

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00127/2014

Date of Decision: 24.8.2015

Reserved on: 19.08.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Sh. Jameet Singh, Conductor No.326, aged 55 years, son of Sh. Sital Singh, r/o Sahauran, Tehsil Kharar, District Mohali, presently posted at Booking Branch, Depot No.3, Chandigarh Transport Undertaking, Sector 25, Chandigarh.

Applicants

Versus

1. The Union Territory of Chandigarh through its Secretary Transport, U.T. Secretariat, Sector 9, Chandigarh.
2. The Director Transport, Chandigarh Transport Undertaking, Industrial Area, Phase-I, Chandigarh.
3. The General Manager, Chandigarh Transport Undertaking, Industrial Area, Phase-I, Chandigarh.

Respondents

Present: Mr. D.R. Sharma, proxy for Mr. Harish Chhabra, counsel for the applicant

Mr. K.K.Thakur, counsel for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (i) Set aside order dated 02.08.2013 (Annexure A-2), decision of respondent no.2 by which the applicant was reverted from the post of Sub Inspector to the post of Conductor.

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(ii) It may be declared and directed that the applicant may be continued / reinstated as Sub Inspector in terms of orders dated 17.07.2012 (Annexure A-1) with continuity of service and release of all consequential benefits / arrears along with an interest from the date of accrual to its realization."

2. Interim relief was sought seeking that the respondents be restrained from effecting further recovery from the salary of the applicant. When the matter came up for consideration on 13.02.2014, interim relief was allowed and this position continues till date.

3. It has been stated in the OA that the applicant has been working with the respondents since 1980 and is at present posted as Conductor in Depot

3. He was designated as Sub Inspector vide order dated 17.07.2012 (Annexure A-1) and was placed in the higher pay scale of Rs.10300-34800+ GP of Rs.3600 (Initial Pay Rs.14430). Suddenly, however, respondent no.2 vide order dated 02.08.2013 reverted the applicant to the post of Conductor w.e.f. 17.07.2012 (Annexure A-2). In this order, it has been mentioned that the applicant was designated as Sub Inspector as per recommendations of the Committee, but it had come to notice that the applicant was awarded punishments from time to time which were in force at the time when he was upgraded as Sub Inspector. Due to the effect of the ongoing punishment he was not eligible for being designated as SI and was consequently being reverted to the post of Conductor. Respondent no.2 thereafter started effecting recovery of alleged excess salary paid to the applicant from the month of January, 2014 (Annexure A-4).

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4. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The applicant has been singled out for the act of reverting, whereas the other remaining 25 Conductors have been working as Sub Inspectors and some of them have even been promoted as Inspectors recently from time to time. It is important to highlight that of the other Conductors who were designated as Sub Inspectors along with the applicant, there have been many Conductors who have not been having a very good service record or their service record has been much worse than that of the applicant. The respondents must be directed to produce the service records of all the designated Sub Inspectors till date. The facts as alleged in the impugned order qua the applicant are also false, absolutely wrong and hence denied. Therefore, the applicant has been clearly discriminated against to his detriment by the arbitrary action of the respondents. It is absolutely illegal on the part of the respondents to effect recovery out of the salary of the applicant without any notice or opportunity whatsoever in terms of the ratio of Budh Ram Vs. State of Haryana (P&H) (FB) 2009 (4) RSJ 110.
- ii) The action of the respondents is arbitrary and arbitrariness has been held to be anti-thesis of equality clause enshrined under Article 14 of the Constitution of India. The Hon'ble Supreme Court in the matter of R.D. Shetty Vs. The International Airport Authority in India & Ors., reported AIR 1979 SC 1628, E.P. Royappa Vs. State of Tamil Nadu, reported AIR 1978 SC 555 and Maneka Gandhi Vs. UOI, reported AIR 1978 SC 597 has held that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that the State must not be arbitrary but must be based on some rational and relevant principles, which are non-discriminatory. It must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality.

5. In the written statement filed on behalf of the respondents, it has been stated that the applicant was designated as Sub Inspector vide order dated 17.07.2012 by the recommendations of the Committee but at the time of his next promotion to the post of Inspector, it had come to the notice of the answering respondent that in fact the applicant was not entitled to be designated to the post

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of Sub Inspector because the applicant on the date of promotion was under the currency of punishment. The applicant in connivance with the dealing Assistant of the answering respondent concealed the relevant fact that the applicant was under the currency of punishment i.e. order dated 15.07.2004, which started its effect from 01.06.2012 and its effect was upto 31.05.2013. Because of this manipulation, the applicant was designated as Sub Inspector vide order dated 10.07.2012 by the Committee.

6. In the rejoinder filed on behalf of the applicant, it has been stated that any penalty order as per rules must be implemented within one year. The penalty orders dated 15.07.2004 had to be implemented within one year and could not be stated to be under implementation upto the year 2012 when the applicant was considered and upgraded as Sub Inspector.

7. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant reiterated the content of the OA and the rejoinder.

8. Learned counsel for the respondents referred to the tabular statement in para 4 (iv) of the written statement and stated that items 6, 7 and 8 were relevant to the matter. As per the penalty orders dated 15.07.2004 and 01.04.2005 the increments of the applicant had been stopped with cumulative effect and hence the applicant was not eligible for upgradation. He stated that

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the service of the applicant was quite unsatisfactory and hence the action taken in reverting the applicant to the post of Conductor was in accordance with the rules.

9. We have given our thoughtful consideration to the matter. None of the penalty orders referred to in the written statement have been placed on record. In para 5(i) of the written statement it is stated that "one increment stopped with cumulative effect vide order dated 15.07.2004 and its effect started from 01.06.2012 and remained effective upto 31.05.2013". It is not understood how a penalty order dated 15.07.2004 for stoppage of one increment with cumulative effect can remain pending for implementation upto 01.06.2012 when the applicant's case for upgradation as Sub Inspector was considered along with 26 others. The record of the applicant would have been scrutinized and the Committee would have been satisfied that he was fit to be considered for upgradation in 2012. Raking up the order of penalty order dated 15.07.2004, through which one increment was stopped with cumulative effect, 08 years later appears to be a malafide act on the part of the respondents. Moreover, the reversion has been ordered without even giving the applicant and opportunity of being heard in the matter.

10. Hence, the OA is allowed and the order dated 02.08.2013 (Annexure A-2) is quashed. The applicant may be reinstated as Sub Inspector w.e.f. 17.07.2012 and consequential benefits allowed to him in this regard.

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Implementation of this order may be ensured within one month from the date of receipt of a certified copy of this order being served upon the respondents.

11. No costs.

**(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.**

**(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER**

Place: Chandigarh

Dated: 24.8.2015.

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