

(1979) 02 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 484 of 1978

Rajkumar Kulshrestha

APPELLANT

Vs

The Secretary, Rajasthan State Electricity Board and Others

RESPONDENT

Date of Decision : 27-02-1979

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 311

Electricity (Supply) Act, 1948 — Section 10, 12, 5, 78, 79

Citation : (1979) WLN 645

Hon'ble Judges : K.S. Sidhu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.S. Sidhu, J.—This is a petition under Article 226 of the Constitution of India for a direction, order or writ in the nature of certiorari and prohibition to bring up and quash the order of reversion dated August 10, 1978, passed by the Rajasthan State Electricity Board (for short the Board) in respect of the petitioner and to restrain the Board from giving effect to the impugned order. The impugned order which is Annexure 4 to the petition is in these terms:

Shri R.K. Kulshrestha who is continuing against the temporary post of Executive Engineer on ad hoc basis is hereby reverted to the post of Asstt. Engineer with immediate effect.

On reversion as Asstt. Engineer, services of Shri R.K. Kulshrestha are placed at the disposal of the Chief Engineer (Const. & Gen.), RSEB, Jaipur.

By order,

sd/-

(Harish Nayyer)

Secretary

2. The case of the petitioner as set out in his petition may be briefly stated here. The petitioner joined service of the Board as a Junior Engineer on June 2, 1959. He was promoted as Assistant Engineer in officiating capacity vide order (Annexure 1), dated May 26, 1975. In the words of the petitioner this promotion was made "on ad hoc basis for a period of one year under Regulation 26(1) of the Rajasthan State Electricity Board, Service of Engineers (Recruitment, Promotion, and Seniority etc.) Regulations, 1969" (for short the Regulations). Other Assistant Engineers, 29 in number, were also promoted simultaneously as officiating Executive Engineers on ad hoc basis by virtue of the same order. The petitioner's name appeared at serial number 4 of the said order. The Board also prepared a seniority list (Annexure 2) of Assistant Engineers in September 1968. The petitioner's name appeared at number 106 of the seniority list. Out of the 30 Assistant Engineers promoted as officiating Executive Engineers by virtue of one and the same order mentioned above, as many as 26 are junior to the petitioner in the cadre of Assistant Engineers. This is evident from the seniority list aforementioned.

3. On his promotion as officiating Executive Engineer, the petitioner was transferred and posted as Executive Engineer (O. & M.) Bharatpur. He assumed charge of this post on May 28, 1975. He continued to work as Executive Engineer till his impugned reversion as Assistant Engineer in August 1978.

4. On August 10, 1978, the Board passed the impugned order and the Secretary of the Board issued it reverting the petitioner from the temporary post of Executive Engineer to his permanent post of Assistant Engineer. The petitioner has challenged this order on the grounds that firstly, it contravenes Article 311(2) of the Constitution in that he has been reduced in rank without any charge, inquiry or opportunity of being heard and secondly, it is also violative of the fundamental right of equality of opportunity enshrined, in Article 16 of the Constitution in that while the petitioner has been reverted, 26 officers junior to him in the, substantive cadre of Assistant Engineers have, been retained, as temporary Executive Engineers.

5. The Board and its Secretary who were impleaded as respondents in this petition, contested it and filed a written reply in answer of it. The Board admitted that the petitioner who substantively held the permanent post of Assistant Engineer, had promoted as officiating Executive Engineer on ad hoc basis for a period of one year by the Chairman of the Board in exercise of his powers under Rule 26(1) of the Regulations. The Board also admitted that it hid in tied seniority list, Annexure 2, but it pleaded that the paid list was merely tentative and not final. It also admitted that it had issued the impugned order reverting the petitioner from the post of temporary Executive Engineer to his substantive rank as Assistant Engineer. It defended this order pleading that since the petitioner had been promoted in an officiating capacity on ad hoc basis he had no right to hold the post of Executive Engineer and, as such, his reversion which had been ordered without casting any reflection or stigma on him cannot be taken as

being by way of punishment. The Board maintained that it had reverted the petitioner as it put it, "purely in the interest of the Board's work" without being actuated by any penal or punitive motive. The Chairman of the Board in his affidavit dated September 9, 1978 further clarified this averment solemnly affirming that the order had not been passed as a punitive measure but merely in the interest of the work of the Board, for according to him, "the petitioner's performance as Executive Engineer both at Bharatpur and Banswara was not found satisfactory." The Board added in this context that the petitioner "will certainly be considered for promotion to the post of Executive Engineer as and when the occasion arises" and assured that the present reversion does not entail any loss of seniority in the petitioner's substantive rank and cannot therefore, "mar his further chance of promotion".

6. The Board then referred to the petitioner's grievance as to the alleged discrimination against him vis-a-vis 26 junior officers who have been continued as Executive Engineers after the petitioner's reversion from that post, and pleaded that "there is no rule of law requiring that if more than one person is promoted on officiating basis on a higher post then only the junior most should first be reverted". The petitioner's reversion does not involve any discrimination or violation of the fundamental right of equality of opportunity.

7. The petitioner, in his rejoinder to the written reply of the respondents, pleaded that since the respondents had not filed on the record any seniority list, contrary to the one filed by him, the latter may be accented is final and that in any case the respondents have not denied his claim that he is senior in the substantive cadre of Assistant Engineers to 26 officers who have been continued as officiating Executive Engineers after his reversion from that post. As for the Board's assurance that he would be considered for promotion to the post of Executive Engineer as and when the occasion arises, he described it as false and pleaded in this context that even after the institution of this petition, the Board had promoted another batch. If u officers, all junior to the petitioner, as Executive Engineers on August 13, 1978, without considering the petitioner's case in that behalf.

8. Reference may also be made to a counter affidavit filed by the petitioner in support of his averments that the order of reversion, in effect amounts to order of reduction in rank so far as the petitioner is concerned. The petitioner has affirmed in the counter-affidavit that he stood automatically confirmed in the post of Executive Engineer on the completion by him of service as Executive Engineer for a period of two years because, under Rules 28 and 29 of the Regulations the period of probation which was initially one year could not be extended by a period exceeding one year more. He further affirmed that he had come to know after the filing of this petition that the Departmental Promotion Committee had recommended his regularisation as Executive Engineer and that the said recommendation had been accepted by the Board on February 25, 1976. He complained in his affidavit that all this would show that the Board had

reverted him from the post of temporary Executive Engineer to the post of Assistant Engineer by way of punishment without complying with the provisions of Article 311 of the Constitution. It may be mentioned in the context of this counter affidavit that there is nothing in the pleadings of the petitioner, i.e. in the petition and rejoinder, to say that he had been promoted to the post of Executive Engineer on probation with effect from May 26, 1975 and that, therefore, he stood automatically confirmed on that post on the expiry of the period of two years from the even date. Mention has been made of the petitioner's counter affidavit in the context of the pleadings not because it can be or is being treated as a part of the pleadings but merely because such a mention would complete the narration.

9. As already stated, the first contention of the petitioner is that the order of reversion is bad, being violative of Article 311(2) of the Constitution in as much as he has been reduced in rank without any charge, enquiry or opportunity of being heard. This contention need not detain me, for Article 311 has no application to this case. It will be seen that the petitioner is not a member of the civil service of the Union or the State, nor does he hold a civil post under the Union or the State. He is a servant of the Board which is a body corporate u/s 12, Electricity (Supply) Act, 1948 (hereinafter called the 1948 Act), constituted as such by the State Government of Rajasthan u/s 5 of the 1948 Act. The Supreme Court has repeatedly held see for example *Sukldev Singh v. Bhagat Ram* AIR 1975 SC 5331 and *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, that employees of statutory corporations, like the Board in the instant case, are not servants of the Union or the State & as such not entitled to protection under Article 311 of the Constitution.

10. Reference may then be made to the provisions of the 1948 Act to ascertain if it contains any provision analogous to Article 311 of the Constitution conferring equivalent statutory protection upon the servants of the Board against dismissal or removal from service or reduction in rank. Section 5 which deals with constitution and composition of the State Electricity Board provides that the State Government shall constitute by notification in the official Gazette a State Electricity Board and that such Board shall consist of not less than three and not more than seven members appointed by the State Government. Section 8 lays down that the Chairman and other members of the Board shall hold office for such period, and shall be eligible for reappointment under such conditions as may be presumed. Section 78 which deals with power to make rules enables the State Government, after previous publication by notification in the official Gazette to make rules generally and in particular to provide for, inter alia, the conditions of service of the Chairman and other members of the Board. Section 10 deals with removal or suspension of members of the Board. It provides inter alia that no order of removal shall be made unless the member concerned has been given an opportunity to submit his explanation to the State Government. It is significant to note that the 1948 Act which affords statutory protection to the member of the Board some what on the lines of such protection available to civil

servants, of the Union or of the State under Article 311 of the Constitution, does not contain any provision affording similar or any protection to the servants of the Board. In fact there is no provision in the 1948 Act dealing with officers and servants of the Board. Since the State Government is empowered u/s 78 of the 1948 Act to make rules only to give effect to the provisions of the said Act, it follows as a matter of necessary corollary that the State Government has no power to make rules providing for the appointment, dismissal or removal from service or reduction in rank of the officers and servants of the Board. Such power is the exclusive preserve of the Board as employer. Section 79 which deals with "power to make regulations" enables the Board to make regulations on its own, without reference to any other authority, providing for, inter alia, "the duties of officers and servants of the Board, and their salaries allowances and other conditions of service". Such regulations could always be made by the Board, as an employer like any other employer, in respect of its employees even if the 1948 Act had been silent about it. Section 79(c) which purports to enable the Board to make such regulations is not creatory but clarificatory in nature. It clarifies that the Board has the power to make rules regulating the terms and conditions of service of its employees.

11. It is, however, significant that, unlike many other statutes, the 1948 Act does not impose any restriction or limitation on the power of the Board in the matter of laying down terms and conditions of the service of its officers and servants. It is precisely on account of the absence of such restrictions and limitations on its powers terms and conditions of service of different categories of its officers and servants that such power of the Board partakes the nature of private power of contract of any employed and as such is entirely different from what may be described as the statutory power carrying with it command and control of a statute over that power. Regulations framed by the Board in exercise of its private power which existed de hors Section 79 of the 1948 Act and the existence of which has been merely recognised by Clause (c) of that section do not have the force of law. These regulations are a category apart from such regulations under the Oil and Natural Gas Commission Act, 1959, the Life Insurance Corporation Act, 1956 and the Industrial Finance Corporation Act, 1948 with which the Supreme Court dealt in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*. The Supreme Court held in the cited case that the regulation in question before it were statutory in nature having the force of law in as much the statutory authorities concerned had no free hand in making, mending, altering departing from or rescinding them. These regulations could be framed, altered, amended or rescinded only by or with the approval of Central Govt. As already stated, the Board in the instant case is free to make regulations in respect of its employees without the intervention of or reference to the State Government or any other authority. These regulations are, therefore, not statutory in character and do not possess the force of law. They stand in the

category of such regulations made by any other private employer and as such can be read into the contract of employment of each employee covered by them.

12. The servants and employees of the Board do not therefore, enjoy any statutory status which may entitle them to relief of specific performance of contract of personal service. If the Board reduces in rank any of its employees in breach of any regulation framed by it relating to terms and conditions of service such wrongful reduction in rank may entitle the employee concerned to damages, but he cannot claim restoration of his rank in specific performance of the contract. The legal position in this behalf was stated in no uncertain terms by the Supreme Court in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, and Indian Air Lines v. Sukhdev Rai* AIR 1971 S.C. 1823. It was held in the latter case that when the relevant statute or the rules made thereunder do not lay down any obligation or restriction as to the power of the statutory body to terminate the employment of its employees or any procedural safeguard to which only power could be exercised, regulations made by the statutory corporation without reference to or intervention of any other authority prescribing terms & conditions of its employees do not constitute a statutory restriction as to the kind of contract which the corporation can make with its employees or the grounds on which it can terminate them. These authorities apply on all fours to the facts of this case. The petitioner cannot therefore derive any help from the regulations framed by the Board under Clause (c) of Section 79 of the 1948 Act for obtaining the relief prayed in this petition.

13. Assuming for moment that the Regulations constitute a statutory restriction as to the kind of action which the Board could have taken against the petitioner, I am of the considered opinion that by reverting the petitioner to his substantive rank as Assistant Engineer, the Board has not committed any breach of the Regulation. The petitioner has himself admitted in the writ petition that he was appointed as officiating Executive Engineer, to quote his own words "on ad hoc basis for a period of one year under Regulation 26(1) of the Regulations. A careful perusal of the Regulation would reveal that there is a clear distinction between an appointment by promotion by the Board under Regulation 24 and 24A on one hand, and an ad hoc appointment by the Chairman of the Board under Regulation 26, on the other. To appreciate this distinction, it will be necessary to refer to a few other provisions of the Regulations relating to such appointments. Regulation which deals with definition of the expression Committee as a committee consisting of the Chairman and Technical Member of the Board for the purpose of selection of suitable persons for appointment by promotion to fill up the vacancies in the various categories of posts Regulation 23(2) which deals, inter alia with appointment to the post of Executive Engineer lays down that such appointment whether permanent or in an officiating capacity "shall be made by promotion on the basis of seniority-cum-merit from among the members of the Service possessing qualifications and length of service as mentioned in Schedule I on the recommendations of the Committee" Regulations 24 and 24-A prescribe the procedure for selection for promotion to the post of

Executive Engineer and the senior posts. It is important to note that the only way to make appointments, on regular basis, to posts is by following this procedure. There is no escape from this mandatory procedure for regulation 24 itself lays down that "the provisions of this regulation shall have effect notwithstanding any thing to the contrary contained in any provision of these regulations". Under regulation 24A, the Secretary of the Board is charged with the duty to prepare a list containing the names, not exceeding twice the number of vacancies in the post of Executive Engineer, of all officers eligible for appointment as such and place the same before the Committee for consideration. The Committee is required to consider the names of all the candidates in the list, prepare its own list of suitable candidates upto one and a half times the number of posts and send the list so prepared to the Board for final selection of the candidate for appointment to the vacant posts. As laid down in Regulation 24(6), the Board shall approve the list prepared by the Committee if a change is considered necessary. The list is required to be reviewed and revised each year. Power is given to the Chairman to make appointment by taking persons out of the list so approved by the Board in the order in which they have been placed in the list till such list is exhausted or reviewed or revised, as the case may be. Regulation 18 which deals with probation lays down in effect that an Executive Engineer appointed by promotion in the manner indicated above shall be on probation for a period of one year. The first proviso to Regulation 28 which is very meaningful for our present purpose may be reproduced here:

Provided that such of them as have previously to their appointment by promotion officiated temporarily on a post encadred in the Service may be permitted by the Chairman where the Board is the appointing authority to count such officiating or temporary service towards the period of probation upto a maximum of six months.

Regulation 30 deals with confirmation and provides that the probationer shall be confirmed if the Board is satisfied about his integrity and the probationer has passed the prescribed departmental examination, if any. The proviso reproduced above clearly brings out the basic difference between an appointment by promotion on regular basis under Regulations 24 and 24-A and an officiating appointment on ad hoc basis under Regulation 26(1). In the case of an appointment as Executive Engineer by promotion on regular basis under Regulations 24 and 24-A, the promotee is entitled to count his entire service from the date of such appointment towards the period of probation and on completion of one year service, becomes eligible for confirmation in the post of Executive Engineer. On the other hand, if an officer is appointed as Executive Engineer on ad hoc basis for a period of one year and such ad hoc appointment is extended from time to time expressly or by necessary implication, for a period of three years as in the case of the present petitioner, such officer on his appointment by promotion on regular basis under Regulations 24 and 24-A will not be entitled to count such service except to the extent of six months in the maximum, towards probation. In other words, there is all the difference in quality

between an appointment by promotion under Regulations 24 and 24-A, which is an appointment or probation for a period of the year, liable to be extended by a further period not exceeding one year, and an ad hoc appointment under Regulation 26(1).

14. It can thus be safely concluded that, on the petitioner's own showing, the status that he enjoyed on his appointment as Executive Engineer for a period of one year initially which appears to have been subsequently renewed, from time to time, for similar successive terms, expressly or by necessary implication, was that of an ad hoc appointment under Regulation 26(1) and not an appointment by promotion as a probationer, on regular basis, under Regulations 24 and 24-A, read with Regulation 28. It will be recalled that on his first appointment as officiating Executive Engineer on ad hoc basis for a period of one year the petitioner had assumed charge of that post on May 28, 1975. Giving the petitioner the benefit of all reasonable intendments, it may be said, in the absence of evidence to the contrary that his tenure as ad hoc Executive Engineer was renewed by the Chairman for a further period of one year which is the maximum which the Chairman could have done under Regulation 26(1), with effect from May 28, 1978, There is nothing in the Regulations which may be construed as a limitation or restriction on the power of the Board as an employer, to revert such an ad hoc Executive Engineer to his substantive post of Assistant Engineer in the interest of the work of the Board before the expiry of the period of one year. Even assuming that the said period of one year which in this case would expire on May 27, 1979, is a period which can be read into the contract of employment between the parties, the petitioner's reversion before the expiry of that period can, from his stand point, at best be construed as a breach of contract, making the Board liable in damages.

15. This view finds support from the ruling of the Supreme Court reported in S.R. Tewari Vs. District Board Agra and Another, , and Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, . In the latter case the Supreme Court affirmed in appeal the findings of fact, arrived at by the court below, to the effect that C.K. Tyagi had been dismissed from service as a result of enquiry which was held in violation of the regulations framed by the appellant. Nevertheless, the Supreme Court allowed the appeal before it on the ground that notwithstanding the dismissal being wrongful the declaration that C.K. Tewari continued to be in service could not be granted because in dismissing him the appellant could not be said to have acted in violation of any mandatory provision of law resulting in the dismissal being declared null and void. It referred to its earlier decisions in the The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, and S.R. Tewari's case (ibid) and summarised the position of case-law as follows:

Under the common law, the court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But the rule is subject to certain well recognised exceptions. It is open to the court in an

appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311 continues to remain in service even though by so doing the State is in effect forced to continue to employ the servant, whom it does not desire to employ. Similarly under the industrial law, jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker when he does not desire to employ is recognised. The courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to do.

The petitioner's case is not covered by any of the three aforementioned exceptions to the common law rule that the court will not ordinarily force on employer to retain the services of an employee whom he no longer wishes to employ on a particular post. The first exception relating to Article 311 of the Constitution has already been ruled out on the finding that the petitioner is not a member of the civil service of the Union or the State. The second exception is also ruled out because no industrial dispute has been raised on behalf of the petitioner in respect of his reversion, in accordance with the provisions of the Industrial Disputes Act. The third exception is also not applicable because the petitioner has not been able to show that the Board, in reverting him, has acted in breach of any mandatory obligation imposed by the statute.

16. The first contention raised on behalf of the petitioner, along with all other arguments raised in the nature of off shoots from this contention, must therefore, fail.

17. Turning now to the second contention, it is argued that the petitioner's reversion is violative of his fundamental right of equality, of opportunity guaranteed by Article 16 of the Constitution in that while, the petitioner has been reverted, 26 officers junior to him in the substantive cadre of Assistant Engineers have been retained as temporary Executive Engineers by the Board. Reliance is placed by counsel on State of U.P. and Others Vs. Sughar Singh, , and Anand Swaroop Bhatnagar v. State AIR 1966 Rajasthan 8, in support of this argument.

18. I have very carefully studied these rulings and am of opinion that they do not apply to the facts of this case. In State of UP v. Sughar Singh, Sughar Singh, the employee concerned, was a member of the civil service of the State of Uttar Pradesh and as such entitled to the protection of Article 311 of the Constitution. It was conceded in that case by counsel, appealing for the State, that Sughar Singh had been reverted from his officiating rank of Platoon Commander/Sub Inspector to his substantive rank as a result of the adverse entry made in Sughar Singh confidential character roll. It was on the basis of that admission by counsel that the Supreme Court held that Sughar Shinghi's reversion was really in the nature of punishment in disguise and that in any case it was a case of hostile discrimination in as much as 200 other officers junior to Sughar Singh in the substantive rank were retained as officiating Platoon Commanders/Sub-

Inspectors. It will be seen that in the cited case the reversion was admittedly punitive in nature and therefore it had to be struck down either under Article 311 or 16. In the instant case, the reversion does not involve any penalty or stigma, for all that has been done is to revert a temporary and ad hoc Executive Engineer to his substantive rank of Assistant Engineer. The order of reversion does not stigmatize the petitioner in any manner. Nothing has been brought on the record to indicate that the reversion has in fact been ordered by way of punishment under the cloak of simple reversion to the substantive rank.

19. In its written reply also, the Board explained that the reversion had been ordered without casting any stigma or reflection on the petitioner. The Board added in this context that it had to revert the petitioner "purely in the interest of the Board's work". The Chairmen of the Board subsequently clarified in his affidavit dated September 9, 1978, that "the petitioner's performance as Executive Engineer both at Bharatpur and Banswara was not found satisfactory". This does not however mean that the reversion was punitive in nature. It has been repeatedly held by the Supreme Court see for example, *Yogendra Nath Naskar Vs. Commissioner of Income Tax, Calcutta*, and *R.S. Sial Vs. The State of U.P. and Others*, that service of a temporary servant can be terminated under the rules of his employment and that an order of termination in unexceptional form may be closely examined with the help of proceeding and attendant circumstances to find out if it is in fact penal in nature, but in doing so the motive or the inducing factor which influences the Government to take action under the express or implied terms of the contract or rule is wholly immaterial. The Supreme Court further held in *R.S. Sial's* case that the same rule would hold good if the order passed is not for termination of service, but for reversion of an employee from a higher post to a lower post which he holds in substantive capacity. The motive, i.e. unsatisfactory work inducing the Board in reverting the petitioner to his substantive post of Assistant Engineer is, therefore, not material for the purpose of adjudging the nature of the reversion as to whether it is punitive or not.

20. This Court itself has had to deal with a similar fact-situation in *Kailash Chand Sethia v. R.S.E.B. Jaipur* 1973 RLW 534, P.N. Shinghal J. (as his Lordship then was) held that expressions like "unsatisfactory work" and the like in the order of termination or reversion of a probationer or temporary employee would not render the termination or reversion ipso facto penal and that in fact the use of such expressions could not be avoided and was in keeping with the contract of service.

21. The mere fact that the Chairman of the Board in the instant case has since been compelled to, explain in the pleadings, long after passing the impugned order of revision, that the reversion had to be ordered in the interest of the work of the Board having regard to the unsatisfactory performance of the petitioner as Executive Engineer at Bharatpur and Banswara is no ground for holding that the reversion visits the petitioner with any evil consequences or casts an aspersion

against his character or integrity. What is important to note is that the impugned order was passed in wholly unexceptional terms. It did not even mention that the petitioner's work as ad hoc Executive Engineer had been found to be unsatisfactory or that his reversion had become necessary in the interest of the work of the Board. It was only after the petitioner had challenged the order of reversion by way of this petition that the Board was compelled to state in its reply and affidavit that the petitioner's work had been found to be unsatisfactory. It would be idle to expect the appointing authority, while forming its opinion as to the suitability of an employee appointed on ad hoc or trial basis, to give reasons to the employee for its refusal to continue his employment. It is enough if it forms an opinion subjectively that he is not suitable for the job. It would generally avoid giving reasons, for such avoidance is in the interest of both sides. No employee would like being told that his performance was not upto the standard expected of him. By giving detailed reasons, the employer would also be running the avoidable risk of his action being blamed as punitive. Hence the way out of this dilemma for the employer is to keep his opinion about the quality of the performance of the employee to himself and pass the order of termination or reversion as the case may be, in unexceptional and non-controversial form and language.

22. All said and done therefore, the facts of this case are wholly distinguishable from the facts of the State of UP v. Sughar Singh (supra). Similarly, the ruling of this Court in Anand Swaroop Bhatnagar Vs. State, is also distinguishable. Apart from the facts that this too was a case of a civil servant, the reversion therein was ordered from the post of Assistant Conservator of Forests to a post two steps below. The civil servant concerned instead of being reverted from the post of Assistant Conservator of Forests to the next below post DFO was reverted to a post, i.e. Ranger Grade II, immediately below the post of DFO, although his juniors were working as DFOs at that time. Such double reversion, in the circumstances, was found to be violative of Article 16 of the Constitution.

23. In Champaklal Chimanlal Shah Vs. The Union of India (UOI), , the Supreme Court held that the question of discrimination may arise in a case of retrenchment or reversion of a temporary or officiating employee on account of abolition of one of several temporary posts of the same kind in one office, but such a question, to quote their Lordships, "can in our opinion never arise in the case of dispensing with services of a particular temporary employee on account of his conduct being unsatisfactory".

24. For all these reasons, I am of opinion that the Board has not infringed the petitioner's fundamental right of equality of opportunity in the matter of employment by reverting him from his temporary rank as Executive Engineer to his substantive rank of Assistant Engineer.

25. Lastly, an argument was also raised that the impugned order of reversion is bad because it was passed in violation of the principles of natural justice. This argument is also of no avail, for it is well established that principles of natural

justice have no relevance in considering the validity of a purely administrative act. Reversion of an ad hoc Executive Engineer to his substantive post of Assistant Engineer by the Board is an administrative act which does not involve the exercise of any judicial or quasi judicial function by the Board. The decision was arrived at by the Board on the basis of its subjective assessment as to whether the petitioner could give it satisfaction on the higher post or not. The Board was not bound to apply any particular procedure in forming such assessment. Its assessment cannot therefore be called in question on the ground that the petitioner was not given an opportunity of being heard before the assessment was formed.

26. In conclusion, this petition is without any merit and deserves to be dismissed. It is hereby dismissed. The parties are how ever left to bear their own costs.