

D. Senthivelu Vs. the Southern Railway Represented by the General Manager

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Court : Chennai

Decided On : Mar-15-1967

Reported in : (1967)2MLJ297

Appellant : D. Senthivelu

Respondent : The Southern Railway Represented by the General Manager

Judgement :

ORDER

T. Venkatadri, J.

1. This petition under Article 226 of the Constitution is to quash the Office Order No. 40, dated 19th January, 1963 passed by the respondent, the General Manager, Southern Railway, Madras, reverting the petitioner from the post of Assistant Engineer (Class II Service) to the post of Head Draftsman (Class III service).

2. The petitioner joined service in the Southern Railway as a Junior Draftsman on 22nd November, 1948. In 1951, he was transferred to Integral Coach Factory, Madras, as a Senior Draftsman and in 1956 he was promoted as Head Draftsman. In the year 1959, he was selected as Assistant Engineer, by a duly constituted Selection Board, and was placed sixth in rank, and by an order dated 12th January, 1960, he was informed that he was promoted to officiate in Class II and posted as Officiating Assistant Engineer, Bridges. Though the said promotion was

purely temporary and ad hoc, it had the personal sanction of the General Manager, as seen from the order itself. In February, 1961, he was selected and deputed to the Advanced Permanent Way Training School, Poona, where he underwent training from 5th February, 1961 to 4th May, 1961. It may be mentioned here that in the said training school, the petitioner was assessed as below average and was ranked last. On his return from training, he was posted as Assistant Engineer, Madurai. The petitioner was again deputed for training in the Railway Staff College, Baroda, from 27th November, 1961 to 27th February, 1962. It must be said that, in that course, the petitioner had earned distinction in one subject, credit in three subjects and pass in the remaining nine subjects. On return from training, he was posted as Assistant Engineer, Gadag, from 15th March, 1962. According to the allegation in the counter-affidavit, in view of the adverse comments in the confidential Report, to which I shall refer in great detail presently the Chief Engineer called for a special report from Divisional Superintendent, Hubli in which division the petitioner was working as Assistant Engineer, and also sent a copy of the letter to the petitioner. The petitioner submitted his explanation in regard to the comment on his unsatisfactory work. The Divisional Superintendent sent a report called for informing the Chief Engineer that he considered the work of the petitioner as unsatisfactory. Under those circumstances, the General Manager, Southern Railway, passed the Order, impugned in this Writ Petition, reverting the petitioner from the Officiating post of Assistant Engineer (Class II) to his substantive post of Head Draftsman (Class III).

3. It is alleged, in the affidavit filed in support of the Writ Petition, that the petitioner was compelled to go on leave even in December, 1962 and finally reverted, in order to accommodate one Nareshwar Prasad. It is, therefore, contended for the petitioner that the said order of reversion is mala fide, illegal and bad and also opposed to the principles of natural justice.

4. For the respondent, it is contended that the work of the petitioner was unsatisfactory ever since he returned from the Poona Training School where he was ranked last and that the question of retaining him in Class II Service was under consideration even in December, 1962. It is, therefore, alleged in the counter-affidavit that, at that time, one Nareshwar Prasad happened to return from

training at Poona and he was, therefore, posted, and that the petitioner was granted leave and finally reverted on account of unsatisfactory work.

5. It is contended for the petitioner that the order of reversion, having been passed without disclosing any apparent or stated reason or ground whatsoever, is entirely unsustainable and is also opposed to the rules laid down by the Railway Administration. It is also faintly argued that the Order of reversion would amount to reduction in rank by way of punishment, and that for the reasons stated in the affidavit filed in support of the Writ Petition, it is liable to be quashed as offending Article 311(2) of the Constitution. But it must be stated that the post to which he was promoted was only an officiating post. It is true there was a rule in the Railways in the year 1956 stating that any person who is promoted to continue to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules. But these instructions were cancelled by the Railway Board in 1960 and the Rule was revived only in 1965, when the Railway Board considered the matter again and decided that it would not be correct to effect such reversions for unsatisfactory work after prolonged officiating periods without following the procedure prescribed in the Discipline and Appeal Rules. Unfortunately for the petitioner, this rule was not in force at the time when the General Manager passed the order of reversion. Apart from this, Rule 1707 of the Rules provides that reversion to lower post, grade or service, of a railway servant officiating in a higher service, grade or post on the ground of unsuitability, after trial, unconnected with his conduct, would not amount to a penalty within the meaning of that rule. Under these circumstances it cannot be validly contended that the reversion in question from the officiating post to the substantive post would amount to reduction in rank by way of punishment, so as to come within the scope of Article 311(2).

6. But, in this case, the order of reversion is based on the assessment of the work of the petitioner, as revealed in his confidential report. The confidential report is therefore relevant for the purpose of considering the case of the petitioner in this writ proceeding, and it is quite necessary to scrutinise it carefully as the order of reversion is attacked as mala fide. As already stated, the petitioner who was a Head Draftsman (Class III Service) was selected and promoted to officiate as

Assistant Engineer (Class II). This promotion, though temporary, had the personal sanction of the General Manager. The Department was, therefore, quite satisfied with the work of the petitioner. The confidential report for the year ending 31st March, 1960 showed that the petitioner's technical ability was satisfactory, that he showed good aptitude for design (office) work, and that he was tactful and got on well with those above him and below him. The Deputy Engineer agreed with these remarks of the Executive Engineer and they were accepted by the then Chief Engineer and approved by the then General Manager. for the year ending March, 1961, the Bridge Engineer has stated that the (petitioner) is methodical and prompt in carrying out orders and his proposals are carefully thought out and economical. It is also stated that the petitioner is good in design of steel structure. These remarks have been endorsed by the Deputy Chief Engineer, accepted by the then Chief Engineer and approved by the then General Manager. It was during this period the petitioner was sent to the Advanced Training School at Poona for three months' training. It is true that he was assessed below average and placed last in rank. The trouble for the petitioner started from now on. Braganza, the then Chief Engineer, commenting on the performance of the petitioner at the Poona School, writes as follows, in his letter dated 17th July, 1961, which has been placed on the personal file of the petitioner: The report of your work as received from the principal shows that you are below average and incidentally you are ranked last. Your performance is such that you are a disgrace to the Southern Railway and I wish to make it clear that if I receive any further adverse report on your work, I shall be reluctantly compelled to revert you to your previous post...

The adverse remarks were communicated to the petitioner, and the petitioner cannot, therefore, be heard to say that the procedure laid down in the Rules has not been followed. But, apart from the poor performance of the petitioner in the Poona School, there has been nothing adverse about the work of the petitioner, as revealed by the confidential reports so far. It is, therefore, not clear, as to why this Chief Engineer should say that he should be reluctantly compelled to revert the petitioner to his previous post, if he received any further adverse report on his work. Fortunately, for the petitioner, when he was again deputed for training at Baroda, he had returned, if I may say so, with credit not only for himself but also for the Southern Railway, in that he had obtained distinction in one subject, credit

in three subjects and pass in the remaining subjects. As soon as he returned from Baroda, he was posted as Assistant Engineer, Gadag, where he worked till December, 1962. In October, 1962 this very Chief Engineer had inspected the Hubli section, where the petitioner was working and had reported that the running of track through-out was quite good. Further, his confidential report for March, 1962 was also satisfactory, according to the report of the Reporting Officer (Sundaram). This Officer has stated that the petitioner was managing satisfactorily his technical work, office and staff during the period 5th June, 1961 to 26th November, 1961, when the petitioner worked in his division (Madurai). The Divisional Superintendent agreed with this assessment of the work on 10th May, 1962. But, curiously enough, the Divisional Superintendent, Madurai (Chopra) stated, in the very same report, that 'this officer took little or no interest in maintenance of Permanent-way (and) speed restriction had to be imposed over long lengths in his sub-division due to his inaction.' The Chief Engineer, Braganza, has followed it up by saying that the petitioner's work has not been satisfactory. The Chief Engineer writes as follows in his letter dated 1st August, 1962 addressed to the petitioner:

In your Confidential Report for the year ending 31st March, 1962, it has been mentioned that you took little or no interest in the maintenance of track and that speed restrictions had to be imposed due to your inaction. Your poor performance even in the Permanent Way Training School at Poona. where you have been classified as below average was also brought to your notice. Your performance as an Officer ever since your promotion has not been satisfactory and the question of your retention in Class II is therefore to be decided. Will you please therefore note that unless you show a distinct improvement in your work, I will be reluctantly compelled to revert you to your former post.

To this letter, the petitioner replied on 27th August, 1962. He has stated that the newly laid formation was made up of black cotton soil which gave trouble leading to sudden settlement during first monsoon in 1961, that the Permanent Way Inspector in charge imposed speed restrictions on these newly extended loop lines taking into consideration the safety of the track and that immediately on hearing the message, he proceeded to the spot and removed the speed restrictions by

spreading necessary moorum matting over the newly laid track. In this letter, the petitioner has invited the attention of the Chief Engineer to his own letter W. 465/1 of 23rd May, 1962 wherein it is mentioned that for all future line capacity works speed restriction of six miles per hour should be imposed for one complete monsoon due to newly laid formation as a matter of policy. It may be repeated here that when this Chief Engineer visited Hubli on inspection duty, when the petitioner was working there, he found the running of track quite good. Therefore it is rather strange that this Chief Engineer should write as follows on 4th September, 1962:..You have been informed that as an Officer your work is not satisfactory. The remarks on track maintenance has been based on the report from the Divisional Superintendent, Madurai that you took little or no interest in the maintenance of permanent way and speed restrictions had to be imposed over long lengths on your sub-division due to your inaction. Your ranking in the Permanent Way School at Poona has been 'below average'. In your course at Baroda, you have earned distinction in one subject out of 13, credits in 3 subjects and passed in 9. I presume you do not mean to infer that your performance has therefore been something creditable. I repeat my warning therefore that unless you show a distinct improvement, the question of your retention as an Officer, Will have to be considered...

In the face of what I have stated supra, it is rather distressing that this Officer should repeat, recapitulate and reiterate the performance of the petitioner in the Poona School, when he has bettered himself at the Baroda College. The petitioner has also given plausible reasons for the speed restrictions in his sub-division. Very senior Officers of the Southern Railway have uniformly spoken about the satisfactory work and technical skill of the petitioner. It is, therefore, incomprehensible, when it is said of him that he took little or no interest in the maintenance of track.

7. It is the case of the petitioner that he was compelled to go on leave in order to provide for one Nareshwar Prasad. This is evident from the letter s/1, dated 3rd December, 1962 from the Divisional Office, Hubli:

I have been advised by the Dy. C.E./N that one Mr. Nareshwar Prasad has been posted to take over from you. The C.E. has also sanctioned you leave for 60 days. You may please send your formal application for leave...

The memorandum of the Divisional Superintendent, Personnel Branch, Guntakal, G.P. 508/G.T.C./ARN, dated 3rd December, 1962 is to the same effect:

Shri N. Prasad...who reported for duty on the morning of 3rd December, 1962 on return from the Training School at PA (Poona) is being posted as AEN/GDG in place of Sri Senthivelu, AEN/GDG who is granted 60 days leave from the date of relief.

The post-script says:

An application from Sri Senthivelu for 60 days leave may please be obtained immediately and sent to GM/P/MAS...

This is certainly not the normal procedure adopted in public offices for grant of leave. An officer is granted leave even before he formally submits a leave application. It is in these circumstances that the petitioner's Counsel contends, and rightly in my opinion, that the petitioner is asked to go on leave in order to provide for one of their men.

8. The events chronologically stated by me, the procedure adopted in asking the petitioner to go on leave, finally ending with the order of reversion, all go to show that the reduction in rank indicted on the petitioner is not based on any ground of inefficiency or incapacity on the part of the petitioner, but one made with ulterior motives known only to the authorities concerned. Looking at the surrounding circumstances, I am of opinion that the impugned order is unjust and unreasonable and one passed in the exercise of bad faith or abuse of power. It is an act of wilful partiality, motivated by considerations that are incompatible with the performance of public responsibilities. If the exercise of the power is wholly unreasonable, it may well be said that it is beyond the power given by the Statute. The Court, in the exercise of its writ jurisdiction, cannot interfere with the jurisdiction vested by the Statute in the administrative agency. It is not proper for

the Court to put itself in the shoes of the agency and consider whether a particular decision is reasonable. But the Court is always entitled to look at the surrounding circumstances, to consider whether the decision in dispute is reasonable, and will be prepared to revise it, if it is palpably unreasonable, that no reasonable authority or administrative agency could come to that decision without contravening the purpose and, exceeding the power of the statute. What I have to consider, while considering the impugned order, whether the Administrator used his power to attain his purpose. If it is an act inspired by a partisan spirit or done in the interest of a third party, Certainly the Court can interfere. Garner, in his book on the Administrative Law (1963 Edition) says as follows at page 97:

The principles according to which the Courts are prepared to apply the ultra vires doctrine and review the exercise of the Administrative, Judicial or Legislative acts of an administrative agency are as follows:

- (a) Breach of the principles of natural justice;
- (b) Excess of powers...;
- (c) Errors of procedure;
- (d) Palpable error of law;
- (e) Failure to perform a duty; and
- (f) Bad faith or abuse of power.

For the reasons given by me in the foregoing paragraphs, I am of opinion that the impugned order passed by the respondent is in exercise of bad faith or abuse of power. It is, therefore, quashed. The result is that the petitioner should be regarded as having held the post of an Assistant Engineer from the date of reversion and should further be regarded as having earned increments in the time scale (if he is entitled according to Rules) as and when they become due.