
(1990) 01 CAL CK 0034
In the Calcutta High Court
Case No : O.A. No. 600 of 1987

Chandi Das Banerjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-01-1990

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (1990) 01 CAL CK 0034

Hon'ble Judges : Pratibha Bonnerjea, J

Bench : Single Bench

Advocate : ;P.K. Ghosh and Mr. M.M. Mullick, for the Respondent

Judgement

P. Srinivasan, A.M.

1. The applicant before us is now working as Assistant Signal & Telecom Engineer, Eastern Railway at Calcutta. His complaint in this application is that after being promoted to the senior scale on ad hoc basis and appointed as District Signal & Telecommunication Engineer (DSTE) (Con) 14th May, 1986, he has been reverted to his original post of Assistant Signal & Telecom Engineer in 29.7.1987. He challenges this reversion.

2. The applicant, who argued his case himself, submitted that a Selection Committee considered his name along with those of others for ad hoc promotion to the post of DSTE and recommended a panel of names in which his name had appeared at the top. It was on the basis of this panel that the applicant was given an ad hoc promotion and he assumed charge on 2.5.86. He was appointed as DSTE at Jamalpur in Malda Division of the Eastern Railway. He states that while he was so working, he had to co-ordinate with the DSTE (Cons), Howrah, Shri D.D. Banerjee and in the course of their official connection, they developed differences. Later, Shri D.D. Banerjee became the Sr. DSTE (Cons), Howrah and the applicant, had to work under his overall guidance. Shri D.D. Banerjee found fault with a joint circular issued by the applicant along with Divisional Engineer

(Cons), Jamalpur and Divisional Safety Officer, Malda in a letter dated 27.3.87 and again in a subsequent letter dated 16.7.87, he had criticised the work of the applicant. Sri D. D. Banerjee who bore a grievance against the applicant because of earlier differences between the two had gone out of the way to level unjustified criticism against the applicant and had seen to it that the applicant was reverted. Even though he was promoted only on ad hoc basis as DSTE and would therefore normally have had no right to continue in that post, he alone had been picked out for reversion while his juniors who were also promoted on ad hoc basis had been continued in their posts. It was a clear case of punishment and being so, it was illegal because the applicant had not been given an opportunity of being heard as required by Article 311 of the Constitution.

3. Mr. M.M. Mullick, counsel led by Mr. P.K. Ghosh, counsel appearing for the respondents sought to counter the arguments of the applicant. Regular promotion to the post of DSTE could be made only by the Railway Board but the Railway Board had authorised General Managers to make ad hoc officiating promotion to the post for a period of upto one year. Extension beyond one year, however, had to be made only with the prior approval of the Board. For making such ad hoc promotion, the General Managers had to constitute a Selection Committee consisting of three heads of the Department which would draw up an ad hoc panel for promotion. The ad hoc panel was to be drawn up on the basis of seniority-cum-fitness. The ad hoc promotee would be replaced as soon as a regular DPC panel was received from the Railway Ministry. Reservation of vacancies for SC/ST had to be followed in making such ad hoc promotions. In accordance with the instruction of the Railway Board, the General Manager, Eastern Railway had constituted a Selection Committee which recommended a panel of four names for ad hoc promotion and the applicant was placed at the top of the list. The applicant did not acquire any right to continue in the post on ad hoc promotion, because ad hoc promotion is, by its very nature, a temporary arrangement which could be terminated at any time without assigning any reason. An ad hoc promotee is not entitled to the protection of Article 311(2) of the Constitution against reversion to his original post. Moreover, the powers of ad hoc promotion of the General Manager were limited to one year and the applicant had been reverted after a little over a year. There was nothing illegal about this. After the applicant was appointed as DSTE at Jamalpur, his work was constantly watched by his superiors who found it not to be up to the mark. The respondents say in their reply that the assessment of the work of the applicant as recorded in the two confidential letters issued to him dt. 27.3.87 and 16.7.87 disclosed several deficiencies and instances of highly irregular working by the applicant. The applicant had failed to make up these deficiencies and to show progress in his work and that was why he was reverted as being unsuitable to hold the higher post. The respondents had every right to revert him for administrative reasons because he was not found suitable to hold the higher post. Mr. Mullick draws our attention to a letter dated 20.4.85 issued by the Railway Board, according to which, the protection available to a person promoted to a higher

post and holding it for 18 months was not available to the applicant because he had not completed 18 months and he had not been approved for regular promotion by the Railway Board. He, therefore, submits that the application deserves to be dismissed.

4. We have considered the matter carefully. There can be no doubt that a person promoted to a higher post on ad hoc basis has no right to continue in that post. The tenure of an ad hoc promotee is even more tenuous than that of a probationer or a person holding temporary appointment still it cannot be said that the protection of Article 311(2) cannot be claimed by him at all. If the ad hoc promotion is terminated by an innocuous order without assigning any reason, the official concerned cannot complain. If he be reverted because the permanent incumbent of the post comes back or because a decision has been taken to terminate all ad hoc appointments he cannot complain. However, if he is reverted as a matter of punishment, he is entitled to the protection of Article 311(2). What do we see in this case? The applicant was selected for ad hoc appointment by a committee duly constituted by the General Manager. Among the candidates considered, the applicant was placed at the top on the basis of his seniority and confidential report. He was thus found fit for ad hoc promotion by a duly constituted Selection Committee. It is not disputed that the posts to which the applicant and the others were promoted ad hoc were permanent posts and the vacancies were clear vacancies. The promotees could therefore expect to continue in their posts till regular promotions could be made by the Board as senior persons in the lower cadre, they could also be considered for regular promotion by the Board and as a matter of fact persons promoted along with the applicant were continued in the higher post till they were regularised therein in due course without any break. The applicant alleges that after promotion he had differences with a senior official who had criticised his work. The respondents in their reply say that the applicant was guilty of higher irregular working and there were deficiencies in his work which were pointed out to him in the two confidential letters dated 27.3.87 and 16.7.87 and because he did not show any improvement in his work he was reverted. This, therefore, was not a routine case of an ad hoc promotee being reverted in exercise of the powers conferred on the respondents under the rules. If ad hoc appointment is to be terminated, one would expect the juniormost person to be first reverted unless all the persons promoted on ad hoc basis are to be reverted. It is common ground that persons junior to the applicant in the panel have been retained and have also been regularised in their posts, thereby showing that the applicant was singled out for special treatment. As we have already stated, the reason for his reversion was an assessment of his work in the higher post and the deficiencies pointed out in the two letters addressed to him. In other words, adverse remarks on the quality of his work in the higher post were the cause of his reversion to a lower post and this is nothing sort of punishment. If he had been asked to offer his explanation, he could possibly have shown that the criticism was unjustified. That being so, we have no hesitation in holding that the reversion of the applicant was indeed

illegal and unconstitutional particularly because his juniors were retained and subsequently even regularised in their posts. If the respondents are of the view that the applicant had committed irregularities, they are free to initiate disciplinary proceedings against him and take suitable action in accordance with law.

5. In view of the above, we quash the order dated 29.7.87 by which the applicant stood reverted and direct the respondents to give him all consequential benefits and to give him posting as DSTE. As we have already clarified, this order will not preclude the respondents from initiating departmental proceedings in accordance with law. Parties to bear their own costs.