

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.NO.060/01345/2018

Orders pronounced on: 10.01.2019

(Orders reserved on: 07.12.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

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Sukhdarshan Pal

S/o Sh. Surjit Ram,

age 52 years,

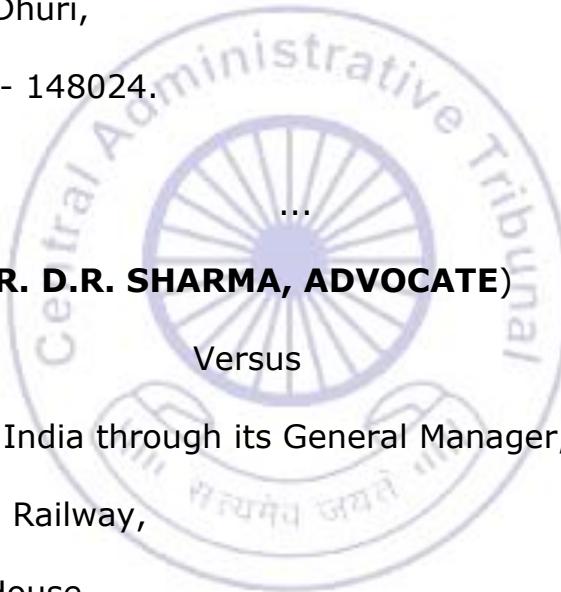
working as Carpenter Grade-III,

Office of Senior Section Engineer (Works),

Northern Railway Dhuri,

District – Sangrur - 148024.

Applicant



Versus

1. Union of India through its General Manager,

Northern Railway,

Baroda House,

New Delhi-110001.

2. Divisional Railway Manager,

Northern Railway,

Ambala Division,

Ambala-133001.

3. Assistant Divisional Engineer,

Northern Railway, Patiala-147001.

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Respondents

**(By: Mr. G.S. BAL, SR. ADVOCATE WITH
MR. SANJAY GOYAL AND
MR. L.K. BRAR, ADVOCATE)**

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the letters dated 17.10.2018 (Annexure A-1), 16.10.2018 (Annexure A-2) and 23.10.2018 (Annexure A-7) vide which applicant has been ordered to be reverted back to the post of Trackman, with immediate effect.

3. The facts in brief, which led to filing of the instant O.A. are that applicant joined respondent Department as a Trackman on 15.4.1985. On his request, he was posted as Artisan Khalasi and on completion of two years of serviced as such, became eligible for promotion to the post of Carpenter Grade-III, subject to passing of trade test. He appeared in the same and on being successful, was appointed as Carpenter Grade-III in pay band of Rs.5200-20200 with grade pay of Rs.1900/- as per letter dated 22.8.2015 (Annexure A-4). However, he was issued a show cause notice dated 23.5.2017 as to why he should not be reverted to the post of Trackman, on the ground that change of his category from Gangman/ Trackman to Artisan Khalasi, as per letter dated 3.12.2005, was not done with the approval of competent authority. The applicant submitted a reply dated 6.6.2018 which has been rejected vide letter dated 16.10.2018 (Annexure A-2) and vide order dated 17.10.2018 (Annexure A-1) direction has been issued to revert the applicant to lower post.

4. The respondents have filed reply pleading that since change of category in 2005 of applicant had not taken place with approval of competent authority, as such, impugned orders relating to reversion of applicant are proper and may be upheld.

5. We have heard learned counsel for the parties and perused material on the file.

6. The short and crisp issue involved in this case is as to whether the non-approval of change of category of applicant in 2005 from Gangman/Trackman to Artisan Khalasi, could result in his reversion from promoted post of Carpenter Grade-III to Trackman.

7. A perusal of the record leaves no manner of doubt that there is no allegation of any illegality in the change of category of the applicant from Gangman/Trackman to Artisan Khalasi, carried out in 2005. The only shortfall pointed out by the respondents is that the process was not approved by the competent authority at that point of time. In other words, it was merely an irregularity which could always be regularized by the respondents by taking ex-post-facto sanction. Now putting a person back to his original cadre, after changing it in 2005, by passing an order in 2017 or 2018 would be too late in the day, more so when there is no illegality in the matter. There is a specific plea taken by the applicant that similarly situated employees, who were placed as Artisan Khalasi, by following the same procedure are working on the promoted post, whereas applicant has been chosen for reversion which is discriminatory. To this specific plea, there is no denial on the part of the respondents.

8. It is well settled principle of law that an illegality cannot be cured but if it is an irregularity, it can always be corrected. In the case of

PRAMOD KUMAR V. U.P. SECONDARY EDUCATION SERVICES COMMISSION & ORS., AIR 2008 SC 1817, the Apex Court examined the issue as to whether an irregularity/illegality can be cured/condoned. After considering the issue threadbare, it was held that an illegality cannot be regularized, but an irregularity can be cured.

9. In this case there is no fault on the part of the applicant. The procedural irregularity has taken place due to act of omission on the part of the authorities. They could have well cured this procedural irregularity of non approval of change of cadre, by taking approval from the competent authority, ex post facto. They cannot be allowed to pass impugned orders after change of cadre in 2005 with such a huge delay, to regularize an irregularity.

10. In view of the above discussion, this O.A. is allowed. The impugned orders, Annexures A-1 to A-3 are quashed and set aside. The respondents would be at liberty to take ex post facto of the competent authority, to cure the irregularity that had taken place in change of cadre of the applicant. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: JANUARY 10, 2019

HC*