

(1958) 07 CAL CK 0011
In the Calcutta High Court
Case No : Civil Revn. Case No. 32 of 1954

Dineshwar Bhattacharyya

APPELLANT

Vs

Chief Commercial Superintendent, Eastern Railway and
Others

RESPONDENT

Date of Decision : 02-07-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1960 Cal 209 : 62 CWN 921

Hon'ble Judges : Sinha, J

Bench : Single Bench

**Advocate : Ranadeb Choudhary and Anil Kumar Das Gupta, for the Appellant;
G.P. Kar and Ajoy Kumar Basu, for the Respondent**

Judgement

Sinha, J.—The facts in this case are shortly as follows.

The petitioner joined the Bengal Nagpur Railway, sometime in 1945 in a Class III post, as Traffic Office Assistant (Office Superintendent) Road Transport Branch, Commercial Traffic Manager's Office. He was confirmed in that post in January 1947. In 1950 he was first of all selected by the Selection Board to fill the post of Assistant Road Transport Officer, and he was selected for" a second time for filling a post in Class II in the Commercial Department. What the Selection Board does is to put the approved candidates in a panel, from which officiating appointments are made, strictly according to priority. An officiating appointment may lead to the person holding the post being confirmed therein. The petitioner was first of all appointed to the post of an Assistant Road Transport Officer, which was a post sanctioned only for six months. Upon expiry of that period, he reverted to his substantive post. On the 27th July, 1951 he was promoted to the post of officiating Assistant Commercial Officer (Operating Branch). This is a Class II post (gazetted). On "the 14th April, 1952 the B. N. Railway merged with the East Indian Railway, which in its turn was renamed the Eastern Railway. On the 29th May, 1952 an order was passed by the Chief Commercial

Superintendent, Eastern Railway to the effect that the petitioner being surplus to requirement will revert to Class III on and from the 1st June, 1952. It is said that owing to the regrouping of the Railways and due to a general tendency on the part of all employees not to go out of Calcutta, certain persons became surplus and had to be reverted back to their substantive posts. Against this order of the Chief Commercial Superintendent, the petitioner appealed to the General Manager on the 31st May, 1952. On the 7th June, 1952, an order was made by the General Manager as follows:

"The General Manager has decided that you should be reverted from the L. G. S. to Class III on account of unsuitability and your name should be removed from the panel of Class III staff approved for promotion to the Lower Gazetted Service."

Against this the petitioner appealed to the Railway Board. Pending the appeal, the petitioner was asked to appear before the Selection Board for selection, but he refused to do so on the ground that the matter was pending decision and he was only willing to appear before the Selection Board without prejudice to his rights, a course to which the authorities did not agree. On the 18th November, 1953 the petitioner was informed that his representation had been carefully considered by the Railway Board which had come to the conclusion that he had been correctly reverted to Class HI. Nothing has been said with regard to the complain! that the petitioner's name had been struck off the panel. This Rule was issued on the 5th January, 1954. In this application, the petitioner complains -against the Order of the General Manager reverting him to his substantive post as well as striking out his name from the panel of Class III -- staff, approved for promotion to the lower gazetted rank. As I have stated above, the petitioner was officiating in a Class II post, his substantive post being that of a Traffic Office Assistant which is a Class III post. The order made by the Chief Commercial Superintendent was obviously incompetent, because he was not the appointing authority. But, as I have said, there is the subsequent order by the General Manager reverting him to his substantive post and also striking out his name from the panel. The complaint is that both these acts were by way of punishment, and the petitioner has not been given an opportunity of being heard, or of defending himself. Now, so far as reverting him to his substantive post is concerned, the ground for doing so is stated to be that the petitioner became surplus to requirement. In the affidavit-in-opposition, another ground has- been sought to be advanced, viz., that it was thought that the petitioner should have more experience in the Commercial Department. But that, of course, is nowhere in the orders mentioned above. But even if the removal was for such a purpose, it appears to me that the mere sending back of the petitioner to his substantive post cannot be considered as a Punishment. He was in an officiating post and ad no legal right to continue there. If the matter stood there, then, of course, no relief could be granted. But we have another part of the order, viz., that the General Manager struck his name out of the panel of Class III officers, who were to be promoted to Class II posts. In the affidavit-in-opposition it has

been sought to be established that this panel is of no consequence, and that, in any event, it was a panel for promotion to art officiating post. In my opinion, this stand cannot be supported. One could have understood if it was stated that by reason of the merger, the old selections had entirely vanished. On the contrary, in paragraph 12 of the affidavit-in-opposition affirmed by Phul Chand Vaish it is stated that selections were now being made from amongst the staff whose names were in the approved panel, according to seniority and merits of the individual candidates. It is further stated that the petitioner's name was not on the panel since the 7th June, 1952, and for that reason there is no question of supersession. Further, as I have already mentioned, the General Manager has actually removed the name of the petitioner from the panel as appears from the communication dated the 7th June, 1952 which is Annexure "B" to the petition. The position is that there was a panel which is still in existence, drawn up by a Selection Board, according to the rules and regulations enforced in the Eastern Railway. It will be necessary to investigate the question of this panel a little further. According to Rule 104 of the Indian Railway-Establishment Code, Vol. I. page 3, railway services in India are classified into three classes: Classes I and II are gazetted, and the third class viz. Class III is non-gazetted. We next come to Rule 132 which is as follows :

"Recruitment to Class II service by promotion may be made by the General Manager, provided such promotions are made in the strict order of priority in which the individuals have been placed on the recommendations of Selection Boards".

Rule 134(2) runs as follows :

"Substantive promotions to Class II service shall be made by the General Managers provided that such promotions are made in the strict order of priority in which the individuals have been placed on the recommendations of Selection Boards; if any supersession of that order is involved, the matter should be referred to the Railway Board."

The Rules governing the promotion of subordinate staff are to be found in Appendix II-A appearing in the Indian Railway Establishment Code, Vol. I, page 211. Rule 6 lays down that selection posts shall be filled up by a positive act of selection made with the help of Selection Boards; from amongst subordinates who are ordinarily considered for promotion to the selection posts in accordance with the orders or practice regulating such promotions. Rule 7 lays down how Selection Boards are to be appointed : Sub-rule (a) lays down that Selection Boards shall be constituted for the purpose of making recommendations to the competent authority of the employees considered by it as suitable for filling a selection post. Rule 8 lays down the constitution of Selection Boards and Rule 9 lays down the procedure to be adopted by them. It is inter alia laid down that a list will be drawn up according to the recommendations. It is further laid down that it shall be open to the General Manager, or the Chief Mining Engineer to direct, where circumstances warrant or the system in force requires it, that

candidates selected by a Divisional or District Selection Board shall be subject to another selection by a Central Selection Board.

2. It is, therefore, clear that a Selection Board is contemplated by the rules. The Selection Board makes its recommendations and the appointments by way of promotion must be made in accordance with the priority in the list or panel prepared by the Selection Board. I do not find anywhere any rule enabling the General Manager himself to override a panel or to strike out the name of a person from the panel. On the other hand, Mr. Chaudhury on behalf of the petitioner has drawn my attention to a series of circulars and/or letters issued by the Railway Board which shows that there is a recognised procedure to be adopted in such cases. Reference has been made to the Railway Board's letters dated 14th November, 1944, 1st March, 1945, 12th April, 1946 and 26th August, 1953. Copies of the first three communications above-named have been filed and the respondents were called upon to produce the originals which they have failed to produce. However, this does not matter, because Mr. Kar appearing on behalf of the opposite parties himself relied upon them. These letters make it clear that for the purpose of selecting subordinates for promotion to gazetted ranks, Selection Boards should always be constituted for purposes of recommendations. These recommendations for promotion are always in practice to higher post in an officiating capacity, because promotions are always made in that fashion; first of all an employee is promoted to a higher post in an officiating capacity and if he proves himself efficient then he is confirmed therein. The Railway Board has expressly disapproved of the action on behalf of the railway officials ignoring the panels made by the Selection Boards; it has even disapproved of an arbitrary cancellation or amendment of such panels without reference to the Railway Board. Looking at the Rules and the circulars of the Railway Board, it appears that such promotions should be made according to the panel, that is to say, according to the recommendations made by the Selection Board. There is no rule anywhere empowering the General Manager, by himself, to either ignore the panel or strike a person's name off the panel, by himself. Assuming, however, that the General Manager had that power, it is clear to me that this action must be by way of punishment. When an employee is reverted from an officiating post to a substantive post, whether it is by way of punishment or not, is a vexed question. There have been various decisions on this point, culminating in the Supreme Court decision, *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . This decision I have analysed in the case of *Dhajadhari Dutta Vs. Union of India (UOI)*, (Home Police Department) New Delhi and Others, . In the Supreme Court decision, the learned Chief Justice has held that such a reduction of an employee would be penal if there is any penal consequence, viz. forfeiture of pay Or allowances, loss of his seniority in his substantive rank, stoppage or postponement of his future chances of promotion. The question is whether the striking o? the petitioner's name from the panel, has affected his future right of promotion. In my opinion, the inescapable conclusion is that it has so affected the petitioner. As I have mentioned above, promotion from Class III post to a

Class II post is to be done according to the recommendations made by Selection Boards. Where there is such a list or a panel, then a person not in the list cannot hope to be promoted. In fact, this position is admitted in the affidavit-in-opposition, paragraph 12, where it has been said that by reason of the fact that the petitioner's name is no longer in the panel, no question of promotion arises and consequently, no question of supersession. It is implied, that in order to have a chance of promotion, the petitioner would have to be in the selection list, that is to say, in the panel. Mr. Kar appearing on behalf of the opposite parties has argued that a panel is but a stepping stone to the higher service and to be deprived of being included in the panel means nothing. I am unable to accept this argument. In view of the rules and regulations and the practice prevailing in the Railway which I have mentioned above, it appears that exclusion from the panel is fatal to an employee in Class III, so far as his chances of promotion are concerned. It is then said that the petitioner was given several chances to appear before a new Selection Board but he refused to appear. I have already pointed out the stand the petitioner took. He correctly said that the matter was being decided by the higher authorities and he could not appear before a Selection Board unless the authorities agreed that it would be without prejudice to his rights. To this course, however, the authorities did not agree. The position, therefore, is that with regard to the first part of his contention, viz. that the reversion to the substantive post is by itself, apart from anything else, a punishment, the petitioner's contention cannot be upheld. But with regard to the second contention, viz. that the striking out of his name from the panel affected his chances of future promotion, it is a point of substance and must be upheld. What the authorities should have done before striking out the name of the petitioner from the panel was to give him an opportunity of showing cause as to why his name should not be struck off from the panel and the order could only be made after giving the petitioner an opportunity of being heard,

3. Lastly, it was urged that the matter had gone to the Railway Board which had made its decision and that the Railway Board is not within my jurisdiction. As has been pointed out in a recent Supreme Court decision, *State of Uttar Pradesh v. Mohammad Nooh* (1958) SCA 73 : (AIR 1958 SC 86), all orders in departmental proceedings do not necessarily merge in the appellate order. But quite apart from this, it will appear from the facts mentioned above that the Railway Board never considered or passed any order on this part of the contention, viz. about striking of the petitioner's name from the panel, I do not see, therefore, why I am not competent to deal with it.

4. The result is that this Rule must be made absolute only in part. While the order of reversion of the petitioner to his substantive rank is upheld, that portion of the order passed by the General Manager which relates to the removal of the petitioner's name from the panel of Class III staff, approved for promotion to the lower gazetted services, must be quashed and/or set aside and a Writ in the nature of certiorari is issued therefore; there will also be a writ in the nature of mandamus directing the opposite parties not to give effect to the same, and to

restore his name in the panel,

5. If the opposite parties wish to remove the petitioner's name from the panel, it must be done in accordance with law.

6. There will be no order as to costs.

7. I must make it clear, however, that what ever action may have been taken in respect of other persons in the panel who are not before me, will not be affected by this order.