

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day October, 2010

CORAM:

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

ORIGINAL APPLICATION No.410/2010

Narsi Lal Meena
s/o Shri Jai Narain Meena,
r/o Village Rohara Khurd,
Post Jasota, Tehsil Dausa,
District Dausa.

.. Applicant

(By Advocate: Ms. Ashish Joshi)

Versus

1. Union of India through the General Manager, North-West Railway, Hasanpura, Jaipur.
2. The Divisional Railway Manager, Divisional Railway Manager's office, North Western Railway, Power House Road, Jaipur
3. Senior Divisional Personnel Officer, DRM Office, North-Western Railway, Jaipur
4. Senior Divisional Engineer (Co-ordination), DRM Office, North-Western Railway, Jaipur.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORIGINAL APPLICATION No.411/2010

Nand Kishore Meena
s/o Shri Chhotu Lal Meena,
r/o Plot No.485, Nai Dhani,
Shanti Nagar,
NBC Road, Jaipur

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.. Applicant

(By Advocate: Ms. Ashish Joshi)

Versus

1. Union of India through the General Manager, North-West Railway, Hasanpura, Jaipur.
2. The Divisional Railway Manager, Divisional Railway Manager's office, North Western Railway, Power House Road, Jaipur
3. Senior Divisional Personnel Officer, DRM Office, North-Western Railway, Jaipur
4. Senior Divisional Engineer (Co-ordination), DRM Office, North-Western Railway, Jaipur.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORIGINAL APPLICATION No.412/2010

Narendra Kumar Sharma
s/so Shri Purshottam Das Sharma,
r/o 379, Moti Nagar West,
Shiv Colony, Ajmer Road,
Jaipur

.. Applicant

(By Advocate: Ms. Ashish Joshi)

Versus

1. Union of India through the General Manager, North-West Railway, Hasanpura, Jaipur.
2. The Divisional Railway Manager, Divisional Railway Manager's office, North Western Railway, Power House Road, Jaipur
3. Senior Divisional Personnel Officer, DRM Office, North-Western Railway, Jaipur

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4. Senior Divisional Engineer (Co-ordination), DRM Office, North-Western Railway, Jaipur.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORIGINAL APPLICATION No.443/2010

Madan Singh
s/o Shri Jai Singh,
r/o VPO-Patwan,
Via Bhal,
District-Biyain, Haryana,
SSE (W) Rewari (Jaipur Mandal)
Rewari.

.. Applicant

(By Advocate: Ms. Ashish Joshi)

Versus

1. Union of India through the General Manager, North-West Railway, Hasanpura, Jaipur.
2. The Divisional Railway Manager, Divisional Railway Manager's office, North Western Railway, Power House Road, Jaipur
3. Senior Divisional Personnel Officer, DRM Office, North-Western Railway, Jaipur
4. Senior Divisional Engineer (Co-ordination), DRM Office, North-Western Railway, Jaipur.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

By this order, we propose to dispose of these OAs, as common question of law and facts is involved.

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2. Briefly stated, facts of the case are that the applicants are Khalasis belong to Engineering Department. They submitted application for change of category from Engineering Department to Traffic Department on different dates. Request of the applicants for change of category was considered by the appropriate authority and by a common order dated 13.8.2010 (Ann.A/6 in OA No.411/2010), the applicants were transferred to Traffic Department on bottom seniority. The applicants were relieved on different dates and they have submitted joining report which was accepted by the Traffic Department. The applicants were required to undergo training of one year but before the applicants could complete the training they were repatriated to their parent department vide common order dated 31.8.2010 (Ann.A/1) by cancelling the earlier order dated 13.8.2010. It is this order which is under challenge in these OAs.

3. It may be stated that the respondents have filed reply in all the OAs except OA No.443/2010. The learned counsel for the respondents submits that reply filed by the respondents in the aforesaid connected OAs may also be read as reply to this OA. As such, we have proceeded to decide these OAs.

4. The impugned order has been challenged on the ground that they fulfill the requisite qualification and were eligible for change of category, as such, once they were allowed to change the category vide order dated 13.8.2010, subsequently cancelling the change of category is highly arbitrary, unreasonable and discriminatory.

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5. Notice of these applications were given to the respondents. The respondents have filed reply. In the reply, the stand taken by the respondents is that as per recruitment procedure by transfer it can only be against 10% annual intake of the transferee department for which requisitions are required to be called by the department. In the instant case no such procedure was followed. It is further stated that recruitment by transfer is rarest mode of recruitment which can only be exercised in administrative exigency. Thus, no fault can be found in the action of the answering respondents. What the respondents want to say is that order dated 13.8.2010 whereby the applicants were allowed to change the category was not issued as per the prescribed procedure and the same was issued ignoring the letter dated 21.7.2009 (Ann.R/1) where such change of category was not permissible after 31.3.2010. It is further stated that the post of Gangman is safety category post and no such change in this category was administratively prudent and permissible as per extant rules. The respondents have further stated that the matter was thoroughly examined by the Headquarter of North Western Railway which issued directions that change of category ordered after 31.3.2010. should be annulled. Thus according to the respondents, cancellation of the order dated 13.8.2010 is as per the extant rules and as per order of the Headquarter of North-Western Railway. The respondents have placed on record copies of the Headquarter letter dated 21.7.2009 and 20.8.2010 as Ann.R/1 and R/2.

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6. The applicants have filed rejoinder thereby reiterating the submissions made in the OA. The applicant have placed reliance upon the different provisions as contained in Railway Establishment (IREC) Code Vol.I as well as instructions issued by the Railway Board to contend that change of category was permissible.

7. We have heard the learned counsel for the parties and gone through the material placed on record.

8. Before we proceed to notice the contention raised by the parties and to decide the matter, it will be useful to quote relevant provisions, which are attracted in the instant case. Admittedly, the applicants were working as Khalasis in the Engineering Department and they sought change over to another department i.e. Traffic Department. Transfer from one department to another is governed by Rule 231 of the IREC Vol.I, which is in the following terms:-

"231. Transfer form one department to another.- Person employed in one department shall not be eligible for employment in another except with the previous consent of the head of the department in which they are employed. Without such prior consent the head of an office or department shall not employ a person either temporarily or permanently, if he knows or has reasons to believe that such persons belongs to another establishments under Government. A railway servant who takes up a new employment without the consent of the head of department commits a breach of discipline and is liable to be punished. Divisional Railway Managers, may, however, transfer Group D employees (peons, gangmen, khalasi, unskilled and semiskilled, etc.) from one department to another or from one Division to another." (emphasis supplied).

Thus, in view of the rule as quoted above, the DRM had power to transfer the applicants who were Group-D employees from Engineering to Traffic Department. To the similar effect is also

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the instructions issued by the Railway Board vide letter dated 13.8.2010. Para-5.1 of which has been reproduced by the applicants in the rejoinder. On the basis of the aforesaid provisions it has been argued by the learned counsel for the applicants that once the applicants were transferred in exercise of powers conferred under Rule 231, it was not permissible for the respondents to issue the impugned order Ann.A/1, and such order is bad, inasmuch as- i) no reason of cancellation has been mention in the impugned order, ii) no notice has been given by the respondents before passing the impugned order and iii) no reference has been made to Ann.R/1 and R/2 in the said order which formed basis for passing the impugned order, as per the stand taken by the respondents in the reply.

On the other hand, the stand taken by the respondents is that change of category can be allowed only in the administrative exigency whereas change of category of the applicants was considered on their own request. Further submission made by the learned counsel for the respondents is that on the face of order Ann.R/1 and R/2, it was not permissible for the appropriate authority to permit change of category and once this mistake was brought to the notice of the Headquarter office, appropriate order in terms of Ann.A/1 was passed thereby correcting the mistake. The learned counsel for the respondents submits that no opportunity was required to be given in the facts and circumstances of the case.

9. We have given due consideration to the submissions made by the learned counsel for the parties. We are of the view that the

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applicants are not entitled to any relief for the reasons stated hereinbelow. There is no dispute that in terms of provisions contained in Rule 231 of the IREC and the instructions issued by the Railway Board, the Divisional Railway Manager was competent to change the category of the applicants from Engineering to Traffic department. The next question which requires our consideration is whether in the light of the order passed by the Headquarter office Ann.R/1 and R/2 whether the applicant could be permitted to change the category. Before we answer this question, it will be useful to quote letter dated 21.7.2009 in extenso which thus reads:-

"In modification of this office letter No.W-260/1/Trackmen dated 14.5.2009, General Manager's verbatim orders are produce below:-

"We have inducted nearly 1400 trackmen in last one year. It will be unfair to deny opportunity to trackman to improve their promotion prospects by going to other depts, despite such heavy induction of new entrants. Let this inclusion be permitted as per extent rules till end of current financial year i.e. 31st March, 2010. Base be taken as men on roll as on 31.03.2008. Position be reviewed thereafter. Advice all divisions accordingly."

Necessary action may please be taken as per above."

It may be stated that this order dated 21.7.2009 which permits change of category of Gangmen till end of current financial year i.e. upto 31.3.2010 was in modification of the earlier order dated 14.5.2009. At this stage, it will also be useful to quote letter dated 14.5.2009, which thus reads:-

".....

Sub: Change of category of Gangman.

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It has come to notice that some divisions are permitting change of category of Gangman and lateral induction to other departments.

No such change of category should and/or lateral induction to other departments be permitted in the division without prior approval of PCE..."

Thus, from the combined reading of letter dated 14.5.2009 and 21.7.2009 it is evident that the Headquarter office of the North Western Railway has imposed complete ban for change of category of Gangmen and lateral induction to other departments without prior approval of the PCE. However, instructions contained in letter dated 14.5.2009 were modified to the extent that as one time measure such change of category was allowed for the financial year upto 31st March, 2010. Admittedly, the applicants were allowed change of category vide order dated 13.8.2010, after the cut off date of 31st March, 2010. Thus, it was not permissible for the Divisional Railway Manager to allow change of category of the applicants vide order dated 13.8.2010. Net result of this is that the order dated 13.8.2010 was passed by the Divisional Railway Manager erroneously ignoring the Headquarter office letter dated 21.7.2009. When the fact regarding change of category of certain Group-D staff was brought to the notice of the Headquarter office, the Chief Personnel Officer (Admn.) issued another order dated 20.8.2010, which thus reads:-

"Sub: Change of category to Gateman/Traffic Khalasi.

It has been brought to headquarter notice that categories of certain Group 'D' staff have been changed without following the due procedure and/or without complying with the necessary instructions on

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the subject. Therefore, all such changes of categories ordered after 31.3.2010 may be annulled. In future whenever any change of category of Group 'D' staff is processed, the provision of SOB and the extant instructions on the subject may be adhered to scrupulously.

If any name notings have been ignored in the above process, the corrective action in this regard may also be taken.

The action taken in the matter may be advised within 10 days."

10. Thus from this letter it is evident that appropriate authority has been directed to annul all such orders where change of category has been ordered after 31.3.2010. It is in the light of these orders that the respondents have passed the impugned order Ann.A/1. Thus, we see no infirmity in the action of the respondents whereby they have rectified its earlier order which was passed contrary to order Ann.R/1. There cannot be any dispute that mistake committed by the authorities can not be allowed to be perpetuated and should not be rectified. It is always permissible for the authorities to rectify mistake. However, the grievance of the applicants is that before carrying out such rectification at least opportunity should have been given to the applicants and further that the respondents should have passed the speaking order while repatriating the applicants and cancelling the order of change of category. For that purpose, reliance has been placed upon the decision of the Apex Court in the case of (2008) 2 SCC 750, (2009) 13 SCC 118 and (1999) 3 SCC 378. Though the submissions made by the learned counsel for the applicants is attractive but the same deserve out right rejection. Further, the case laws as relied by the learned counsel for the applicants are not applicable in the facts and

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circumstances of these cases. As can be seen from order Ann.R/1 read with order dated 14.5.2009 there was a complete ban for change of category and only as one time measure upto 31.3.2010 the change was allowed in respect of category of Gangman. As such, the order of change of category of the applicants from Engineering to Traffic Department was passed in violation of these orders. It is a trite law that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of mistake, however, may in a given situation requires compliance of the principles of natural justice. However, where the mistake is apparent on the face of record, rectification thereof is permissible without giving hearing to the aggrieved party. In the instance case, the order of change of category of the applicants from Engineering to Traffic Department was passed ignoring the order Ann.R/1, thus it is a mistake which is apparent on the face of record and rectification thereof can be done without hearing the aggrieved party. The question of principles of natural justice was considered by the Apex Court in the case of P.D.Agarwal vs. State Bank of India and ors, (2007) 1 SCC (L&S) 43 whereby the Apex Court considered its earlier decisions and it was further observed that in recent times the law has undergone a sea change and in para-39 has made the following observations:-

"39. Decision of this Court in S.L.Kapoor vs Jagmohan whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea

change. In view of the decisions of this Court in *State Bank of Patiala v. S.K.Sharma* and *Rejendra Singh v. State of M.P.* the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula..."

11. : The decision in the case of *P.D.Agarwal (supra)* has further been followed in the case of *Ashok Kumar Sonkar vs. Union of India and Ors.*, 2007 (3) AISLJ 420, wherein in para 25, 26 and 27 the Apex Court observed as under:-

"25. A Court of law does not insist on compliance of useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

26. In *Aligarh Muslim University and Others vs. Mansoor Ali Khan*, 2001 (1) SLJ 409 (SC = (2000) 7 SCC 529, the law is stated in the following terms:

"25. The useless formality theory, it must be noted, is an exception. Apart from the class of cases of admitted or indisputable facts leading only to one conclusion referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C.Mehta* referred to above. This Court surveyed the views expressed in various judgments in England by Lord. Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megary, J

and Straughton, L.J etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

In Karnataka State Road Transport Corporation and Another vs. S.G.Kotturappa and Another, 2005 (2) SLJ 208 (SC) = (2005) 3 SCC 409, this Court held:

".... The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any strait jacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and, thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given..."

27. In Punjab National Bank and Others vs. Manjeet Singh and Another, (2006) 8 SCC 647, this Court opined:

".... The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The Court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not

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issue only because there was a violation of the principle of natural justice." (emphasis supplied).

12. If the matter is viewed from the law as reproduced above, issuance of the show-cause notice to the applicants and then passing the same order in view of the admitted position that such change of category could not have been allowed on the face of Ann.R/1 could have been a useless formality and even after issuance of show-cause notice to the applicant, the result would have been the same. As such, we are of the view that it is a case where no prejudice has been caused to the applicants by non-issuance of the show-cause notice. Even, the learned counsel for the applicant could not satisfy this Tribunal how prejudice has been caused to the applicants by non-issuance of show-cause notice and as to how contrary order than Ann.R/1 could have been passed in the circumstances of the case.

13. For the foregoing reasons, the above OAs are bereft of merit, which are accordingly dismissed with no order as to costs.

(ANIL KUMAR)
Admv. Member

(M.L. CHAUHAN)
Judl. Member

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