

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day of June, 2005

ORIGINAL APPLICATION No.283/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR.G.R.PATWARDHAN, MEMBER (ADMINISTRATIVE)

Raghubeer Singh s/o late Shri Chuttan Lal, Senior
Section Engineer, 26 Deptt. C&W Workshop, Ajmer and
r/o House No.442/18, Ashoknagar, Bhatta, Behind Santi
Market, Ajmer.

.. Applicant

(By Advocate: Shri Subhabh Biswa)

Versus

1. Union of India through
General Manager,
Northern-Western Railway,
Near Railway Hospital, Jaipur.
2. The Chief Works Manager,
Northern Western Railway,
Loco Head Office,
Ajmer.
3. The Dy. C.M.E. [c],
Carriage and Wagon Workshop,
North Western Railway,
Ajmer.

.. Respondents

(By Advocate:



ORDERPer Hon'ble Mr. M.L.Chauhan

The applicant has filed this Original Application thereby praying for the following reliefs:

- a) The show cause notice dated 4.6.2005 may kindly be quashed and the respondents be directed not to revert the applicant from the post of Senior Section Engineer Scale 7540-11500 till the finalization of this O.A.
- b) Any other writ, order or direction may also kindly be granted which may be deemed just and proper in the facts and circumstances of the case.
- c) Cost of this application may also be allowed.

2. Facts of the case are that the applicant while working on the post of Senior Section Engineer was served with show-cause notice dated 4.6.2005 (Ann.A1) whereby it was stated that he has been wrongly given promotion on the basis of deficiency of reserved category post of Scheduled Caste and it was further stated that the competent authority has come to the conclusion that the applicant is required to be reverted from the post of Senior Section Engineer scale Rs. 7450-11500 to the post of Section Engineer scale Rs. 6500-10500. The applicant was directed to show-cause within 15 days. Pursuant to the aforesaid show-cause notice, the applicant has filed representation dated 15.6.2005. Simultaneously, the applicant has also filed OA in this Tribunal thereby praying for the aforesaid reliefs. By way of interim

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relief, it has been prayed that the respondents be restrained from reverting the applicant from the post of Senior Section Engineer.

3. We have heard the learned counsel for the applicant at admission stage. We have also gone through the impugned order as well as the plea taken by the applicant in this OA in order to challenge the validity of the impugned order. It is not the case of the applicant that the impugned show-cause notice has been issued by the authority who has no power or jurisdiction to enter upon the enquiry in question or the impugned notice is ex-facie a nullity or without jurisdiction that is to say that even commencement or initiation of the proceedings on the face of it is totally unauthorized. The only contention raised by the applicant is that this show-cause notice is mere formality and eye-wash as decision has already been taken by the respondents to revert the applicant. We are not inclined to agree with the contention raised by the applicant. In the impugned show-cause notice, the competent authority has indicated the reasons on the basis of which the applicant is required to be reverted to the lower post. These reasons were necessary to be communicated to the applicant so that he can put up his case before the competent authority on the basis of which his reversion was warranted. The reasons indicated in the show-cause notice were

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tentative one and the said decision cannot be said to be a final decision. Further, the matter is no longer res-integra and the same is covered by the decision rendered by the Apex Court in the case of Executive Engineer, Bihar State Housing Board vs. Ramesh Kumar Singh and ors., AIR 1996 SUPREME COURT 691. That was a case where show-cause notice against eviction was issued to the petitioner therein by the competent authority under the Housing Board Act. The petitioner therein raised dispute regarding jurisdiction of the competent authority on the ground that he is not tenant of the Board. The Apex Court in para 10 gave the following findings:-


"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 alleged or proved. It cannot be said that Ext. 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 or initiation of the proceedings, on the face of it and without anything more, is totally unauthorized. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that 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 reversion, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

The ratio as laid down by the Apex court in the aforesaid case is squarely applicable in the instant case. As already stated above, the applicant has not

made challenge to the impugned show-cause notice on the ground that the notice is ex-facie nullity or totally without jurisdiction or that the authority has no power or jurisdiction to enter upon the enquiry in question. As such, we cannot go into the merit of the case at this stage. It is only after final order is passed by the appropriate authority, the applicant can again approach before this Tribunal, in case the decision is adverse.

4. With these observations, the OA is dismissed at the admission stage with no order as to costs.


(G.R. PATWARDHAN)
Member (Adm)


(M.L. CHAUHAN)
MEMBER (Judl)

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