

(2009) 11 BOM CK 0019
In the Bombay High Court
Case No : Writ Petition No. 2240 of 1999

Deepak

APPELLANT

Vs

The Chief Personal Manager, Central Railway and The
Divisional Railway Personal Manager, Nagpur Division, Central
Railway

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Railway Establishment Manual, Vol. II — Rule 224, 319, 323

Citation : (2009) 11 BOM CK 0019

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : M.W. Harsulkar, for the Appellant; R.G. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—Heard rival submissions at length.

2. The order dated 1221999 passed by the Central Administrative Tribunal is challenged in the present Writ Petition by the petitioner, who was employee of Indian Railways, and has superannuated.

3. The impugned order was passed in O.A. No. 1430 of 1995 by which the challenge raised by the present petitioner to the seniority list dated 2331995 was negated.

4. While in the employment of Central Railways, the petitioner was promoted to the post of Ticket Travelling Examiner (TTE) on 1781989. In the year 1991, In the seniority list of the grade of TTE, the name of the petitioner was at serial No. 151. He was assigned the date of promotion as 1781989, i.e. the date on which he was initially promoted.

5. After serving in the cadre as TTE, for certain duration, due to his personal/ domestic reasons, the petitioner sought reversion to the earlier post as Ticket

Collector (TC). Said request was accepted and the petitioner was posted at Wardha in the grade of TC.

6. On 6111992, the petitioner was again granted promotion to the post of TTE, which he has availed.

7. On 2331995, a seniority list for the cadre of TTE was published, in which petitioner's date of promotion as TTE was shown as 6111992 as against his earlier date, i.e. 1781989. In this list, he was shown at serial No. 106. Due to this altered date of promotion i.e. 6111992 in TTE's cadre, the petitioner has submitted a representation to the higher authorities and prayed for correction according to his actual date i.e. 1781989.

8. Petitioner's representation was turned down. Aggrieved by said rejection, petitioner filed application before the Central Administrative Tribunal, which came to be rejected, and as such, the order of the Central Administrative Tribunal is challenged before us in the present Writ Petition.

9. The main argument on behalf of the petitioner is that his case was required to have been considered as per Rule 319(b) of the Indian Railway Establishment Manual and not as per Rule 224 of the said Manual, which has been wrongly interpreted and applied by the Central Administrative Tribunal.

10. For the sake of ready reference, Rules 224 and 319(b) of the said Manual are produced hereunder:

224. Refusal of Promotion:

I. Selection Posts:

(i) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection.

(ii) At the end of one year if the employee again refused promotion at the outstation, his name may be deleted from the panel, deletion being automatic requiring no approval from any authority and the administration may transfer him to outstation in the same grade. He will also have to appear again in the selection notwithstanding the fact that he is in the meantime, has officiated non fortuitously against short term vacancy based on his panel position.

(iii) Seniority will be as from the date of effect of promotion and he will be junior to all the persons promoted earlier than him from the same panel irrespective of his panel position. He will not, however, lose seniority to another employee promoted to the same promotion category during the one year period of penalty as a result of a fresh selection subsequently held.

II. Non selection Posts:

(i) Such an employee should be debarred for future promotion for one year but not be transferred away from that station for one year if unavoidable domestic reasons exists. He should again be debarred for promotion for one year in case he refused promotion again after the first year of debarment or refusal of promotion for second time, the Administration can however transfer him to outstation in the same grade and the employee has again to appear for a suitability test when his turn for promotion comes.

(ii) He will rank junior to all promoted during the period he was allowed to refuse promotion irrespective of his relative seniority. He will not, however lose seniority to another employee promoted in the same category during the one year period of penalty as a result of fresh suitability test subsequently held.

319. Seniority on Promotion to Non-Selection Posts:

(a)....

(b) An employee who qualifies in an earlier test and gets promoted in a non fortuitous vacancy but reverts to the lower grade before a subsequent test is held will rank senior to all others who qualify in the subsequent test. Those who have either officiated in fortuitous vacancies or did not officiate at all will not be given any protection for seniority on subsequent promotion.

11. In the midst of hearing, learned Advocate Shri Harsulkar for the petitioner has brought to the notice of this Court Rule 323 of the said Manual, which reads as follows:

Rule 323: Effect of reduction in pay or grade. Sub-rule (ii): Reduction to a lower service, grade or post, or to a lower timescale. Clause (c): In cases where the penalty of reduction to a lower service, grade or post or lower timescale is for a specified period, the employee concerned should be repromoted automatically to the post from which he was reduced. The seniority in the original service, grade or post or timescale should be fixed in such cases as follows:

(i) In cases where the reduction is not to operate to postpone future increments, the seniority of the railway servant should be fixed in the higher service, grade or post or the higher timescale at which it would have been but for his reduction.

12. Based on Rule 323, learned Advocate Shri Harsulkar has argued that when an employee who has been punished and brought down in lower service, grade or post, has to be brought to his original higher post with his status in seniority, it is unjust and arbitrary to deny similar benefits to a nondefaulting employee.

13. Either parties have not brought to the notice of this Court any rule or practice in vogue or any executive order or clarification, dealing with such situation as obtaining in present case.

14. This Court has perused the judgment of the Tribunal under challenge. It is

seen that the petitioner's reliance on Rules 224 and 319(b) of the Manual was found by the Tribunal to be without any foundation. We find that the petitioner's reliance on these Rules 224 and 319(b) was not based on sound reasons. These Rules do not apply to the facts of present case.

15. This Court finds that Rule 323 of the Manual now relied upon by the petitioner carves out a class of employees, viz.: "who were in higher cadre but who were demoted by way of penalty and remained in lower service by grade or post or in timescale for a specific period", and lays down that employees so demoted by way of penalty have to be automatically promoted to the post unless such right is taken away, and upon such restoration, such employee should be fixed in higher service at which he would have been put, but for his reduction.

16. Existence and effect of Rule 323 is not disputed by learned Advocate Shri R.G. Agrawal appearing for the respondents.

17. A serious question is raised by learned Advocate Shri Harsulkar for the petitioner namely, that when rules prescribe that an employee, who was brought down by way of punishment, is required to be restored to his position after the period of punishment is over, there is no rational available as to why an employee, who got reduction in status suo motu and not on account of any stigma, and was again promoted being found fit and eligible, should be prevented from restoration?

18. Learned Advocate Shri R.G. Agrawal has pointed out that this submission is advanced before this Court for the first time and the Tribunal had no opportunity to deal with and decide this aspect and therefore the respondents had no opportunity to deliberate on this point.

19. The point raised by learned Advocate for the petitioner is a pure question of law. Any question of fact is not required to be adjudicated. Case proceeds on admitted facts. Therefore this case can be scrutinized by this Court, as a question of law alone is to be decided.

20. Insofar as interpretation of Rule 323 and its corollary is concerned, it has not been countenanced by learned Advocate Shri Agrawal for the respondents.

21. This Court is of considered view that a person, who got reduction suo motu on account of his own personal difficulty, cannot be compared and brought down in proficiency, quality or integrity, with a person who was brought down by way of punishment. A conclusion to the contrary is violative of Article 14 of the Constitution of India. Rule 323 of the said Manual is, therefore, liable to be construed to confer similar benefit to those, who were reduced in rank because of their personal difficulty. Case of such a person shall always stand on far better pedestal than those who were misconducting.

22. In the result, the petition succeeds and it is allowed. The impugned order is quashed and set aside. Rule is made absolute in terms of prayers (A) and (B) with all consequential benefits.

In the circumstances however we direct the parties to bear own costs.