

Sushant Jha, Senior Divisional Personal Officer Vs Presiding Officer of Central Administrative Tribunal and Another

Court: Jharkhand High Court

Date of Decision: Dec. 18, 2008

Hon'ble Judges: M.Y. Eqbal, J; Jaya Roy, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.

In this writ petition, the petitioner has prayed for quashing the order dated 25.9.2002 passed by the Central Administrative

Tribunal, Patna. whereby the Tribunal held that the order of reversion of the respondent to Switchman from the post of Goods Guard is illegal and

erroneous and further directed the petitioner-Railway to revise the retiral benefits of the respondent on the basis of pay-scale of Goods Guard

w.e.f. 30.9.1996.

2. The facts of the case lie in a narrow compass:

The respondent was initially appointed in the year 1964 and was working on the post Switchman in the pay-scale of Rs. 1200-2040 at Kechki

Railway Station. The respondent along with other employees were deputed to attend the promotional training of Goods Guard at Zonal Training

College, Dhanbad vide order dated 4th March. 1996. The respondent appeared in the promotional training at the said place and after completion

of training, he was granted certificate to this effect. Thereafter on being found suitable for the post of Goods Train Guard in the pay scale of Rs.

1200-2040 and after appearing in the viva voce test, the respondent was promoted to the post of Goods Guard from the post of Switchman and

thereafter he was transferred to Garhwa Road from Kechki. The case of the respondent was that he continuously worked on the post of Goods

Train Guard and superannuated on 30.9.1996. It was contended that on superannuation, he was shown as Switchman and not as Goods Guard

and he was denied the retiral benefits at the pay-scale of Goods Guard. Aggrieved by the said decision of the Railway, the respondent approached

the authority by filing representation and in response thereto, the respondent was informed that since he has failed in the promotional training course

and since he has superannuated on 30.9.1996, he could not be sent for repeat training and was declared failed. The respondent challenged the

order of the authority before the Central Administrative Tribunal. The Tribunal after considering the facts of the case and the stand taken by the

respondent-applicant, held that the impugned order of reversion of the respondent from the post of Goods Train Guard to the post of Switchman

was illegal and the same was quashed. For better appreciation, the concluding paragraph Nos. 11, 12 and 13 of the order of the Tribunal is

reproduced herein below:

11. We have heard the learned-counsel for the parties and perused the record. It is an admitted fact that the applicant has, as sent for training,

appeared in the viva-voce test and after being found fit, he was promoted to the post of Goods Guard, though provisionally as mentioned in

Annexure A/3. It is mentioned in the said annexure that on being found suitable for the post of Goods Guard in the scale of Rs. 1200-2040 and on

completion of promotional training course from the (ZTC) Bhuli and on being declared suitable in the viva-voce test by the committee of three

Assistant Officers as per action plan, the applicant along with other persons were posted at the station each against the existing vacancies, subject

to the completion of practical line training and declaring fit for guard duty by the respective TI. It is further mentioned in Annexure, A-3 that the

promotion as Goods Guard is provisional subject to the passing of promotional training course from ZTC/Bhuli. So far as communication of the

order of reversion is concerned, no specific reply has been given by the respondents in their written statement, and after perusal of Annexure R-I, it

is found that copy of the said order of reversion dated 17.9.1996 has not been sent to the applicant, and the same has been kept in file, meaning

thereby that the applicant kept on working on the post of Goods Guard even after declaration of the result in July, 1996 till his retirement. But

when service certificate was prepared; he has been shown as Switchman on the basis of the said reversion (Annexure R-1), and his pension has

been fixed according to the pay scale of Switchman. It is settled principle of law that the commencement of the impugned order is essential and not

its actual receipt by the officer concerned and such impugned is invalid because till the order is issued and actually not sent out to the person

concerned, the authority making such order would be in a position to change its mind and modify it after he thinks fit. While in the present case,

there is nothing on record to show that the said order of reversion was ever communicated to the applicant or received by him before or after his

retirement. He has been simply intimated vide Annexure A/7 that the said order of reversion has been passed on 17.9.1996 and that too not at

their own but the same has been communicated in reply to the representation made by the applicant to the respondents which clearly envisages that

the said impugned order of reversion has never been communicated to the applicant, and as has been held by the Hon"ble Apex Court in the

decision referred to hereinabove, the order not communicated is ineffective and is no order in the eyes of the law. Therefore, the said cannot be

legally sustainable.

12. It is also evident from the record that since the said reversion order has not been communicated to the applicant, it appears that till his

retirement he has worked on the post of Goods Guard. The respondents have also allowed him to continue as such even after July. 96 and in such

circumstances, the reversion though legally permissible as he could not qualify the said test, the same can safely be held improper, more so in view

of the fact that the said result was declared in July. 1996, but the applicant was not sent for repeat course, because he was due to retire very

shortly. In such circumstances, it was incumbent on the respondents to work as model employer by not passing such order of reversion by giving

such harsh treatment to the applicant at the fag end of his long career. Moreover the applicant has satisfactorily performed the duties of Goods

Guard for about six months till his retirement as nothing adverse about the performance of his duties as Goods Guard has been brought on record

by the respondents.

13. Therefore, taking similar view, as has been taken by the Calcutta Bank of the Tribunal in decision as quoted hereinabove and other decisions

discussed hereinabove, we are of the considered opinion that the impugned orders Annexure A/7 dated 29.10.1996 and Annexure R-I i.e. the

order of reversion dated 17.9.1996 are not sustainable and held to be void and illegal, therefore, the same are hereby quashed. The applicant is

deemed to be retired as Goods Guard. In view of this, the applicant is held to be entitled for consequential modification in his retiral benefits as

permissible under the law and the respondents are directed to revise the same accordingly. The said revised retiral benefits on account of order

made hereinabove may be paid to the applicant within a period of three months from the date of receipt of this order.

3. Mr. Mahesh Tiwari, learned Counsel appearing for the petitioner, assailed the impugned order of the Tribunal as being illegal and wholly without

jurisdiction. Learned Counsel submitted that the promotion of the respondent from, the post of Switchman to the Goods Train Guard was

provisional subject to passing of promotional training course. Since the respondent was finally declared failed and thereafter superannuated, he is

not entitled to get the pensionary benefits for the post of Goods Train Guard.

4. From perusal of the impugned order of the Tribunal, we found that before superannuation of the respondent, he was not communicated about

the alleged order of reversion from the post of Goods Train Guard to his original post.

5. The Tribunal further taking into consideration the other cases has recorded the finding of fact that the respondent retired as Goods Guard and he

is entitled to all the benefits. We do not find any illegality in the finding and the order passed by the Tribunal.

6. For the reasons aforesaid, there is not merit in this application which is, accordingly, dismissed.

Jaya Roy, J.

7. I agree.