

Union of India and Others

Vs

Arjun Singh

Civil Appeal No. 150 of 1989

(Sujata V. Manohar, D. P. Wadhwa JJ)

03.12.1997

ORDER

1. The respondent joined the office of the Assistant Controller of Stores, Northern Railway, Locomotive Workshop, Putlighar, Amritsar on 15-12-1962. He was subsequently promoted as Clerk/Material Clerk. On 30-3-1983, he was provisionally promoted as a Senior Clerk. While he was officiating as a Senior Clerk, he received an order of reversion dated 30-10-1984 reverting him to his substantive post. This order of reversion was challenged by the respondent by filing a suit which was subsequently transferred to the Central Administrative Tribunal. By the impugned order of 15-4-1987, the Tribunal has set aside the order of reversion. The present appeal is from the impugned order of the Tribunal dated 15-4-1987.

2. Under the Railway Servants (Discipline & Appeal) Rules, 1968, Rule 6 deals with penalties. The first part of Rule 6 deals with minor penalties and the second part deals with major penalties. The Explanation to Rule 6 provides, inter alia, as follows :

"Explanation. - 1. The following shall not amount to a penalty within the meaning of this rule, namely :

#(i)-(iii) \* \* \*##

(iv) reversion of a railway servant officiating in higher service, grade or post to a lower service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post, or on any administrative ground unconnected with his conduct;"

3. In the present case, the respondent has been reverted on the ground of his unsatisfactory performance in the higher post.

4. Learned counsel for the respondent relies upon two confidential letters issued by the Railway Board dated 9-6-1965 and 15-7-1965 and a further confidential letter of the Railway Board dated 5-4-1983. Under the confidential letter of the Railway Board dated 9-6-1965, it is, inter alia, stated in para 2 that it would not be correct to effect such a reversion (that is to say, on the ground of unsuitability) after prolonged officiating periods. The Railway Board had, therefore, decided again that in future, any person who is permitted to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules. The next confidential letter of 14-7-1965/15-7-1965 sets out that an officiating employee can be reverted at any time if his performance is not satisfactory and reversion is justified in the interest of

work, irrespective of the period of the officiating service involved and without resorting to the procedure laid down in Discipline and Appeal Rules. This letter also reiterates what was stated in the earlier letter and states that the matter has been reconsidered by the Railway Board and it has been decided that in future, any person who is permitted to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Discipline and Appeal Rules. There is a further confidential letter of 5-4-1983 which provides for a periodic review of the working of newly-promoted staff. It says that instead of their work being assessed only once in a year, the work of such staff promoted against a clear vacancy, should be reviewed quarterly so that any shortcomings in their work may be brought to their notice with a view to bring about an improvement. This will help in improving the quality of their work or they may have to revert within 18 months from the date of promotion if the work is not satisfactory. Quarterly review will give them enough opportunity to improve the standard of their work. There are further provisions in this letter about maintaining a review register and appointing a reviewing authority.

5. The respondent places strong reliance on these circulars and contends that since he was reverted for unsatisfactory work after officiating for 19 months instead of 18 months, a departmental enquiry should have been held against him. In its absence, the order of reversion is bad in law. In order to appreciate this contention, it is necessary first of all, to bear in mind that the Discipline and Appeal Rules do not require any enquiry to be held in cases where a person is reverted from an officiating post on the ground of his unsatisfactory performance. The confidential letters of the Railway Board, however, state that such a reversion without any disciplinary enquiry should be made within a period of 18 months. There is also a provision for a quarterly review of the performance of such staff so that their unsatisfactory work can be brought to their notice for the purpose of improvement. If no improvement takes place, the staff can be reverted within 18 months. The confidential letters are for the purpose of guiding the administration regarding the manner in which it should exercise its power under the relevant Discipline and Appeal Rules. Undoubtedly, these letters have prescribed a period of 18 months within which the reversion without disciplinary enquiry should take place.

6. In the present case, the order of the Tribunal itself shows that there had been quarterly reviews of the respondent's performance. There were six such periodical reviews and the respondent was informed about his unsatisfactory performance by confidential letter addressed to him dated 8-6-1984 within the period of 18 months. On 30-10-1984 the order of reversion was passed. Instead of being passed within 18 months, this order has been passed within 19 months. But the order is really in continuation of and as a result of the periodic assessments of the performance of the respondent during the period of 18 months of his being appointed to officiate in a higher post. The fact that his performance was unsatisfactory was conveyed to him within the period of 18 months. In the context of these facts, the confidential letters which have been issued by the Railway Board cannot be construed as if they lay down a rigid statutory period. The letters are by way of guidelines to ensure that the power of reversion is exercised within a reasonable period. The order of reversion, in the circumstances of the present case is in substantial compliance of the directions and is based on a periodic review of the respondent's performance during the first eighteen months. Merely because the actual order is issued late by one month will not vitiate the order in the circumstances of the present case. We, therefore, do not see any reason to set aside the order of reversion.

7. Learned counsel for the respondent has drawn our attention to two decisions of this Court in connection with the circulars issued by the Railway Board. One is *Rly. Board v. P. R. Subramaniam* [(1978) 1 SCC 158] where this Court said that between the Rules in Indian Railway Establishment Code framed under Article 309 and circulars of the Railway Board issued under Rule

157 of that Code, the latter will prevail. This case has no application in the present case because the confidential letters are not circulars issued by the Railway Board under Rule 157. The second case which is relied upon is B. S. Vadera v. Union of India [AIR 1969 SC 118 : (1968) 3 SCR 575] where this Court said that the Railway Board acting under Rule 157, can make a rule having retrospective effect. This judgment also does not help the respondent in the present case.

8. In the premises, we allow the present appeal and set aside the impugned order of the Tribunal.