

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01885/2017

Dated Friday the 3rd day of August Two Thousand Eighteen

PRESENT

**HON'BLE MR. R. RAMANUJAM, Member (A)
&
HON'BLE MR. P. MADHAVAN, Member (J)**

V.Sivaraj, JWM/T,
Per. No. 940288,
EAS-II,
Engine Factory, Avadi,
Chennai 600054.Applicant

By Advocate M/s. R. Priya Kumar

Vs

1.Union of India,
The GGOF/Chairman,
Ordnance Factory Board,
Ayudh Bhawan, 10A, S.K. Bose Road,
Kolkata 700001.

2.The General Manager,
Engine Factory,
Avadi, Chennai 600054.Respondents

By Advocate Mr. M. Kishore Kumar

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"To call for the records of the first respondent culminating in the impugned letter No. EFA/A/Admin/017/LDCE, dated 07.04.2017 issued by the respondent as illegal, arbitrary and unconstitutional and set aside the same, consequently direct the respondents not to revert the applicant from Junior Works Manager to parent post ie., HS/SK and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper."

2. The applicant is aggrieved by the impugned Annexure A15 order dt. 30.09.2017 passed by the 2nd respondent rejecting the contentions raised in his reply to Annexure A10 Show Cause Notice dated 07.04.2017 proposing to revert him to his pre-2008 status. It is submitted that the applicant was successful in the Limited Departmental Competitive Examination (LDCE) held among Machinist Highly Skilled for promotion to the post of Chargeman Gr-II. There was one vacancy for SC and the applicant having been found the most meritorious among SC candidates was granted the promotion. However, subsequently, on a representation made by one M. Subramani for appointment against a UR vacancy to which one D. Vetrivel belonging to SC had been appointed, it was decided that the said Subramani should be granted the UR post and the said D. Vetrivel who had scored equal marks as Subramani should be accommodated against the SC post, as he had scored higher marks than the applicant

under the SC category. Since there was only one vacancy, the applicant is sought to be reverted.

3. Learned counsel for the applicant would submit that it is now more than 9 years since the applicant was appointed as Chargeman Grade II in 2008. During this time, he had performed to the fullest satisfaction of the competent authority and had also earned a further promotion as Junior Works Manager (JWM) in 2015 on which post he is continuing. The respondents ought to have explored other ways of regularising the promotion granted to the applicant without impinging on the interests of the said Vetrivel as they are estopped from reverting the applicant after a lapse of over 9 years, it is contended. He would accordingly seek a stay of the impugned letter dt. 30.09.2017.

4. Learned counsel for the respondents, Mr. M. Kishore Kumar would, however, submit that the applicant was granted appointment against a SC post as the person higher in the merit list was accommodated erroneously against a UR vacancy. Once the error was corrected, consequences were bound to follow. The fact of further promotion earned by the applicant in the meantime from the post of Chargeman Gr. II is irrelevant as he had no claim for the post of Chargeman Gr. II in the first place, in terms of his merit in the LDCE.

5. Learned counsel for the respondents would rely on the order of the Hon'ble Apex Court in CA no. 5805/2007 in the case of Union of India and anr Vs. Narender Singh on the following lines :

"28. It is true that the mistake was of the Department and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In Indian Council of Agricultural Research & Anr. v. T.K.Suryanarayanan & Ors., (1997) 6 SCC 766, it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore Statutory Rules.

29. As observed by us, Statutory Rules provide for passing of Departmental Examination and the Authorities were right in not relaxing the said condition and no fault can be found with the Authorities in insisting for the requirement of law. In the circumstances, the action of the Authorities of correcting the mistake cannot be faulted.

30. True it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the Authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him. But as observed earlier, in the instance case, in accordance with Rule 31-A of the Fundamental Rules, notice was issued to the respondent-employee, explanation was sought and thereafter the order was passed. The said order, in our considered view, was just, proper and in consonance with law and it ought not to have been set aside by the Tribunal or by the High Court. To that extent, therefore, the orders impugned in this appeal deserve to be set aside."

6. It is submitted that in view of the emphatic ruling of the Hon'ble Apex Court, the respondents were fully justified in correcting the mistake. As the applicant had been erroneously granted appointment against an SC post which was legitimately due to a person higher in the merit list who had in turn been erroneously accommodated against

a UR vacancy, the consequences would inevitably follow once the error is corrected. The person higher in the merit list in the SC category above the applicant has now been granted the SC post and, therefore, there is no option but to revert the applicant in such circumstances.

7. We have considered the matter. It is noted that the facts of the case are not in dispute. The action taken by the respondents relying on the aforesaid judgment of the Hon'ble Apex Court has to be weighed against the inconvenience and adverse consequences that might have visited the applicant as a result of the erroneous promotion granted to him for no fault of his. This is not a case where an error is sought to be corrected within a reasonable time. It is not in dispute that the respondents have acted after nine long years of the erroneous promotion. The promotion was granted to the applicant on the basis of the results of Limited Departmental Competitive Examination. Had the applicant not been erroneously promoted at the relevant time, he would have had opportunities to appear in the subsequent examinations for promotion under the LDCE quota which he has been deprived of as the applicant having already been promoted did not seek to appear in such examinations again. To that extent, the applicant must be deemed to have been put to irreparable loss on account of the error committed by the respondents. Further in the

meantime, the applicant has earned his next promotion to the post of JWM in 2015. It would, therefore, appear far too late to undo the erroneous action and reverse the career progression of the applicant. We are accordingly of the view that the respondents must consider creating a supernumary post from the appropriate date so as to ensure that while the claims of the person who has now been correctly appointed against the SC vacancy are not overlooked in any manner, the applicant is not made to suffer reversion as a consequence.

8. OA is disposed of with the above direction. No costs.

(P. Madhavan)
Member(J)

(R.Ramanujam)
Member(A)

03.08.2018

SKSI