

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.242 of 2000

Jabalpur, this the 14th day of October, 2003

Hon'ble Shri J.K.Kaushik, Judicial Member
Hon'ble Shri Anand Kumar Bhatt, Administrative Member

R.G.Barkur, aged about 54 years, son of
Shri Moolchand Barkur, Occupation-Senior
Loco Inspector (Rs.7450-11500 RSRP) posted
in the Diesal Shed, Central Railway, Itarsi

- APPLICANT

(By Advocate - Shri S.Nagu)

Versus

1. Union of India through Secretary, Rly. Deptt.
Govt. of India, New Delhi.
2. General Manager, Central Railway, Chhatrapati
Shivaji Terminal, Mumbai.
3. Chief Personnel Officer, Central Railway,
Chhatrapati Shivaji Terminal, Mumbai.
4. Divisional Railway Manager, Central Railway,
Bhopal.
5. Shri D.N.Shukla, Loco Foreman, Central Railway
Bhopal (MP)

- RESPONDENTS

(By Advocate - Shri S.P.Sinha for official respondents &
Shri A.K.Tiwari on behalf of Shri S.Yadav for private-
respondent)

O R D E R (Oral)

By J.K.Kaushik, Judicial Member -

R.G.Barkur has filed this Original Application
assailing an order dated 7.3.2000 (A-1) and has sought for
further direction to the respondents to continue the
applicant in the promotional post of Senior Loco Inspector
in the grade of Rs.7450-11500 in pursuance with the orders
at Annexures-A-6, A-7 and A-8.

2. The brief facts of the case of the applicant are
that he was appointed on regular basis to the post of Loco
Supervisor with effect from 11.1.1990. A seniority list
of Loco Supervisors was issued at Annexure-A-4 in which
the name of the applicant is at serial no.270. An order
was passed by the Chief Personnel Officer, Central Railway,

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on 22.4.1997 (Annexure-A-6) by which the applicant was ordered to be promoted to the grade of Rs.2375-3500. Vide order dated 18.12.1998 (Annexure-A-7) another order was issued by the same authority directing the subordinate authorities to treat the applicant as promoted against the vacant post of running side and for taking over the charge latest by 21.12.1998. Accordingly, the promotion order dated 28/30.12.1998 (Annexure-A-8) was passed and the applicant was promoted to the post of Senior Loco Inspector in the grade of Rs.7450-11500. He continued to discharge his duties on the said post and after about one and half years' period, an order dated 7.3.2000 (Annexure-A-1) has been issued by which the applicant has been ordered to be reverted to the lower post of Assistant Loco Foreman in the grade of Rs.6500-10500. It has also been averred that respondent no.5 is junior to the applicant inasmuch as in seniority list his name is at serial no.272 whereas the name of the applicant is at serial no.270 but respondent no.5 Shri D.N.Shukla has been continued on the promotional post. The impugned order has been assailed on number of grounds inasmuch as it has been averred that the promotion order was issued by the Chief Personnel Officer whereas the reversion order has been issued by an inferior authority to the promotion authority. The applicant has been reverted despite the fact that his junior is continuing and this has been done to accommodate his next junior. No show cause notice has been issued to the applicant prior to passing of the impugned order, thereby there has been flagrant violation of the principles of natural justice.

2. The respondents have contested the case and separate replied have been filed on behalf of the official respondents as well as on behalf of private-respondent no.5.

3. In the reply of the private respondent it has been averred that there was some mistake in the date of appointment of the applicant and in fact the applicant was given the benefit of Contd.....3/-

adhoc service whereas the said respondent was not given such benefit. As per the official-respondents the defence has been set out in the reply stating therein that the order of promotion has been issued in contravention with the provisions of the Railway Board circular dated 25.11.1992 (Annexure-A-10) whereby the post of Loco Inspector, Crew Controller and Power Controller are required to be filled exclusively from the persons belonging to the loco running side, while the post of Assistant Loco Foreman and Loco Foreman are to be filled in from loco maintenance side. The applicant belongs to loco maintenance side and was posted wrongly in the running side. Thus, he cannot claim the protection of his illegal promotion against the post of running cadre. The reversion order has been issued at the instance of the competent authority.

4. Rejoinder has also been filed on behalf of the applicant. The official-respondents have also filed additional return on behalf of the respondents and have reiterated their stand of defence.

5. We have heard the learned counsel of parties at a considerable length and have earnestly considered arguments and pleadings on the record of this case.

6. The learned counsel of the applicant has strenuously argued that ~~an~~ conscious decision was taken by the Chief Personnel Officer at Headquarters to promote the applicant keeping in view the requirement of the administration and this position is evident from the very wording at Annexure-A-7 dated 18.12.1998, he has submitted that the main promotion order Annexure-A-7 had been issued by the Chief Personnel Officer whereas the reversion order at Annexure-A-1 has been issued by the Senior Divisional Personnel Officer. He has also submitted that the applicant was promoted to the post of Senior Loco Inspector on

substantive basis without any rider whatsoever, and he had indefeasible right to hold the post. In the present case the minimum requirement of the principles of natural justice has not been found expedient to the respondents inasmuch as the applicant was not issued with any prior notice and has also not been given pre-decisional hearing in the matter even though the impugned order would visit him with evil and civil consequences.

7. The learned counsel of the respondents have reiterated their pleadings and have submitted that the Chief Personnel Officer was not competent to promote the applicant. They have also submitted that the actual order of promotion was issued by the Senior DPO who has also issued the reversion order. Thus, the competence to issue the impugned order cannot be questioned. It is also argued on behalf of the respondents that there is specific instruction from the Railway Board vide circular dated 25.11.1992 wherein directions have been issued in specific terms for filling up the supervisory grade posts and the applicant who belongs to maintenance side could not have been posted to the running side and the order issued by the Chief Personnel Officer was contrary to the order of the Railway Board. Hence the applicant cannot derive any benefit from the same. He has also submitted that the respondents have every right to rectify their mistake and there was no need of issuing any show cause notice prior to passing of such order. Finally, the learned counsel of the respondents submitted that in case this Tribunal comes to the conclusion that the impugned order cannot be sustained in the eye of law, then the respondents may be given liberty to proceed with the matter afresh in accordance with law.

8. The learned counsel for the private-respondent has tried to defend the case of respondent no.5 narrating that he is senior to the applicant. He has also submitted that a separate case has been filed in regard to seniority before

this Tribunal. It has also been brought to our notice that subsequent to the impugned order in this OA, Shri Shukla was ordered to be reverted, but on the strength of a stay order he is continuing to hold the same post.

9. We have considered the rival contentions raised on behalf of the parties. The material facts of this case are not at dispute. It is the admitted position of this case that none of the order promoting the applicant contained any rider whatsoever and the inescapable conclusion would be that the promotion order was issued in respect of the applicant on regular basis. It is also not in dispute that the main promotion order has been issued by the Chief Personnel Officer and the reversion order has been issued by the Senior Divisional Personnel Officer. But, it looks very strange that one side the respondents contend that the actual promotion order in respect of the applicant was issued by the Senior Divisional Personnel Officer, other side they contend that promotion order which was issued by the Chief Personnel Officer had no sanctity. In this way they also admit that the promotion order was, in fact, issued by the Chief Personnel Officer, who is a higher authority than that of Senior Divisional Personnel Officer. In this view of the matter, the impugned order has not been issued by the competent authority and on this ground alone the Original Application deserves to be allowed.

10. Now examining the matter from another angle, it is an admitted position of the case that the applicant has not been given any show cause notice prior to the issuance of the reversion order. There can also be no doubt that the applicant was appointed on regular basis and the impugned order would definitely visit him with evil consequences, since he had indefeasible right to hold the post. The law on the point of natural justice is very clear by now inasmuch as if any adverse order is passed without hearing the affected person, the order would be bad in law. This proposi-



tion of law has been propounded by the Apex Court in H.L.Trehan and others Vs. Union of India and others, (1989) 9 ATC 650. Similar position has also been settled in one of the very recent judgment of the Apex Court in Onkar Lal Bajaj etc,etc. Vs. Union of India and another, AIR 2003 SC 2562, popularly known as 'Petrol Pump Case'. This this view of the matter also the impugned order cannot be sustained.

11. In the premises the Original Application merits acceptance. The same is hereby allowed. The impugned order dated 7.3.2000 (Annexure-A-1) is hereby quashed and the applicant shall be entitled to all consequential benefits. However, this order shall not preclude the respondents-railways to take any action in the matter in accordance with law and the existing rules. However, there shall be no order as to costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K.Kaushik
(J.K.Kaushik)
Judicial Member.

rkv.

पृष्ठांकन सं. ओ/ज्ञा.....जवलाहल. दि.....

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कानूनी विवरण अधिकारी

S. Naga Adl
S. P. Saini, Adl & S. Yadav Adl
17.10.03

File No. 17/10/03