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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1714 of 2001

New Delhi, this the 24th day of January, 2002

HON'BLE MR. V. K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri Gian Chand Rai
S/o Lt. Shri P.N. Rai
R/o EPT-58 Sarojini Nagar
New Delhi-110 023.

Working as Accounts Officer
Bharat Sanchar Nigam Ltd.,
New Delhi-110 001.Applicant

By Advocate: Shri M.K. Gupta

VERSUS

1. Union of India
through its Secretary,
Department of Tele-Communications,
Ministry of Communications,
Sanchar Bhawan,
New Delhi-110 001.

2. Bharat Sanchar Nigam Ltd.,
through Chief General Manager,
Northern Telecom Region,
2nd Floor, Kidwai Bhawan,
Janpath, New Delhi-110 001.

3. The Member (Finance)
Telecom Commission,
Sanchar Bhawan,
New Delhi-110 001.Respondents

By Advocate Shri R.N. Singh.

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

(i) To restrain the respondents from reverting against the applicant from the post of Accounts Officer to the post of Assistant Accounts Officer pursuant to the departmental proceedings initiated vide Memo dated

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21.6.2001.

(ii) To pass any other order or orders which this Hon'ble Tribunal may deem just and equitable in the facts and circumstances of the case.

2. The facts, in brief are, that the applicant was appointed as a Clerk in the office of respondent No.1 in the year 1978. After qualifying the departmental examination, he was promoted to the post of Junior Accounts Officer in the year 1993. He was further promoted to the post of Assistant Accounts Officer, Group 'B' Gazetted post in the year 1998.

3. It is further submitted that applicant being the senior-most AAO was promoted on ad hoc basis as Accounts Officer w.e.f. 1.9.98 and was made in-charge of Pension Section vide order dated 3.9.98. This was done as certain new posts of Accounts Officers were created in the said year.

4. The applicant was given above promotion initially for 180 days but that continued till 27.2.99 when he was given a technical break for one day on 28.2.99 (Sunday). Thereafter he was again promoted to the said post of AO, i.e., to hold the charge of the Pension Section w.e.f. 29.8.99 till 24.2.2000 when again he was given a break for a period of 3 days, i.e., w.e.f. 25.2.2000 to 27.2.2000 (26th and 27th being holidays). The applicant was again appointed in the said grade on 28.2.2000 and continued till 16.8.2000 when he was

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technically reverted to the grade of AAO. Ultimately he was promoted as Accounts Officer in the Indian P&T Accounts and Finance Service, Group 'B' Gazetted on ad hoc basis vide order dated 16.8.2000 with immediate effect or the date of assumption of charge whichever is later. The order was based on the recommendations made by the duly constituted DPC.

5. Unfortunately vide charge memo dated 21.6.2001 which was received by the applicant on 4.7.2001 under Rule 14 of the CCS (CCA) Rules, 1965 alleging a misconduct committed by the applicant while functioning as a TR clerk in MTNL from August, 1992 to December, 1993. It is submitted that the said charge is baseless as the same is not the subject matter of the present OA.

6. It is further submitted by the applicant that the respondents are contemplating to revert the applicant from the post of Accounts Officer to that of Assistant Accounts Officer on the basis of the OM dated 24.12.1986 issued by the Government, DOP&T.

7. The applicant has further submitted that he had worked on the post of Accounts Officer since 1.9.98 for about 3 years except for a technical break, which was given only to deprive him of his legal dues. He has also mentioned that no DPC was held after August, 2000 despite the fact that regular vacancy was available in the said cadre and applicant was fully eligible but was not considered. It is also submitted by the applicant that after the creation of Bharat Sanchar Nigam Ltd. as a Government Company and converting the entire staff

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employed in the Department of Telecommunications, he along with other officers are deemed to be on deputation but without deputation allowance from 1.10.2000, i.e., the date of taking over of Telecom operations by the said company from the Department of Telecom Service and Department of Telecom Operation.

8. The applicant has submitted that there was no option available with the applicant except to challenge the action of the respondents and that is why he has filed the present OA.

9. In the grounds to challenge the impugned order the applicant has submitted that since he was working as Accounts Officer w.e.f. 1.9.98 for a period of 3 years (technical break of only 1-3 days) was eligible to be considered for promotion as Accounts Officer but was not considered. The rules also provide that Junior Accounts Officer with 5 years service in the grade can be considered for promotion as such he was fully eligible to be considered.

10. The charge memo issued on 21.6.2001 for the alleged incident of August, 1992 to December, 1993, has been issued belatedly and the allegations made therein are baseless and false, as such the same should be quashed.

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11. It is also submitted that the respondents action in reverting him to the post of AAO is against the principle of natural justice, fair play as well as legitimate expectations and the same would cause irreparable loss and injury to the applicant.

12. He has also submitted that the only plea taken by the respondents to revert him is that he is holding the post of Accounts Officer for less than one year, which cannot be accepted and as such the impugned order be quashed and the OA be allowed.

13. The respondent who are contesting the OA submitted that the applicant was promoted as Accounts Officer on temporary and ad hoc basis by the appointing authority vide order dated 16.8.2000. He was issued a charge-sheet dated 21.6.2001 in connection with the disciplinary case and the same was served on the applicant on 4.7.2001.

14. It is further submitted by the respondents that vide OM dated 24.12.1986 when a disciplinary proceeding is initiated against a Government servant, officiating in a higher post on ad hoc basis for a period less than one year, he should be reverted to the post held by him substantively or on regular basis. As the applicant was holding the post of Accounts Officer on ad hoc basis, by an order of appointing authority for less than one year and a disciplinary case is initiated against him which warrant reversion of the applicant to the grade of Assistant Accounts Office in accordance with the OM dated 24.12.1986.



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15. It is also submitted that the applicant has submitted false information to the Tribunal that he is holding the post of Accounts Officer on ad hoc basis continuously from 1.9.98 whereas he was promoted as Accounts Officer on 16.8.2000 and all the appointments prior to that date was made only on temporary and local officiating basis with intervening breaks as such it is submitted that the OA be dismissed.

16. We have heard the learned counsel for the parties and gone through the records of the case.

17. The short question in this case is whether the applicant who was working as Accounts Officer (AAO) could be reverted back to the post of Assistant Accounts Officer pursuant to memo dated 21.6.2001 which was issued to him. The learned counsel appearing for the applicant submitted that since the applicant had been working as Accounts Officer for a period for more than one year though on ad hoc basis so he cannot be reverted back as AAO. In support of his contention he has relied upon an OM dated 24.12.1986, the relevant clause of which have been reproduced hereinbelow for ready reference:-

"(4) Procedure to be followed when disciplinary proceedings is initiated against a Government servant:- The question whether a Government servant appointed to a higher post on ad hoc basis should be allowed to continue in the ad hoc appointment when a disciplinary proceedings is initiated against him has been considered by this department and it has been decided that the procedure outlined below shall be followed in such cases.

(i) Where an appointment has been made purely on ad hoc basis against a short term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held him substantively or on a regular basis, when a disciplinary proceedings is initiated against him.

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(ii) Where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceedings is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceedings has been initiated against him".

18. The counsel for the applicant further submitted that the applicant was promoted for the first time on 3.9.98 and he was not posted against any leave vacancy or as a stop-gap arrangement, rather he was promoted on creation of the post of Accounts Officer (Pension) so as such he was appointed on a newly created post of Accounts Officer (Pension) and thus he was continued with a periodical renewal of post as well as of periodical promotion given to the applicant vide letters dated 17.8.99 and then 9.9.91 and further by 5.4.2000. Thus there were technical breaks but that breaks were given only on those days which were Sundays or Holidays. Thus, in fact, there was no break even and the vacancy was not a short term vacancy, as such the applicant had continued to work from 3.9.98 till the day he was reverted back when he had completed more than 3 years and hence was never reverted back to the post of Assistant Accounts Officer in accordance with para 4 of the OM dated 24.12.1986.

19. In reply to this, the learned counsel for the respondents submitted that the applicant was never appointed to work for more than one year and as such his case is not protected under the OM dated 24.12.1986. The learned counsel for the respondents submitted that when applicant was given promotion for the first time it was clearly mentioned that it is an ad hoc promotion and the

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order itself mentions that the post which was created that itself was created for 180 days so the post itself was never available for a period for more than one year and after the expiry of 180 days every time the department had to receive fresh sanction for creation of the post and on all the occasions the letter issued will find mention that each time a fresh post was created 180 days and all these promotions were given by the department of Telecommunications itself on local arrangement basis. It is only on the last occasion when the applicant was appointed on 16.8.2000 the order was passed by the Government of India, Ministry of Communication, Department of Telecommunication itself and that is why they had created the post for 180 days each time and each time they had been seeking sanction and finally approval by the higher authorities. Thus by no stretch of imagination, it can be said that the applicant had ever been appointed to a post on a long term basis.

20. We have considered all these contentions and we are also of the considered opinion that since the post of Accounts Officer itself was never available for more than 180 days so the applicant cannot be said to have worked on long term vacancy on ad hoc promotion and, in fact, the applicant had worked on the post only for 180 days for which period the post was available with the department though it is true that the applicant had been again promoted periodically with a technical break of 1 day or two days may be on holidays but the fact remains that whenever the applicant was given ad hoc promotion by the department of Telecommunication the post was available with the department only for 180 days so the applicant cannot be said to have worked for more than one

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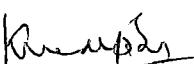
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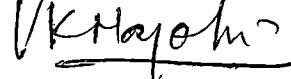
year continuously on ad hoc basis in the post of AO. The perusal of various orders of promotion also go to show that each time the applicant was given promotion that was given at the level of department on local arrangement basis which they could not have given for more than 180 days. It is the only last order of ad hoc promotion which was made by Government of India, i.e., in the year 2000 when the applicant was given promotion but before completion of one year charge-sheet under Rule 14 of the CCS (CCA) had been issued to him.

21. Thus we find that even the OM dated 24.12.1986 does not help the applicant rather by sub-rule (ii) of clause (4) of OM dated 24.12.1986 the applicant could be reverted back to the post of Assistant Accounts Officer, the moment he was served with the memo.

22. In view of our detailed discussion above, we find that the OA has no merits and the same is dismissed.

No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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