
(2010) 12 GAU CK 0033
In the Gauhati High Court
Case No : WP (C) No. 5371 of 2010

Samir Kumar Sen

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Citation : (2011) 5 GLR 518

Hon'ble Judges : Madan B. Lokur, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : M. Chanda, for the Appellant; S. Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—More than a decade after passing the order dated 18.10.1991 for reversion of the service of the petitioner to Group D, he woke up from the deep slumber and filed Original Application No.233 of 2008 for assailing the reversion order and also for a direction to the respondents to treat him as Junior Clerk (Group C) for the entire period from 10.12.1980 to 31.1.2008. Admittedly, the writ petitioner had already retired from service on superannuation on 30.1.2008.

2. The learned Tribunal vide judgment and order dated 5.4.2010 dismissed the O.A. No.233/2008 for the reasons that the petitioner who remained unmoved despite his reversion for years is precluded to contend that the cause of action is of continuing nature merely because it affect his pension for filing the original application assailing the reversion order and also that mere continuance for a long time in the capacity of Junior Clerk in connivance with the concerned staff would not secure a right to continue in service and also that sympathy cannot be claimed for protection of his service as Junior Clerk in the absence of finding that the reversion order is wholly illegal and unjust.

3. The factual matrix of the petitioner's case, in nutshell is recapitulated:

The petitioner was initially appointed as Gangman, Group D service under Alipurduar Division of N.F. Railway in 1973. On 5.12.1980 he was promoted as Junior Clerk in Group C against 33-1/3% quota w.e.f. 5.12.1980. Along with the petitioner other 14 persons who were similarly situated were also promoted and the petitioner was reverted back to Group D category in 1982 vide DRM, Alipurduar's order No.E/254/ 24(E)/AP/Pt.II dated 26.7.1982; the said reversion order was not accepted by the Recognized Labour Union and in the result the said reversion order was cancelled and the petitioner was again promoted as Junior Clerk w.e.f. 10.12.1980 vide Divisional Railway Manager (P) Alipurduar office order No.E/254/24(E)/AP/P II dated 18.8.1989. The NF Railway Employees' Union filed O.A. No. 118/1989 before the Central Administrative Tribunal (CAT) challenging the policy for treating the personnel in higher scale as senior to those in lower scale and policy for promotion to Group C post against the quota reserved for Group D employees and that old panel including that of 1979 cannot be changed by the administrative decision of 7.7.1989 or any other decision in such matters.

4. The learned CAT vide judgment and order dated 5.2.1991 allowed the O.A. No. 118/1989 with the direction that the matter may be sent back to the Director, Establishment, Railway Board for passing a reasoned order relating to the matter in dispute in consultation with the General Manager, N.F. Railway, after holding meeting with the recognized Unions so that everybody under the NF Railway would remain bound by the decision of the Director.

5. Admittedly, the petitioner is a member of one of the recognized Unions and the Director concerned in the Railway Board acted as per the direction of the CAT and passed speaking order dated 10.1.1991, which was endorsed by the DRM(P), Alipurduar on 18.10.1991, that the combination of two panels for promotion from Group D to Group C against 33-1/3% quota held in 1979 and 1982 stood cancelled. In the result, writ petitioner and others were reverted to Group D service and they were asked to appear-in fresh selection in future for promotion from Groups D to C against 33-1/3% quota. It is not that the writ petitioner alone had to face the consequence of the said speaking order dated 10.10.1991, in total there were five persons including the petitioner, two of whom retired on 30.11.1991 and 31.10.1993 respectively. The third person appeared in the test and regularized on 4.9.1992. But the writ petitioner at no point of time appeared in the Selection Test for enabling the authority to appoint him in Group C service. Shri Kriti Banerjee, the fourth person reverted along with the writ petitioner died on 1.10.2005.

6. The petitioner is not denying the fact that one of the persons who were reverted along with the petitioner in consequence of the said speaking order dated 10.10.1991 appeared in the test and regularized his service on 4.9.1992 and also that the writ petitioner at no point of time appeared in the Selection Test for appointment to the post of Group C service.

7. A copy of the speaking order or/memorandum dated 10.10.1991 for

cancellation of panel for promotion from Class D to Class C issued in the years 1979 and 1982 in which the writ petitioner featured was sent to the writ petitioner through the officers under whom he was working according to the respondents. Although the writ petitioner was made aware of his reversion and advised to appear in the Selection Test for promotion to Group C against 33-1/3% quota he ignored it and in consequence continued to work as ad hoc Group C Clerk under the Assistant Engineer, Barpeta Road of Rangiya Division where he was transferred on creating Rangiya Division. The concerned office staff including a Supervising Office Assistant of the Office of the DRM/Alipurduar was suitably punished for their acts of connivance and negligence in avoiding the said speaking orders dated 10.10.1991 and 18.10.1991 in the field postings.

8. After knowing the said collusive actions of the petitioner and other staff for avoiding the implementation of the said orders for reversion in the field postings, the Divisional Railway Manager (P), Alipurduar Junction under his letter being No.E/254/24(E)AP/Pt.III (Loose) dated 6.1.2006 made aware the D.M. Railway Manager (P), NF Railway/RNY the reversion of the petitioner by canceling the promotion order and direction to the writ petitioner to appear in fresh selection in future for promotion from Group D to Group C against the 31 1/3% quota. In terms of the said letter dated 6.1.2006 and judgment of the learned CAT dated 5.2.1991 passed in O.A. No. 118/1989 the Divisional Railway Manager, Rangiya issued office order dated 25.5.2006 for reverting the petitioner to his original cadre. The writ petitioner filed representation dated 14.6.2006 to the Chief Personal Officer, NF Railway, Maligaon against the said speaking order dated 10.10.1991 passed in pursuance of the judgment and order of the CAT dated 5.2.1991 only on the ground that he was at the verge of retirement and also he was only solitary person now remaining in the cadre from the panel. The Joint Secretary of the NF Railway Employees' Union, who had been consulted by the Director, Establishment, Railway Board pursuant to the judgment and order of the learned CAT dated 5.2.1991 passed in O.A No. 118/1989 filed appeal dated 7.9.2006 against the said order for reversion to the Chief Personal Officer, NF Railway.

9. The NF Railway Employees' Union is one of the applicants in the O.A. No. 118/1989. The writ petitioner who is a member of the NF Railway Employees' Union who filed the appeal dated 7.9.2006 against the reversion order only on the ground that the reversion of the petitioner from Group C to Group D after 26 years is highly irregular and irrational, cannot deny/feign or ignore the order of the learned CAT dated 5.2.1991 passed in O.A. No. 118/1989. The said appeal of the writ petitioner had been rejected by a speaking order dated 1.11.2007 and being aggrieved, the writ petitioner filed O.A. No.233/2008 assailing only the order dated 6.1.2006 of the Divisional Railway Manager (P) Alupurduar Division appraising the earlier reversion order dated 10.10.1991 and also office order dated 25.5.2006 for reiterating the earlier order for reversion dated 10.10.1991 and also for a direction to the respondents to treat his service as Junior Clerk from 10.12.1980 to 31.1.2008.

10. The respondents filed their written statement in O.A. No.233/2008 stating clearly that O.A. No. 118/1989 was filed by the NF Railway Employees' Union, of which the petitioner is one of the members and another for challenging the policy decision regarding promotion to Group C post against the reserved Group D employee and also the Administrative decision for changing old panel of 1979, and that learned Tribunal vide judgment and order dated 5.2.1991 passed in O.A. No. 118/1989, directed the Director, Establishment, Railway Board to issue reasoned order relating to the said policy decision in dispute in consultation with the General Manager, NF Railway and recognized Unions under the NF Railway so that everybody under the NF Railway would remain bound by the decision of the Director, and that pursuant to the order of CAT dated 5.2.1991 passed in O.A. No. 118/1989 the Director, Estt, had already issued speaking order dated 10.10.1991 for canceling old panel. It is also stated in the written statement that in the result petitioner and others had been reverted in consequence of the change of policy decision; the DRM(P) Alipurduar, on 18.10.1991 under Whom petitioner was working had already endorsed the said speaking order dated 10.10.1991 by passing order dated 18.10.1991 and that the petitioner was aware of the said speaking orders dated 10.10.1991 and 18.10.1991; but in connivance with the staff/official he feigned ignorance and continued to work as ad hoc Group C Clerk; and that the concerned staff including the Supervisory Officer and Superintending Officer of the DRM, Alipurduar who were responsible for not implementing the said orders in the field posting where the petitioner was working had suitably been punished for their acts of connivance and negligence in ensuring that orders dated 10.10.1991 and 18.10.1991 were implemented in the field posting. The petitioner did not file rejoinder denying those facts in O.A. No.233/2008.

11. The learned Administrative Tribunal (CAT) vide judgment and order dated 5.4.2010 dismissed the O.A. No.233/2008 with certain findings that the appellant/writ petitioner did not assail the order dated 1.11.2007 for rejecting the appeal filed by the petitioner against the reversion order and also that the writ petitioner had been reverted from Group C to Group D service as early as 18.10.1991 but he continued to work in the said capacity in connivance with the concerned staff. The learned CAT also further made findings in the impugned judgment and order dated 5.4.2010 that the appellant had not disputed the fact that erring officers had already been punished for their acts of connivance and negligence in ensuring that the reversion orders were implemented in the field posting where the petitioner was posted and the petitioner who remained unmoved despite his reversion, virtually for a number of years, is precluded to contend by filing O.A. lately that the cause of action is of continuous nature merely because it affects his pension and also that the two panels namely 1979 and 1982 basing on which the writ petitioner had been promoted as Junior Clerk had already been cancelled pursuant to the order of the CAT dated 5.2.1991 passed in O.A. No. 118/1989; and also that the petitioner cannot claim sympathy that as he continued to serve for a number of years he should be protected from

reversion even though the reversion orders are not wholly illegal and unjustified.

12. For the foregoing reasons we are unable to persuade ourselves to interfere with the findings and reasons in the impugned judgment and order dated 5.4.2010 passed in O.A. No.233 of 2008. We further reiterate that it is too late for the petitioner who already retired on superannuation on 30.1.2008 to challenge the said orders dated 10.10.1991 and 18.10.1991 for reversion from Group C to Group D more than a decade after passing the reversion orders in the given case.

The writ petition is accordingly, dismissed.