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**(2005) 08 AHC CK 0203**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 44602 of 2001

Arun Kumar Srivastava

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Aug. 9, 2005

**Citation:** (2005) 6 AWC 6025 : (2006) 108 FLR 152

**Hon'ble Judges:** B.B. Agarwal, J; A.K. Yog, J

**Bench:** Division Bench

**Advocate:** R.K. Nigam, H.N. Singh, B. Narain Singh and D.P. Misra, for the Appellant;  
Govind Saran, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

B.B. Agarwal, J.

By means of the present writ petition, the petitioner has prayed for a writ in the nature of certiorari quashing the orders dated 24.7.2001 and 13.12.2000 (respectively Annexures "12" and "11" to the writ petition), passed by Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as the "Tribunal"), in O.A. No. 1055 of 1998-Arun Kumar Srivastava v. Union of India and Ors.. Petitioner has also prayed for the quashing of the orders dated 28.07.1997, 21.07.1997, 03.01.1997 and 23.01.1996 respectively Annexures "10", "9", "8" and "6" to the writ petition), passed by Railway Authorities in connection with seniority of the petitioner. The said orders were challenged by the petitioner before the Tribunal in the aforesaid Original Application.

2. The facts of the case are that the petitioner after having been selected through Railway Service Commission started his career as Assistant Station Master and was posted at Allahabad. He was promoted after positive act of selection in the higher grade of Assistant Station Master i.e. Rs. 455-700 (revised Rs. 1400-2300) with effect from 01.08.1982. In 1988 the petitioner was medically decategorized on periodical medical test on administrative grounds and, as per Railway Board's Circular on the subject, he was absorbed in the alternative grade in the Commercial Department as

Head Parcel Clerk /Chief Parcel Clerk with full protection of pay and seniority in the grade of Rs. 1400-2300 with effect from 10.1.1989. The next promotion which was due to the petitioner in the Commercial

3. Department was in the grade of Rs. 550-750 (revised 1600-2660) as Coaching Supervisor. Promotion in the said grade was to be regulated in terms of Railway Board's Circular No. E 369/0 dated 4.8.1967 (Annexure "V to the petition). In view of that Circular the petitioner was promoted in the grade of Rs. 1600-2660 through Railway Board's letter dated 6.2.1987. However, when the promotion list was published for the grade of Rs. 1600-2660 in Coaching Supervisor category in July, 1989 the petitioner's name was not included therein. Petitioner represented against the non-inclusion of his name in the promotion list and on his representation in the next list of promotion-dated 9.2.1990 the name of the petitioner was duly included for the post of Coaching Supervisor in the grade of Rs. 1600-2660. A copy of the list is Annexure "3" to the writ petition. It is alleged that the promotion of the petitioner in the aforesaid grade, of Rs. 1600-2660 was substantive. The next promotion of the petitioner was due in the grade of Rs. 2000-3200 and for the selection of the candidates in the above grade a notification was issued on 6.11.1992 and the name of the petitioner found place at serial No. 3. It is said that this was because of the fact that the petitioner was working in the aforesaid grade of Rs. 1600-2660 substantively and he was within the zone of consideration for promotion in the next higher grade of Rs. 2000-3200. In the meantime a Scheme of restructuring of cadres was introduced and under the aforesaid Scheme all the notifications of the process of selection were extinguished and a new mode of selection was introduced, which was to be followed and subsequently petitioner was selected and promoted vide order dated 13.5.1994 as per provisional list and subsequently vide order dated 6.7.1994 which was the final order. Copies of these orders have been annexed as Annexure "4" and "5" to the writ petition. The name of the petitioner appeared at serial No. 2 in the first order and in the second order at serial No. 3. Petitioner claims that an office order dated 23.1.1996 (Annexure "6" to the petition), was Issued by which the petitioner's settled position of seniority was got up set and his name was relegated at serial No. 48 instead of serial No. 2.

4. Aggrieved by the above arbitrary action of the respondents-authorities, petitioner filed a detailed representation dated 5.2.1996 challenging the order dated 23.1.1996 but no orders were passed on the said representation. Petitioner again submitted representation-dated 10.10.1996 (Annexure "7" to the petition), but instead of fair disposal of the aforesaid representation of the petitioner, the respondents issued a vague, indefinite order dated 3.1.1997 (Annexure "8" to the petition), which does not lead to any conclusion from its pith or substance. Petitioner again represented on 29.5.1997 followed by another representation -dated 3.6.1997. It is alleged that the respondents instead of deciding the aforesaid representations, illegally and arbitrarily passed the two consecutive impugned orders dated 21.7.1997 and 28.7.1997 reverting the petitioner from the higher grade of Rs. 2000-3200 to Rs.

1400-2300 with retrospective effect (respectively annexures "9" and "10" to the writ petition). The grievance of the petitioner was that the impugned orders were illegal and violative of principles of natural justice inasmuch as no show cause notice was ever served on the petitioner before passing the orders of reversion from higher grade to lower grade.

5. Aggrieved by the aforesaid orders the petitioner approached the Tribunal by means of O.A. No. 1055 of 1998. However, the Tribunal dismissed the Original Application of the petitioner vide order dated 13.12.2000 and the review petition filed by the petitioner was also dismissed on 24<sup>th</sup> July, 2001. Aggrieved, the petitioner has filed the present writ petition.

6. Respondents 1,2,3 and 4 viz. Railway Authorities contested the writ petition and filed a counter affidavit specifically deposing therein that the petitioner was initially appointed as Assistant Station Master in the grade of Rs. 330-560 with effect from 15.11.1977 and as a result of restructuring, the petitioner was promoted as Assistant Station Master in the grade of Rs. 455-700 with retrospective effect i.e. 1.8.1982. Further, the petitioner was promoted as Section Controller in the grade of Rs. 470-750 w.e.f. 7.11.1984 but due to unsatisfactory work the petitioner was reverted to the post of Assistant Station Master in the grade of Rs. 455-700 w.e.f. 10.1.1985. Petitioner was declared medically unfit for the job of Assistant Station Master by the Medical Board and after de-categorization on medical ground, he was posted as Head Parcel Clerk in the grade of Rs. 1400-2300 vide notification No. 831-E/1-II/E/Misc. dated 9.1.1989 and his seniority was assigned in his new cadre giving him benefit of length of service as Assistant Station Master and on the basis of same seniority he was allowed promotion as Parcel Supervisor Grade 1600-2660 with effect from 12.2.1990. Subsequently, he was selected and placed at the panel of Chief Coaching Supervisor grade 2000-3200 under restructuring with modified selection procedure as one time exemption w.e.f. 1.3.1993 and later on promoted as C.P.S. Grade Rs. 2000-3200 w.e.f. 1.2.1994. It was further mentioned in the affidavit of Ganga Prasad filed on behalf of Respondents-Authorities that two members of the original commercial cadre Sri H.R. Pandey and Sri M.M.A. Siddique represented to Divisional Railway Manager regarding their promotion in the grade of Rs. 2000-3200 as CPS/CBS and pointed out that the petitioner, who was an Assistant Station Master was absorbed on medical de-categorization has been wrongly assigned seniority in the grade of Rs. 1600-2660. Therefore, petitioner was reverted in the grade of Rs. 1400-2300 and his name was deleted from the seniority list of the grade of Rs. 1600-2660. It has been averred that the petitioner was further promoted as Chief Parcel Supervisor with effect from 16.1.1998 in the grade of Rs. 2000-3200/ 5500-10500 after Under going thorough positive act of selection. It is stated that there was no illegality in the judgment and order passed by the Tribunal and the petitioner was not entitled for the relief claimed by him before the Tribunal.

9. Heard learned counsel for the parties and gone through the notifications dated 4<sup>th</sup> August 1967 and 13.4.1987. The notification dated 4<sup>th</sup> August, 1967 is relevant and reads as follows:

"Alternative employment to the medically unfitted staff:

According to paragraph 152-R1, a staff declared medically unfit in his existing category but fit for other categories, is absorbed in an alternative suitable post with emoluments as near as possible to his emoluments prior to medical unfitness. A question has been raised as to whether in cases when such alternative posting involved posts in selection grade and staff concerned is already selected for selection post in another category in higher or equivalent grade such as, posting of an ASM in grade of Rs. 250-380, it is necessary to hold a selection proceeding to determine his eligibility for posting in the alternative employment even in the Branch Officer concerned accepts his fitness.

The matter was accordingly referred to the Rly. Board and they have decided that no selection proceeding is required to be held in such cases. "

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10. There is no dispute that the petitioner was posted on the post of Assistant Station Master after going through Selection Process and therefore, when he was accommodated in another cadre in the same grade he was not required to undergo any selection process and, similarly, when he was promoted in the next senior scale he was not required to undergo selection process again as he had already been posted in the lower grade post after undergoing selection process. After that the petitioner was again promoted in the next selection grade of Rs. 2000-3200 after undergoing Dejection process as required under the Rules. The respondents, therefore, in our opinion, had no authority under the rules to revert back the petitioner in the Scale of Rs. 450-700(revised 1400-2300) even if it is accepted for the sake of arguments that he was wrongly given promotion in the scale of Rs. 1600-2660. The relevant portion of the Notification Dated 13.04.1987 is quoted below:

"(vi) In case where the classification of a lower grade post is changed from non-selection to selection and that of the immediate higher grade post is changed from non-selection to selection, persons who have been promoted to the lower grade on a regular basis after a due process of selection will not be required to undergo a selection again for promotion to the immediate higher grade, which is now classified as a selection. However, their suitability for promotion to such immediate higher grade will be adjudged in the manner through which such higher grade post was being filled before the crucial dates as non-selection post. "

11. It appears from the aforesaid notification and orders that he was lightly promoted without going through any selection process in the scale Rs. 1600-2660 in view of the notification of the Railway Board dated 11.4.1987. It is not disputed that the petitioner was posted as Assistant Station Master in the grade of Rs. 1400-2300 with effect from 1.8.1982 after going through selection process. The contention of the respondents is that the said circular letter was not applicable in the case of the petitioner, as he had been accommodated in the commercial Department on the post of Head Parcel Clerk on his being found unfit for the post of Assistant Station Master after his medical de-categorization. However, this contention of the respondents cannot be accepted as the notifications dated 13.4.1987 does not specifically differentiate between the employees coming from the post of Assistant Station Master on account of being medically unfit and the employees who originally belonged to commercial department.

12. Learned counsel for the respondents submitted that the post of Coaching Supervisor in the scale of Rs. 1600 - 2660 was a non-selection post only for the employees who were originally posted as Head Parcel Clerk after going through selection process and the persons who are accommodated on that post from outside the cadre as it had become non-selection post in 1985 and the employees coming from other departments without any selection process were "not entitled to get the benefit of the aforesaid notification. This contention of the Department does not appear to be correct in view of the provisions of the aforesaid notification, which does not specifically say so. Moreover, once the petitioner was promoted in the next higher scale of Rs. 2000-3200 after undergoing selection process then there was no reason for the Railway Board to revert him back in the lower scale of Rs. 1400-230 simply observing that his promotion in the scale of Rs. 1600-2660 was made wrongly in the beginning, without affording reasonable opportunity of defence.

14. In our opinion, firstly the petitioner was not required to undergo regular selection process before his promotion in the grade of Rs. 1600-2660 as he was a regularly selected employee on his posting in the grade of Rs. 455-700 as Assistant Station Master and secondly, when he was promoted in the next higher grade after undergoing selection process, then he could not have been reverted back to his original grade of Assistant Station Master on the ground that he did not go through the selection process which was required for him for getting selection grade of Rs. 1600-2660. Thus the orders of the Railway Board dated 21.7.1997 and 28.7.1997 reverting the petitioner in our opinion, are not correct and valid orders and deserved to be quashed.

14. Similarly, we do not agree with the finding of the Tribunal that the notification dated 13.4.1987 is not applicable to the case of the petitioner because he was not posted as Head Parcel Clerk after going through selection process. In our opinion, when he had been shifted from the post of Assistant Station Master, which he was holding by virtue of selection and was shifted to the post of Head Parcel Clerk

without any selection process, then it can not be accepted that he will be treated as an employee of non-selection. In our opinion, he shall be treated to be posted as Head Parcel Clerk after going through the selection process and there was no need in view of the Circular dated 13.4.1987 for the petitioner to undergo fresh selection process for getting promotion in the scale of Rs. 1600-2660. The observation of the Tribunal contrary to it is not correct and the order of the Tribunal passed in O.A. as well as in review petition and the orders of the Railway authorities passed in connection with the reversion of the petitioner in the lower grade (respectively Annexures 6 to 10 to the writ petition) are liable to be quashed.

15. In the result, the writ petition succeeds and is allowed. The Impugned orders of the Tribunal dated 24.7.2001 and 13.12.2000 (Annexures 12 and 11 respectively to the writ petition) as well as the orders of the Railway Authorities dated 28.7.1997, 21.7.1997, 3.1.1997 and 23.1.1996 (respectively Annexures 10, 9, 8, and 6 to the writ petition) are quashed. The respondents-authorities are directed to restore the promotions of the petitioner with all consequential benefits. There shall be no order as to costs.