

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 812 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

M.Rama Rao, aged about 47 years, S/o Late M.Bangarayya, presently residing at Rly. Qtr. No. 3/20, PO/PS- Titilagarh, Dist-Balangir, presently working as Sr.TNC under Sr. DOM, Waltair, Visakhapatnam.

.....Applicant

VERSUS

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, At/PO/Dist-Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, At/PO/Dist-Khurda.
3. Chief Operation Manager, East Coast Railway, Chandrasekharpur, At/PO/Dist-Khurda.
4. Divisional Railway Manager (Personnel), East Coast Railway, Waltair Division, Waltair, Visakhapatnam.
5. Sr.Divisional Operation manager, East Coast Railway, Waltair Division, Waltair, Visakhapatnam.

.....Respondents.

For the applicant : Mr.A.Kanungo, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 2.8.2019

Order on : 26.8.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA is filed with the prayer for the following reliefs :

- "(A) Quash the order under Annexure 4, 7 & 8.
- (B) Declare the rejection of the applicant's re-promotion/restoration to the post of Goods Guard is illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India.
- (C) And further direction/directions be issued to the respondents to re-promote and fit the applicant to the post of 'Goods Guard' w.e.f. 21.8.2012.
- (D) And further any other direction/directions be issued to the respondents appropriate under the circumstances as this Hon'ble Court deem fit and proper giving complete relief to the applicant."

2. The applicant while working as a Goods Guard was served with a major penalty charge sheet for unauthorised absence and was dismissed from service vide order dated 3.5.2004. The appeal preferred by him was rejected. When the Revision Petition was pending before the revisionary authority, the applicant

had filed the OA No. 448/2006 and in compliance of an interim order of the Tribunal passed in the said OA, the revisionary authority disposed of the revision petition by passing the order dated 11.6.2007 (Annexure-1 to the OA) stating as under :

"And now therefore in obedience to the interim order dtd. 22.5.06 of Hon'ble CAT/CTC, the undersigned has considered the revision petition of the charged official and after careful examination of the said petition in question and all other aspects/records relevant to the case has decided to reduce the punishment imposed by the Disciplinary Authority & upheld by the Appellate Authority to that of 'Reversion to the post of TNC in scale Rs.3050-4590 (RSRP)' with direction to draw pay at the minimum of the scale of pay i.e. ERs.3050/- affecting his seniority and treating the period from dismissal to revision as 'dies-non'."

3. The applicant was thereafter reinstated in service at the post of TNC vide order dated 21.8.2007, which was lower in rank than the post of Goods Guard. It is the case of the applicant that as per the extant rule, an employee cannot be reverted below to the post in which he was initially recruited and hence, he was entitled for re-promotion to the original post of Guard after completion of 5 years' period from the date of reversion. Since it was not done, he submitted a representation to the authorities on 23.6.2013 (Annexure-3). The matter was referred by the respondent No.1 to the respondent No.3 to dispose of the representation, which was rejected vide order dated 1.11.2012 (Annexure-7) passed by respondent No.3, in which his request to post him as Guard was not agreed to on the ground that it will amount to revision of the order of Revisionary authority.

4. The applicant relied on the Railway Board circular dated 14.4.1967 (Estt. Sr. No.94/67), copy of which is enclosed at Annexure-9 of the OA to justify the reliefs prayed for in the OA.

5. The respondents have filed counter without disputing the facts. The applicant was initially recruited on 24.3.1993 as a Khalasi on compassionate ground. It is stated in the counter as under :

"That in reply to the averments made in para 4.6 of the application, it is to submit that in the instant case the applicant who was initially recruited as Khalasi and later promoted as TNC in scale of Rs.3050-4590/- has been rightly reverted to the post of TNC Gr.III from the post of goods guard as a measure of punishment. Further, though there is a condition that promotion will be considered on completion of 5 years as mentioned in the office order dt. 21.8.2007 issued DRM(P) while communicating the revisionary authorities decision in the case, that does not mean that he should be re posted back to his

former post of Goods Guard as the revisionary authority has not given any such orders at the time of reversion to his former post. Accordingly he has been promoted as Sr.TNC in his normal channel of promotion as per his seniority vide O.O. dt. 31.1.2013."

6. It was further stated in the counter that the applicant has not challenged the order of the respondent No. 3 rejecting his representation and he was allowed to appear in the selection for Guards on 22.6.2013, while working as TNC. He was debarred from the said examination since he was found copying in that examination.

7. Rejoinder has been filed rebutting the stand taken by the respondents in the counter. It is stated that the punishment order dated 11.6.2007 should have been reviewed after a period of 5 years in view of the Estt. Sr.No.94/67 (Annexure-9 to the OA) of the Railway Board and the contention in the counter that it was not a normal reversion. Rejoinder also opposed the contention that the reversion with the change of category which was stated to be misconceived since there was no punishment called reversion with change of category. It was further submitted that the order of the General Manager dated 30.1.2013 (Annexure-8 of the OA) was not sustainable, since the punishment of reversion can be imposed for a certain period.

8. Additional affidavit was also filed by the applicant on 28.7.2019 stating that he was not allowed to appear in the selection for Sr.TNC against the notification dated 9.8.2010. It is further stated that as per the circular at Annexure-9 his punishment of reversion is liable to be reviewed after a period of 5 years from the date of reversion order i.e. 11.6.2007, which has not been done in this case.

9. Heard learned counsels for the applicant and the respondents who reinstated the respective stand taken in the pleadings. The issue to be decided in this case is whether the averment of the applicant that his punishment of reversion passed by the authorities as per order dated 11.6.2007 was required to be reviewed after 5 years in view of the Railway Board circular dated 14.4.1967 (Estt. Srl.No.94/67, copy at Annexure-9) and whether the applicant

was entitled to be promoted to the post of Goods Guard in view of the said circular of the Railway Board.

10. The circular of the Railway Board dated 14.4.1967 (Estt.Sr.No.94/67) stated as under :

"In connection with the Railway Board's order circulated under Establishment Serials Nos. 248/64 and 324/64, the following points have arisen:

- (i) Whether it is permissible to review cases of railway servants, who have been reduced to a lower grade permanently as a measure of penalty, and consider them for re-promotion.
- (ii) If so whether the review will have to be undertaken by application of Rule 1736-RI and if not, whether such review could be undertaken at any time;
- (iii) Whether the employee concerned will have to appear afresh at the Selection Test or Suitability Test, as the case may be, to qualify himself for re-promotion.

The following clarifications are given in this regard :

(i) & (ii) Detailed instructions have been issued under Establishment Serial No.331/66. In cases however of reduction of staff for an Indefinite period as also in those cases in which permanent reduction was made in the past according to the practice then in vogue, their cases can be reviewed for re-promotion without reference to the Rule 1736-RI. As a matter of policy however, it has been decided that in such cases, re-promotion of staff should not be considered till after the expiry of 5 years from the date of reduction.

The review of such cases may be made by the authority next above the one which imposed the penalty of reduction.

(ii) The Railway servants concerned need not have to appear afresh at a selection or suitability test so long as his reduction was ordered as a measure of penalty."

11. From the clarification as mentioned above, there is no instruction that the case of a reverted employee for promotion to his original post from which he was reverted after completion of 5 years from the date of punishment of reversion. In this case, the reversion order dated 11.6.2007 passed and has been accepted by the applicant without any challenge. As stated by the respondents in the counter the applicant had joined as TMC as per order dated 11.6.2007 and he was also promoted to the cadre of Sr.TNC on 31.1.2013. He was allowed to appear in the selection test for Goods Guard against 60% quota in 2013, which was accepted by the applicant, but he was debarred in the said examination, because he was found copying in the said examination. It is noted that the decision of the respondents directing him to appear in the test was not challenged by the applicant in view of the clarification at (ii) of the Estt.Sr.No.94/67 as extracted above. Although the applicant had accepted the

decision of the respondents and appeared in the selection test for Guard, but his case has not been considered in terms of the Railway Board circular Estt. Srl. No. 94/67.

12. The order dated 13.8.2012 communicating the decision of the respondent No.3 on the representation stated as under :

"The speaking order given by the Revisionary Authority (COM/ECoR/BBS) does not indicate that the issue of promotion can be reviewed after 5 years. In fact Estt Srl.No.331/66 also does not indicate that this should be reviewed after 5 years. As Sri M.Rama Rao has been reduced to a lower post, he will be eligible for promotion on his normal channel, subject to fulfilling the required criteria."

Against this order the applicant made a representation at Annexure-5 citing the Estt. Srl. No. 94/67 was addressed to respondent No.1, who marked the same to the respondent No.3 for disposal. The Respondent No.3, thereafter, rejected the said representation vide order dated 1.11.2012 (Annexure-7), which stated as under :

"Having joined in the TNC Cadre, you have to progress in TNC Cadre, which was your parent cadre before being selected as Guard The Revisionary orders of COM/BBS says that reversion to Jr.TNC would affect your seniority, pay etc., but nowhere it says that your will not earn increment nor promotion. It was not a case of simple reversion but reversion with change of category. As per the DAR rule no one can be reverted lower than a post to which he was initially appointed. Since your were appointed as Jr.TNC from there you were selected as Guard, you were reverted to Jr.TNC. From your service record appears that you were appointed in Gr.D initially in the instant case, you could have been reverted to Gr.'D' also.

From your SR it is seen that you are getting your annual increment regularly. As and when you are due you shall be promoted to Sr.TNC, Hd.TNC, Chief TNC etc. You however, cannot go as 'Guard' now which will amount to Revision of Revisionary Authority's order."

13. An appeal was submitted which was also rejected by the respondents vide order dated 30.1.2013 (Annexure-8), upholding the order dated 1.11.2012 as extracted above. The reason mentioned in the order dated 1.11.2012 was that the applicant cannot be promoted as 'Guard' because it will amount to revision of the order of the revisionary authority. Such a reason is not tenable, since the applicant had already undergone the punishment as per the order of the Revisionary Authority and consideration of his case for promotion to the post of 'Guard' after completion of 5 years period will not amount to revision of the order of the Revisionary Authority in view of the Railway Board circular Estt.Srl. No.94/67 (Annexure-9). It is noted that although this circular was mentioned by the applicant in his representation at Annexure-5, but the same

was not considered by the respondents, while passing the impugned order dated 1.11.2012 and 30.1.2013. These impugned orders are silent as to why the case of the applicant for promotion to 'Guard' cannot be considered in terms of the Railway Board circular Estt.Srl. No. 94/67 (Annexure-9 of the OA).

14. In view of the discussions above, the impugned orders dated 1.11.2012 (Annexure-7) and dated 30.1.2013 (Annexure-8) are not sustainable since these orders did not consider the Railway Board circular Estt. Srl.No.94/67. Hence, these orders are set aside and the matter is remitted to the Respondent No.1 to reconsider the representation dated 25.9.2012 (Annexure-5 of the OA) of the applicant for promotion to the post of 'Guard' in the light of Railway Board's circular Estt. Srl. No. 94/67, ignoring the fact that the applicant had earlier appeared in the examination for the post of Guard and was debarred from the said examination for copying, as stated in the counter and take a decision in the matter as per law by passing a speaking order, copy of which is to be communicated to the applicant within a period of four months from the date of receipt of the copy of this order.

15. The OA is allowed in part as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (a)

I.Nath