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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1094/2001 with CP No.407/2001

New Delhi, this 4th day of June, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Shri M.P. Singh, Member(A)

S. Dutta
41, Harnam Dass Dutta
Ghaziabad (UP) .. Applicant

(Shri B.S.Gupta, Advocate, through proxy counsel
Shri S.K. Gupta)

versus

Union of India, through

1. Secretary
Department of Agriculture & Cooperation
Ministry of Agriculture
Krishi Bhavan, New Delhi
2. Director
National Bio-Fertilizer Development Centre
Department of Agriculture & Cooperation
Ministry of Agriculture
Krishi Bhavan, New Delhi
3. Sr. Administrative Officer
National Bio-Fertilizer Development Centre
204-B Wing, CGO Complex II
Kamla Nehru Nagar, Ghaziabad
4. Smt. Sumitra Soren, Steno D
Regional Bio-Fertilizer Development Centre
A-156, Shaheed Nagar, Bhubaneshwar
Orissa
5. Shri Vipin Malhotra. Steno D
Regional Bio-Fertilizer Development Centre
18, Sirsa Road, Hissar .. Respondents

(Shri Arun Bhardwaj, Advocate, through proxy counsel
Shri Pradeep Dahiya)

ORDER

Shri M.P. Singh, Member(A)

In this application, applicant has challenged the order dated 19.04.2001 whereby he has been reverted from the post of Stenographer Grade 'C' to Stenographer Grade 'D'.

2. The admitted facts of the case are that the applicant was working as Steno Grade 'D' in the office of Director, National Bio-Fertilizer Development Centre (Respondent No.2). On the recommendations of the Departmental Promotion Committee (DPC) held on 17.12.96, the applicant

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was promoted to the post of Steno Grade 'C' in the pay scale of Rs.1400-2300 vide order dated 13.1.97. As per the Recruitment Rules, the post of Steno Grade 'C' (Group C, non-selection) is required to be filled up by promotion, failing which by transfer on deputation. Stenos Grade 'D' working in the office of R-2 with five years regular service in the grade are eligible for promotion to the post of Steno Grade 'C'. However the DPC held on 17.12.96 did not follow the prescribed procedures and ~~had~~ considered the name of the applicant for promotion to the post of Steno Grade 'C' in contravention of the Recruitment Rules. Applicant's position in the seniority list of Steno Grade 'D' is at S1.No.3. Though the post of Steno Grade 'C' is a non-selection post, the DPC had adopted the selection method while assessing the suitability of the persons for promotion to the next higher grade. Also, the constitution of the said DPC was in contravention of the Recruitment Rules.

3. Respondent No.5 who is senior to the applicant but was not promoted to the post of Steno Grade 'C' made a representation against the selection of the applicant. Therefore, a review DPC was held on 19.4.2001 in accordance with the Recruitment Rules. The DPC considered the names of five candidates falling in the zone of consideration including the name of the applicant and recommended the senior-most candidate i.e. Respondent No.4 for promotion to the post of Steno Grade 'C'. Respondents vide their letter dated 19.4.2001 had reverted the applicant from the post of Steno Grade 'C'



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to that of Steno Grade 'D'. Aggrieved by this, the applicant has filed this OA seeking direction to quash and set aside the order dated 19.4.2001 promoting R-4 to the post of Steno Grade 'C'.

4. Heard the learned counsel for the rival contesting parties and perused the records.

5. This Tribunal vide its order dated 30.4.2001 has granted status quo as of that date in respect of the applicant. According to the applicant, despite this interim order, respondents have reverted the applicant to the post of Steno Grade 'D'. He has therefore filed CP No.407/2001 on 8.8.2001 stating that he was working on the post of Steno Grade 'C' but the salary which was released on 31.7.2001 was that of Steno Grade 'D' in the lower pay scale of Rs.4000-6000 instead of Rs.5000-8000 and that the interim order dated 30.4.2001 has not been implemented by the respondents.

6. During the course of the arguments, learned counsel for the respondents submitted that the order of reversion was passed by the respondents on 19.4.2001 i.e. before the order of status quo dated 30.4.2001 and, therefore, there is no violation of Tribunal's order passed on 30.4.2001. It was only the pay of the applicant which continued to be paid in the grade of Steno Grade 'C' (Rs.5000-8000). There was some delay in refixing the pay of the applicant in the scale of Rs.4000-6000 in pursuant to the order dated 19.4.2001, which was issued on 23.7.2001. After perusing the records, we are satisfied

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that there is no violation of interim order dated 30.4.2001, although there has been little delay in fixing the pay of the applicant in pursuance of the reversion order. The Contempt Petition No.407/2001 is, therefore, dismissed and notices are discharged.

7. During the course of the arguments, learned counsel for the applicant has stated that there is no show cause notice before reverting the applicant to the post of Steno Grade 'D'. Once he has been promoted to Steno Grade 'C' he has a vested right to continue in that post and he could not have been reverted after a period of about four years. In this connection, the learned counsel has relied upon the judgements in M.S. Usmani & Ors. Vs. UOI 1995(2) SLJ 4 and Bhagwan Shukla Vs. UOI ATC 1994(28) 258.

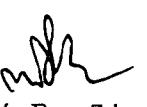
8. On the other hand, learned counsel for the respondents stated that the applicant was wrongly promoted to the post of Steno Grade 'C' in contravention of the Recruitment Rules and that applicant has connived with R-2 to get his promotion by illegal means. When it was detected that his promotion was not in accordance with law and Recruitment Rules, a review DPC was held in which R-4 was found fit and accordingly she was promoted. He has also submitted that no show cause notice is required to be given where a wrong selection has been made. In this connection, he has relied upon the judgement of the Hon'ble Supreme Court in Krishna Yadav Vs. State of Haryana AIR 1994 SC 2166 and also of the

Hon'ble Kerala High Court in Sreejit C.P. & Anr. vs.
Kerala State Coop. Employees Pension Board & Ors. 2000
LAB. I.C.1281.

9. We have given due consideration to the facts. Now the question for consideration before us is whether the applicant could have been reverted from the post of Steno grade 'C' to Steno grade 'D' without giving a show cause notice. As per settled legal position, when the applicant was promoted on the recommendations of DPC he has a vested right to continue in that post and he could not have been reverted without a show cause notice although the selection made by the official respondents was in contravention of the Recruitment Rules. Respondents themselves admit that the promotion of the applicant was in contravention of the Recruitment Rules.

10. In the facts and circumstances of the case, we are of the considered view that the order dated 19.4.2001 deserves to be quashed and set aside. We do so accordingly. Respondents are directed to issue show cause notice to the applicant and give him an opportunity of hearing and thereafter pass an appropriate order in accordance with law, rules and instructions.

11. The present OA with CP No.407/2001 are disposed of in the aforesated terms. There shall be no order as to costs.


 (M.P. Singh)
 Member(A)


 (Smt. Lakshmi Swaminathan)
 Vice-Chairman (J)

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