

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 1st 2003
On
25/3

O.A. No. 98/2003
T.A. No.

199

4/1(A)
Rep. 16/4/03

DATE OF DECISION _____

C. P. Dubey _____ Petitioner

S. K. Jain & R. R. Singh _____ Advocate for the Petitioner (s)

Versus

Union of India & Ors. _____ Respondent

R. G. Gupta _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

The Hon'ble Mr. A. P. Nagrath, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A. P. NAGRATH)
MEMBER (A)

(G. L. GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 17.04.03

O.A. No. 98/2003.

C.P. Dubey S/o Late Shri D. N. Sharma, aged 46 years, resident of 215-A, Workshop Colony, Kota Jn., now-a-days Senior Section Engineer, Workshop, Wagon Repairs, Western Railway, Kota.

... APPLICANT.

v e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Deputy Chief Engineer (RCM), Workshop, Western Railway, Kota.

... RESPONDENTS.

Mr. S. K. Jain & Mr. R. R. Singh, counsel for the applicant.
Mr. R. G. Gupta counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :

Per Mr. Justice G. L. Gupta :

Through this O.A. under Sec. 19 of the Administrative Tribunals Act, 1985, the applicant calls in question the show cause notice Annex. A.1 dated 20.03.2003. It is averred that the applicant was promoted as Senior Section Engineer in the scale of pay of Rs.2375-3500/- (pre-revised) and Rs.7450-11500 (revised) against the upgraded post vide order dated 29.1.94., with effect from 1.3.93 and he has been



continuing on this post. Before his promotion to the post of Sr. Section Engineer, the applicant was working in the post of Chargeman 'A' which post is now known as Shop Superintendent Gr.'A' and one Shri Nathulal Meena who belongs to ST community, was promoted as Chargeman Gr. 'A' vide order dated 2.3.95 and his name appeared below the applicant. Shri Nathulal Meena was promoted as Jr. Shop Superintendent vide order dated 9.3.96. Thereafter a seniority list of Sr. Section Engineer was published on 3.3.03, wherein the name of the applicant was shown at Sl. No.5. It is averred that the respondent No.2 has issued show cause notice Annexure A-1 on 20.02.2003 to the applicant stating that on the basis of 'L' type roster, replacement of post no.3 was to go to S.T. candidate but there was no person available from S.T. candidate to be placed on the cadre of Sr. Section Engineer on the retirement of Shri Duggal and as now S.T. candidate is available, the applicant is proposed to be reverted.

2. It is the case for the applicant that 'L' type roster has been struck down by the Jodhpur Bench of this Tribunal in Rajendra Kumar Gaur vs. Union of India (O.A. No. 286/1998 - decided on 11.5.2001), and, therefore, the action of the respondents is illegal. It is further stated that the show cause notice has been issued by an authority subordinate to the promoting authority and, therefore, the show cause notice is bad.

3. In the short reply, respondents' case is that the application is premature and the applicant should have preferred his objections to the show cause notice within the time prescribed therein.

4. We have heard the learned counsel for the parties and perused the documents placed on record.



5. Mr. Jain, learned counsel for the applicant, pointing out that the applicant was promoted to the post of Sr. Section Engineer, vide order dated 29.1.94 issued by the Chief Works Manager, Kota, whereas the show cause notice has been issued by the Deputy Chief Engineer, Workshop, who is lower in rank to the Chief Works Manager, contended that the notice is illegal under Para 228-C of IREM Vol. I. His further contention was that 'L' type roster has already been struck down by Jodhpur Bench of this Tribunal, hence the show cause notice is illegal.

6. Mr. Gupta, learned counsel for the respondents, on the other hand, contend that this application is premature and should be dismissed on this ground alone.

7. We have given the matter our thoughtful consideration. It is now well settled that at the stage of show cause notice, Court should not interfere. The earliest decision on the point was rendered in the case of Channan Singh vs. Registrar of Cooperative Societies Punjab and others (AIR 1976 SC 1821), wherein it was clearly held that if no punitive action was taken an application before the court is premature. This principle was reiterated in the case of Geep Flashlight Industries Ltd. v. Union of India and Others (AIR 1977 SC 456) wherein it was held that no mandamus can be issued against the issuance of the notice to the parties when they had been asked to represent their case. It was observed at para 24 of the report as under :

" The appellant's prayers for writs of certiorari and mandamus are misconceived. There is no order either judicial or quasi judicial which can attract certiorari. No mandamus can go because there is nothing which required to be done for forbearance under the Act....."

In the case of Executive Engineer Bihar State Housing Board vs. Rameshkumar Singh and Others (AIR 1966 SC 691), it was clearly held by their Lordships that Writ Petition is not maintainable against show



cause notice. The relevant observations appearing at para 10 and 11 of the report are reproduced hereunder :

"10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is allowed or proved. It cannot be said that Ex. P.4 notice is ex facie a 'nullity' or totally 'without jurisdiction' in the traditional sense of that expression that is to say, that even the commencement of initiation of the proceedings on the fact of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show cause notice at the stage, it should be shown that the authority has no power or jurisdiction to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision it will certainly be open to him to assail the same either in appeal or revision as the case may be, or in appropriate cases, by invoking the jurisdiction under Art. 226 of the Constitution of India.

11. On the facts of this case, we hold that the first respondent was unjustified in invoking the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution of India without first showing cause against Annex. Ex.p.4 before the 1st respondent would have been to file his objection and place necessary materials before the 3rd respondent and invite a decision as to whether the proceedings initiated by the 3rd respondent under Sec. 59 of the Bihar State Housing Board Act. 1982 are justified and appropriate. The adjudication in that behalf necessarily involves disputed questions of fact which require investigation in such a case proceedings under Article 226 of the Constitution can hardly be an appropriate remedy. The High Court committed a grave error in entertaining the Writ petition and allowing the same by quashing Annex. Ex. P.4. and also the eviction proceedings No.6/92.

8. In the instant matter, it is not the case for the applicant that fundamental rights guaranteed by the Constitution of India have been infringed. It cannot also be said that the show cause notice is ex facie "nullity" or totally "without jurisdiction".

9. It is the contention of the learned counsel for the applicant that the promotion order was issued by the higher authority but the show



cause notice has been issued by a lower authority. No law laying down the proposition that show cause notice cannot be issued by an authority lower than the authority which had issued the promotion order, was brought to our notice. As to para 238 II (c) of IREM towards which our attention was drawn, it may be stated that under this provision a decision is required to be taken by an authority higher than the appointing authority where appointment or promotion is sought to be rescinded.

The issuance of show cause notice does not amount to taking decision. If the applicant thinks that the decision can be taken only by the higher authority, he should state that fact in his representation and the competent authority will consider that contention. There cannot be any objection in issuing the show cause notice.

Apart from that, the order Annex. A.2 dated 29.1.1994, whereby the applicant was promoted as Sr. Section Engineer, was not signed by the Chief Works Manager, Kota. It was signed by an inferior authority. The show cause notice Annex. A-1 has been also issued from the office of the Chief Works Manager, Kota. The designation of the person who signed the notice cannot be read as it is illegible.

Be that as it may, since there is no legal requirement that a show cause notice has to be issued by the authority who had signed the earlier promotion order or by the higher authority, the contention raised by Mr. Jain in this regard cannot be accepted.

10. As to the contention of Mr. Jain, that 'L' type roster has been struck down by the Jodhpur Bench of this Tribunal, the objection can be taken in the reply to be filed by the applicant against the show cause

A handwritten signature in black ink, appearing to read "Ashok Patel", is written over a diagonal line.

notice. During the course of the arguments, the learned counsel for the applicant informed that his client has already sent a reply to the show cause notice.

11. At this stage, it cannot be said that the action of the respondents in issuing the show cause notice is without jurisdiction and is ex-facie "nullity". As it was not established that the show cause notice (Annex. A-1) was issued by an incompetent authority or the proposed action is wholly without jurisdiction, this application is liable to be dismissed as premature.

12. Consequently, this application is dismissed as premature. Needless to state, the applicant shall be at liberty to challenge the order, that is passed by the authorities concerned after considering the reply to the show cause notice sent by the applicant.

13. No order as to costs.

Amritpal
A. P. NAGRATH)
MEMBER (A)
jsv.

G. L. Gupta
(G. L. GUPTA)
VICE CHAIRMAN