

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 189 of 1997.

DATE OF DECISION..... 14-7-1999.

Shri Bhupendra Nath Roy.

(PETITIONER(S))

S/Shri S.C.Dutta Roy & B.Ckakraborty.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri S.Sengupta, Railway counsel.

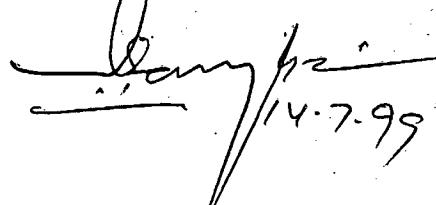
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Administrative Member.


14-7-99

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 189 of 1997.

Date of Order : This the 14th day of July, 1999.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Shri Bhupendra Nath Roy,
At present working as Cabin Man Gr.II,
North East Frontier Railways,
Tinsukia.

... Applicant

By Advocate S/Shri S.C.Dutta Roy &
B.Chakraborty.

- Versus -

1. Union of India,
represented by the General Manager,
N.F.Railway,
Maligaon,
Guwahati-11.

2. The General Manager,
N.F.Railway,
Maligaon,
Guwahati-11.

3. The Divisional Railway Manager(P),
N.F.Railway,
Tinsukia,

4. The Divisional Personnel Officer, Counsel.
N.F.Railway,
Tinsukia.

... Respondents

By Advocate Sri S.Sengupta, Railway counsel.

G.L.SANGLYINE, ADMN. MEMBER,

The applicant was appointed as Porter on 27.5.1979 and thereafter he opted for Cabinman and he was selected and appointed as Cabinman Grade-II on 17.9.1987 after qualifying the Selection Test. On 25.4.1990 he was promoted to the post of Cabinman Grade-I in the scale of pay of Rs. 950-1500/-.

Thereafter in terms of the Railway Board's instructions contained in the letter No.PC/III/GI/CPC/1 dated 27.1.1993 the post of Cabinman Grade-I was allotted the pay scale of Rs. 1200-1800/- with effect from 1.3.1993. The scale of Rs.950-1500/- was allotted to Cabinman Grade-II by abolishing the grade in the scale of Rs.800-1150/- in the category of Cabinman. The applicant was promoted on 20.8.1993 to the post of Cabinman Grade-I in the scale of Rs.1200-1800/- with effect from 1.3.1993.

By office Order dated 22.5.1996, Annexure-IV, the Divisional Railway Manager(P), N.F.Railway, Tinsukia directed the applicant, who was working as Cabinman Grade-I in the scale of pay of Rs. 1200-1800/-, to be put back to his former post of Cabinman in the scale of Rs. 950-1500/- at the stage of pay of Rs.1070/- in the scale. The applicant is aggrieved with the order and has submitted this Original Application. In this application the applicant has contested against his reversion from the post of Cabinman Grade-I in the scale of pay of Rs.1200-1800/- to the grade of Cabinman Grade-II in the pay scale of Rs. 950-1500/- as being illegal and arbitrary. According to him there is no valid ground for such reversion and no opportunity of being heard was afforded to him before issuing the order dated 22.5.1996. He further prays for restoration of his seniority in the grade of Cabinman Grade-II.

2. The respondents submitted that the applicant was promoted to the post of Cabinman Grade-I in the scale of pay of Rs. 1200-1800/- with effect from 1.3.1993 after being found suitable in

the modified selection as per instructions on restructuring of certain Group 'C' and Group 'D' cadres. But the order of promotion was issued wrongly on the basis of seniority list as on 1.4.1994 published by order No.E/255/I/V Seniority of C/Man(II) Part-III dated 6.3.1995 on a wrong assumption of his seniority. In fact, 4 SC employees in the grade of Rs.800-1150/- as mentioned in their letter dated 27.12.1996 were senior to the applicant who is also an SC employee. On detection of the wrong seniority list as on 1.4.1994 the above mistake was corrected by order dated 24.1.1996 on the basis of modified correct seniority position and Rule No.228 ii(a) and (b) of the Indian Railway Establishment Manual Vol.I and accordingly the applicant was put back to his former post of Cabinman Grade-II in the scale of pay of Rs. 950-1500/-. According to the respondents their action is not in any manner arbitrary or illegal in the facts of the case. Moreover, according to them, such action does not require the respondents to give opportunity to the applicant to defend himself. The aforesaid rule also does not provide that an opportunity of being heard is to be allowed to the applicant before an order of putting back was issued.

3. The respondents have admitted that the promotion of the applicant to Cabinman Grade-I in the scale of pay of Rs. 1200-1800/- with effect from 1.3.1993 was made on the basis of the position he occupied in the seniority List as on 1.4.1994. Before this seniority list also the applicant occupied his respective position in the seniority lists published from time to time. It is their case that the order dated 22.5.1996 reverting the applicant from the post of Cabinman Grade-I in the Scale of Rs.1200-1800/- to that of Cabinman Grade-II in the scale of Rs. 950-1500/- was as a consequence

of the modification of the seniority list on the basis of which the applicant was promoted to cabinman Grade-I. As a result of the modification of the Seniority List the position of the applicant in the list was brought down. In both the occasions, namely, in modifying the seniority List in January 1996 adversely affecting the applicant and in issuing the order dated 22.5.1996 reverting the applicant to one grade below no opportunity of being heard was allowed to the applicant. The respondents justify their action on the ground that the aforesaid rule 228 empowers them to cause a reversion on detection of erroneous promotion and that the rule does not provide that an opportunity of being heard is to be afforded to an employee who is adversely affected by such reversion.

We have heard both sides and duly considered the submissions.

In re K.I.Sephard & Others vs. Union of India & others reported in 1988(1) S.L.J (SC) 105, the Hon'ble Supreme Court had held :

"On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet."

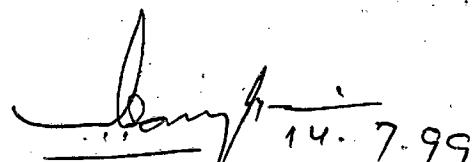
We are of the view that in the case of the applicant presently under consideration the respondents had neither acted fairly nor reasonably. His seniority was adversely disturbed and he was reverted to a lower post on the ground of erroneous promotion. Yet he was not informed before hand about the proposed action to be taken against him. We cannot therefore sustain the action of the respondents. Accordingly we hereby set aside the order dated 22.5.1996 insofar as it relates to the applicant. The respondents shall reinstate the applicant in the post of Cabinman Grade-I in the scale of pay of Rs.1200-1800/- immediately after receipt of this order. Further, the

applicant shall be deemed to be in continuous service in the post of Cabinman Grade-I in the scale of pay of Rs.1200/- 1800/- with all financial and service benefits from the date he was reverted. Arrears shall be paid to him within 3 months from the date of receipt of this order. We however make it clear that the respondents are at liberty to issue fresh orders on merit with prospective effect after reconsideration of the seniority of the applicant by giving him as well as the persons who may be adversely affected reasonable opportunity of being heard.

The application is disposed of. No order as to costs.



(D.N.BARUAH)
VICE CHAIRMAN



14.7.99

(G.L.SANGUINE)
ADMINISTRATIVE MEMBER