him at the time of issue of promotion order dated 7.4.99."

3. It is the case of the respondents that disciplinary proceedings under Rule 9 of Railway Servants (Discipline & Appeal) Rules 1968 were initiated against the applicant and as the applicant had not taken charge of the promoted post on the basis of the order dated 10.8.98 and he waited till the order dated 7.4.99 was passed, the initiation of disciplinary proceedings for major penalty preceded the applicant's actual promotion. Therefore, the promotion was wrong. Therefore, he had to be reverted.

4. We have heard the learned counsel for the parties and perused the records.

5. The learned counsel for the applicant argued that actual promotion order is one dated 10.8.98 and on that date there was no charge-sheet. He further alleged that even on 7.4.99, there was actually no charge-sheet and the charge-sheet was in fact issued long after the order dated 7.4.99. He stated that covering letter alongwith which the charge-sheet <sup>was</sup> sent to the applicant was dated 4.5.99. In this connection, he has also referred to some alterations made in the date of charge-sheet. The respondents' counsel on the contrary stated that

that the charge-sheet in fact was issued on 4.4.99 itself and there was some delay in serving it on the applicant. He further stated that applicant having not taken the charge of the higher post of Executive Engineer till 6.4.99, there was definitely a mistake in permitting him to take charge after the initiation of proceedings for major penalty and, therefore, he had to be reverted. He further contended that as per Govt. of India Department of Personnel & Training O.M. No. 11012/9/87-Estt(A) dated 24.12.86, the applicant having been promoted on an ad hoc basis only and not having held the higher post for more than one year had to be reverted <sup>after</sup> initiation of disciplinary proceedings. He has relied upon the decision of this Bench in OA no. 594/90 by order dated 31.3.98.

6. We are of the view that applicant was actually promoted by order dated 10.8.98. The order dated 7.4.99 was only in partial modification of the order dated 10.8.99, in that the place of posting for the applicant underwent a change. In this view of the matter, the controversy relating to the actual date of charge-sheet is not relevant for the disposal of the present application. We may proceed on the basis that there was no charge-sheet on the date when the order promoting the applicant was passed. Also in fact <sup>this is</sup> not a case where before the applicant assumed the charge of higher post, promotion order was withdrawn. Promotion order was given effect to and the applicant assumed charge of higher post. We have to proceed on that basis.

7. Be that as it may, we find that the promotion of the applicant was only on ad hoc basis. This is clearly stated in the promotion order dated 10.8.98 and also in the modification order dated 7.4.99. It is also a fact that disciplinary proceedings for major penalty was initiated sometime in April-May, 1999. We leave upon the controversy relating to the date of initiation.

of penalty proceedings. In this background, the question is whether the impugned order dated 28.7.99 is in order. We find the Govt. of India, Department of Personnel & Training No. 11012/9-86-Estt.(A) dated 24.12.86 lays down the procedure to be followed when disciplinary proceeding is initiated against a Govt. Servant officiating in a higher post on an ad hoc basis. The said O.M. is as follows:-

**"Procedure to be followed when disciplinary proceedings is initiated against a Government Servant officiating in a higher post on ad hoc basis:-** The question whether a Government Servant appointed to a higher post on ad hoc basis should be allowed to continue in the ad hoc appointment when a disciplinary proceeding is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases -

- (i) Where an appointment has been made purely on ad hoc basis against a short term vacancy or a leave vacancy or if the Government Servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year; the Government Servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.
- (ii) Where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government Servant has held the appointment for more than one year, if any disciplinary proceedings is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case.

[G.I., D.P.T. O.M. No. 11012/9/86-Estt.(A) dated the 24th December, 1986]

8. From this O.M., it is clear that the applicant who has held the ad hoc appointment for less than one year prior to the impugned reversion order, can be reverted. But here again, the basic question that arises for consideration is whether reversion could be ordered in the circumstances of this case unilaterally by the respondents without giving any

notice to the applicant. This is not a case of ad hoc appointment against a short term vacancy or a leave vacancy. It is also not purely temporary. In fact neither in the promotion order dated 10.8.98 nor in the modification order dated 7.4.99, there is any mention regarding the date/period upto which promotion order was to be in force. It appeared as if the promotion was on long term basis. In the case of the applicant in OA 594/90, the promotion was purely on a temporary basis and that is not the case here. Therefore, we are of the view that before the applicant can be reverted for whatever reasons, he is entitled to notice. As no notice was actually given to the applicant, we cannot uphold the impugned order dated 28.7.99.

9. For the foregoing reasons, we set aside the impugned order dated 28.7.99. It is open to the respondents to give notice to the applicant and take further action if they are so advised.

10. The OA is ordered accordingly. No costs.

  
(S. BAPU)  
MEMBER (A)

  
(S.K. AGARWAL)  
MEMBER (J)