

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH
CIRCUIT AT INDORE

Date of Decision : 02.09.2003

O.A. No. 825/1999.

1. Chhotelal S/o Shankerlal, aged about 41 years, occupation-service, R/o Post Palia, Distt. Khargone;
2. Shyamlal S/o Chhotelal, aged 40 years, occupation-service, R/o Railway Colony, Indore.
3. Ramprasad S/o Ramdulare, aged 40 years, occupation-service, R/o Banganga, Indore.
4. Shivshanker S/o Bihari, aged 39 years, occupation-service, R/o Banganga, Indore.

... Applicants.

v e r s u s

1. Union of India through Ministry of Railway, New Delhi.
2. The Senior Section Engineer (Works), Western Railway, Mhow, Distt. Indore.
3. Asstt. Engineer (Works), Western Railway, Mhow, Distt. Indore.

... Respondents.

Smt. Neelam Abhyankar, Proxy counsel for
Shri V. N. Palsikar counsel for the applicants.
Shri Y. I. Mehta, counsel for the respondents.

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Hon'ble Mr. V. K. Majotra, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Shri Chhote lal and 3 others have assailed the impugned order dated 26.06.1999 (Annexur A-2) and have sought a further direction to the respondents to make payment of the arrears of salary to the applicants w.e.f. 22.6.1999 along with interest.



2. The factual profile of the case is at a very narrow compass. All the applicants were initially appointed in the year 1979 and 1980. In due course they were promoted to the post of Senior Khallasi and their pay was fixed in the pay scale of Rs.775-1025/- revised to Rs.2650-4000/- w.e.f. 04.11.1993 (Annexure A-1). Since then, they continued to discharge their duties without any complaint. An order dated 26.06.1999 (Annexure A-2) came to be issued whereby all the applicants have been ordered to be reverted to the post of Khallasi and the pay scale had been reduced from Rs.2650-4000 to 2610-3540. It has been also submitted that all the applicants were confirmed in the year 1990. They have not been given any show cause notice or opportunity of hearing prior to the issuance of the impugned order. A representation was made to the Competent Authority but of no avail. Thereafter a notice for demand of justice was given but that also remained un replied. The salient grounds on which the OA has been filed is that the applicants have been working on the post of Khallasi quiet satisfactorily and they have not been given any show cause notice or opportunity of hearing before passing the impugned order. It is also one of the ground that there are number of juniors to the applicants who were continued to work on the higher post.

3. The respondents have contested the case and have filed the detailed reply to the OA. It has been averred that Annexure A-2 has not been passed because of any complaint or inefficiency and, therefore, there is no question of violating the principles of natural justice. They have been ordered to be reverted for the reason that certain persons were required to be given seniority in pursuance with Para 179 of the Indian Railway Establishment Manual and the same was

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overlooked. When the mistake came to the notice of the authorities the due seniority was assigned to the 8 persons who came under 10% intake and as a result thereof, the applicant became junior most and ~~that~~ had to be reverted to make room for them. Annexure A-2 has been passed in view of Para 228 of IREM Vol.1 for rectification of the mistake and, therefore, the OA deserves to be dismissed.

4. We have heard the learned counsel for the parties and have carefully perused the records of this case.

5. Both the Learned counsel for the parties have reiterated their pleadings. Learned counsel for the applicants has banked upon primarily on the point of the breach of principles of natural justice. On the other hand, learned counsel for the respondents have placed heavy reliance on Para 228 of IREM Vol.1 at Annexure R-2, wherein, a procedure has been laid down regarding dealing with the erroneous promotion. It has been contended on behalf of the respondents that due procedure has been followed and there is no illegality in the action of the respondents.

6. We have considered the rival contentions and submissions made on behalf of both the parties.

7. As far as the facts of the case are concerned there is no serious dispute in regard to the issuance of the notice. It is admitted position of the case that the applicants have neither been issued any show cause notice nor were given any personal hearing prior to passing of the impugned order of reversion. As far as Para 228 of IREM Vol.1 (Annexure R-2) is concerned, since all the applicants were confirmed on the post of Senior Khallasi, the procedure as contemplated in Part (II) of the Para (a) was required to be complied with.



Certain procedures have been prescribed by the Railway Board in such cases vide Circular dated 23.07.1954. This circular has not been brought to our notice by either of the party. The pleadings on behalf of the respondents do not indicate that any such procedure has been followed. We have also enquired from the learned counsel for the respondents whether any procedure has been followed as specified in the said rule, there was no satisfactory explanation.

8. Now examining the matter from the other angle. The applicants were holding the post of Senior Khallasi on substantive basis. Even if they were ~~surplus~~ ^{rendered} in the cadre, specific procedure has been laid down and the same ought to have been followed. In case the persons ~~serving~~ in the cadre, generally they are absorbed on the alternative post. However, the settled position of the law is that once the particular individual has got an indefeasible right to hold the post, he cannot be ousted from that without following the procedure established by law for imposition of the penalty, and in the present case, no such procedure has been followed. Yet the matter is significant from other side inasmuch as the Supreme Court in the case of H. L. Terehan vs. Union of India AIR 1989 SC 568, it has been clearly held that any order which visits an employee with civil consequences must be passed after giving a ~~particular~~ pre-decisional hearing in the matter. It has also been held by their Lordship that the post decisional hearing would not be a substitute for pre-decisional hearing but nothing as such has been done in the present case.

9. In our considered opinion the action of the respondents has not been fair inasmuch as the applicants have been taken



