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Court : Rajasthan

Decided On : Dec-08-1980

Reported in : 1981WLN622

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 1769 of 1980 and 5 Ors.

Appellant : Mangilal and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. Mathur

Advocate for Pet/Ap. : Mr. Kala

Disposition : Petition allowed

Judgement :

Lodha, J.

1. These six writ petitions have been filed by the Railway empolyees. Since common questions of law have been raised in the writ petition's and argued, all these cases are being decided by one judgment, as prayed.

2. It would be necessary first to mention facts from one writ petition in order to appreciate the controversy. The petitioner was appointed as the Trains Cleric in

the Railway. The appointment was made after selection by Railway Service Commission which included written, interview and departmental training.

3. The next promotion post of a Trains Clerk is a Senior Trains Clerk. Both these posts are selection posts and promotions are made on seniority cum merit basis. Quota for direct recruitment are fixed. The petitioners along with eight persons was given promotion to the post of Senior Trains Clerk. He was posted in Northern Railway, Jodhpur. The vacancies were lying since June 1980 and they were filled in on 24-9-1980. The order of promotion of the petitioner dated 24-9-80 Ex. 1 reads as under:

eaM+y jsy izca/kd dk;kZy;

mRrj jsyos] tks/kiqj eaM+y

lk= la0 455bZ@ek0ckcw@ih A ds@80

fnukad 24 flrEcj 1980

LVs'ku v/kh{kd] mRrj jsyos] tks/kiqj @ eq[; fua;=d

mRrjs jsyos] tks/kiqj

LVs'ku ekLVj] mRrj jsyos] esMrk jksM+] Maxkuk] iksdj.k

vkSj ;xr dh dksBks A

fo'k; % & xkM+h ckcwvks dh inksUurh;sk rFkk LFkkukUrj.k

fuEufyf[kr deZpkjh;ks dsk muds LFkkiUu fjDr es inksUur dj muds uke ds lkeus fn;s LFkku ij fu;qDr fd;k tkrk gS A

xkM+h ckcw] osrueku :lk;s 260&400 la0 os0ls ofj'B xkM+hckcw]

osrueku :lk;s 330&560 la0 os0 es inksUufr5 Jh eaxyky ijekj daVksy dk;kZy; @ daVksy @ :0 330 @&tks;/kiqj tks/kiqjvuqlwfpr tkfrg0 eaMydkfeZd vf/kdkjh]mRrj jsyos] tks/kiqj A

The petitioner submitted joining report and took over the charge of Senior Trains Clerk on 25-9-80 and since then, he is holding that charge and working as such.

4. While petitioner and others are holding the post of Senior Trains Clerk, the Assistant Personal Officer Shri T. N. Bhargava has issued order first mentioning that the order of promotion dated 24-9-80 to be kept pending till further orders. Later on, by order dated 1-10-80, the petitioner has been reverted to the post of Trains Clerk by cancelling the order of promotion dated 24-9-80 which was issued by Divisional Personnel Officer.

5. The petitioner has challenged this order of reversion and precisely, the orders marked Anx. 2 and Anx. 3 dated 26-9-80 and 1.10.80 respectively.

6. It has been contended on behalf of the petitioner that the impugned orders are in violation of basic principles of natural justice, equity and fair play. According to Mr. Kala, learned Counsel for the petitioners, these impugned orders are penal in character because the effect of revision results in penalty. It was claimed that Article 314 of the Constitution has also been contravened.

7. Mr. Kala also submitted that the competent authority after considering the suitability of the petitioner promoted him. The order of promotion was communicated and became effective. It is, therefore, not competent for a subordinate authority who is Assistant Personnel Officer and who is not competent authority to revert the petitioner. No Government servant can be reverted by any authority subordinate to his appointing authority.

8. It was argued that since no show cause notice was issued the impugned order is bad in law. In addition to plea of lack of jurisdiction it was also pointed out that there is no sufficient cause of reversion and as such the reversion is not only unauthorised but unreasonable too.

9. So far as the question of promotion and reversion is concerned the fact of all the six cases are similar and therefore it is not necessary to mention facts in each cases separately.

10. The respondents contested the writ petition. Mr. Mathur appeared for the respondents and submitted that the order of promotion as well as the order of reversion both have been passed by the Divisional Personnel Officer. The authority in both the cases is the same and it is not material under whose signatures the order is conveyed.

11. Mr. Mathur pointed out that after the Ex. 1 dated 24-9-1980 was issued, the Union made certain representations alleging that this should not be done before regularising the cases of the promotees. These representations were dismissed on the level of Divisional Railway Manager, Additional Railway Manager and the Divisional Personnel Officer. Ex. 3 dated 26-3-80 was relied upon in this context. On careful examination of the representations and the facts it was thought proper that it will not be in the interest of justice. There is no violation of Article 311 because no punishment is involved, argued Mr. Mathur. The orders were issued by Divisional Personnel Officer and they have been pending by him till the cases of the promotees are regularised.

12. The two-fold submission made by Mr. Kala appearing for the petitioners are as follows:

(1) That the original order of promotion was given by Divisional Personnel Officer and the order of reversion has been passed by Assistant Personnel Officer and, therefore, it is bad in law.

(2) That all the petitioner joined the post on which they were promoted and are working as such since then. They have also drawn the salary on the post of Senior Trains Clerk and now their reversion would result not only in serious civil consequences but penal consequences.

13. Mr. Mathur appearing for the respondents controverted the above allegations of Mr. Kala. According to him it is true that the original order has been passed by the Divisional Personnel Officer and the reversion order has been issued by the Assistant Personnel Officer but the latter only complied with the orders which are on the file for reversion and which have been issued by the Additional Divisional Railway Manager who is superior in rank to the Divisional Personnel Officer.

14. So far as the second limb of submission of Mr. Kala is concerned, Mr. Mathur's reply is that by such orders of officiating promotions or ad hoc promotions, no substantive rights have been created in favour of the petitioners on account of which, the reversion can be said to visit the petitioners with civil or penal consequences.

15. I have carefully considered the submissions of the learned Counsel for the parties and have also given a thoughtful consideration to the various points involved in this case. It is not in dispute that all the petitioners have been promoted on the post of Senior Trains Clerks and they joined the duties on this post before the reversion order was passed and communicated. In view of this, it is not necessary to go into details of the reversion order which was passed in two phases: firstly, an order passed keeping it in abeyance but since the petitioners have already joined, there was nothing to be kept in abeyance however, they could have been reverted or their promotion which had already taken effect, could have been set aside. The second phase of the order was to revert them from the promoted post of Senior Trains Clerks.

16. The orders which have been communicated to the petitioners now here show that they have been passed by the Divisional Personnel Officer or any officer of superior rank. Even from the record which was shown to this Court, there is no order of the Divisional Personnel Officer either withdrawing the order of promotion or directing that the order of promotion should be cancelled and the petitioners be reverted.

17. It is true that the office record contains an order of a senior officer, the Divisional Personnel Officer, but as the record was shown to this Court, the whole thing appears to have been done in hot haste. The representation of the Union may afford a sufficient ground to consider or reconsider the matter but the principles of natural justice warrant that when the order has been given effect to and the petitioners have been promoted and have further drawn salary, they should be told of the representation against them of the Union or any one or else challenging their promotion.

18. The principle of 'audi alteram partem' is no longer restricted to judicial or quasi-judicial orders only. A series of judgments of the Hon'ble Supreme Court have extended it to cover the appropriate cases of administrative authorities passing the order affecting the rights and interests of another. It has been repeatedly held that fairness in the justice is required and reasonable opportunity must be given to show cause.

19. With the proliferation of administrative decisions in the welfare State, it is now well recognised by courts of this country and also of England *Bidge v. Baldwin* 1964 AC 40 that even where an authority or body is functioning in administrative capacity, the principles of natural justice can also be invoked if the orders affect the individual rights or interests. Of course, there the court will have to consider that in a particular situation, it would be unfair for the authority not to have allowed a reasonable opportunity to be heard.

20. In *Ajeeb Singh Bakshi v. State of Punjab and Haryana* 1969 SLR 400, it was held as under:

Promotion once given whether can be withdrawn on change of criteria for promotion (no) - Change in criteria for promotion whether can be given retrospective effect (no)- Petitioner promoted to the post of Assistant Superintendent subsequently reverted on change of criteria of promotion which did not fulfil - Held eligibility for promotion has to be seen when promotion is made- Change in criteria cannot be given retrospective effect.

Even in a case where the court was of the opinion that the promotions were made by mistake, the Himachal Pradesh High Court ordered that before passing an order of reversion, the principles of natural justice should be complied with. The following observations contained in *Shri Dina Nath Sharma v. Director of Public Relations* 1977(1) SLR 567 would substantiate the above view:

Constitution of India, Article 226 and 311 Natural Justice-Promotion-Reversion-- Thinking that appointments were made by mistake-Principles of natural justice to be observed before passing order of reversion.

Again in *B.S. Sandhu v. Union of India and Ors.* 1971(1) SLR 600, the Himachal Pradesh High Court reiterated the same view when it held that even when the officiating promotion has been given by mistake, an order of reversion with an order of recovery of excess salary drawn at higher post is in the nature of penal order having penal consequences. The Government servant is, therefore, entitled to protection of Article 311(2). It would be interesting that while holding the Himachal Pradesh High Court observed as under:

Constitution of India, Article 311(2)- Officiating promotion given by mistake- Promotion treated null and void and reversion ordered after 3 years with order of recovery of excess salary drawn on higher post- The order has penal consequences-the Government servant entitled to promotion of Article 311(2).

In order to appreciate the various judgments of recent origin, it would be useful to relate back the principles laid down in the present case to the basic case of *Commissioner of Police v. Gordhandass Bhanji* : [1952]1SCR135 wherein the Hon'ble Supreme Court while dealing with the administrative law and public orders made the following observations:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

The Patna High Court also held in *Sheonath Prasad v. State of Bihar* 1971 (2) SLR 447 that even if a promotion is given by mistake, the subsequent reversion to rectify the mistake tantamounts to punishment. Recently, in *Kasturilal v. State of Jammu and Kashmir* 1980 SCC (IV) 1, the Hon'ble Supreme Court has considered the scope of judicial review in administrative matter and observed as under:

Administrative action - Must be reasonable and in public interest and not arbitrary, capricious and malafide-presumption is in favour of validity of such action.

20. From a resume of the above decisions of the various High Courts and the Hon'ble Supreme Court, it is evident that in the instant case, after the petitioners have been promoted on the post of Senior Trains Clerk carrying a higher pay than the original post which they were holding and after they have joined on the higher posts and started functioning, the impugned orders were passed behind their back on the representation of the Union of some persons regarding which the petitioner had no knowledge and were never allowed an opportunity to point out whether the representations were correct and tenable or untenable.

21. Mr. Mathur, confronted with the above situation, relied upon the judgment of Himachal Pradesh High Court on D.K. Bhatnagar v. State of Himachal Pradesh 1979(2) SLR 693. In this case, the High Court held that the Government had inherent right to rectify mistake committed by it and in doing so, the rules of natural justice need not be observed. The above case has got no application because firstly, there must be a positive finding both by the appointing authority and this court that the orders of promotion of the petitioners were void ab initio. In the instant case, the controversy which has been raised before the Railway Authorities after the promotion of the petitioners is a matter in which much can be said on both sides. It will not be fair for this Court to decide that controversy at this stage because neither the persons who have raised that controversy which is the Union etc. are before this Court nor this court is seized of that matter directly. The order which has been communicated to the petitioners nowhere makes a mention of that controversy or any adjudication over it. It would be therefore in fairness to both sides that the petitioners as well as the other persons who are not before this Court and who may have made representations to get that matter considered for a fair, legal adjudication by the competent authority after hearing both sides and making an objective approach to the issues involved in that controversy.

22. In this view of the matter, the judgment of Bhatnagar's case (supra) cannot help the respondents because I am not prepared to give a finding that the promotions of the petitioners was void ab initio nor any such order has been shown to me which in terms gives this finding. Such a finding cannot be assumed by implication or inference from the various orders passed in the file as in the very nature of things, it must be explicit and not implicit.

23. Yet another decision which was referred to by Mr. Mathur is the judgment of Union of India v. Gajendra Singh : [1972]3SCR660 . In this case, the Hon'ble Supreme Court observed as Under:

appointment to a post on an officiating basis is, from the nature of employment itself of a transitory character and in the absence of any contract or specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time. The Government servant so appointed has no right to the post.

The above was a case where a Kanungo who was promoted to officiate as Naib Tehsildar under a standing order which contemplated passing of departmental examination also was reverted on failure to pass the same. Such an order was held not to be vitiated simply because the standing order did not provide for such a reversion. It would thus be seen that the above judgment of the Hon'ble Supreme Court is precisely on the implications and extent of Article 311(2) in relation to officiating appointment.

24. Undoubtedly, an officiating appointment per se cannot confer any right, the deprivation of which can result in penal consequences attracting Article 311(2).

25. However, in the instant case, it is not a case of that nature. Here, except a complaint or representation it has not been shown that the reversion is simpliciter. It intends to decide the rights of the petitioners qua the direct recruits. This is not a simple matter which the authorities could have decided exparte and more so after giving promotion to the petitioners without hearing them. I am therefore basing my judgment on the principles of natural justice recognised repeatedly by the Hon'ble Supreme Court and other Courts as mentioned above that in such cases, an opportunity of hearing should be given to the petitioner irrespective of an application of Article 311(2) of the Constitution. I am not holding that Article 311(2) is applicable in the present case.

26. The resultant position is that both the decisions referred to by Mr. Mathur cannot save the situation created by the impugned orders. It is true that a higher authority could have passed such an order but there again, the order

communicated is under the signatures of the Assistant Personnel Officer and it nowhere makes a mention that it is being issued on account of the directions of either the Divisional Personnel Officer or any other authority higher to him.

27. In this view of the matter, I am convinced that the impugned orders staying the promotion of the petitioners as well as reverting them deserve to be quashed on the simple ground that after once they have promoted an individual who has joined and having drawn the salary, the principles of natural justice warranted that they should have been told of the representations against their promotions and allowed an opportunity of showing that those representations were untenable and unjustified. This having not been done, the principles of natural justice have been violated.

28. The result is that all the six writ applications are accepted. Both the impugned orders Ex. 3 and Ex. 4 in all the six cases are quashed. The petitioners would get their costs from the respondents.

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