

Central Administrative Tribunal, Principal Bench

Original Application No.2969 of 2001

New Delhi, this the 31st day of October, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. S.A.T. Rizvi, Member (A)

Shri Ajay Kumar Singh
son of Shri S. Chandra Prakashan
resident of 64, Siddharth Niketan
Sector-14, Kaushambi, Ghaziabad-201010, U.P.
presently posted as Deputy General Manager (O)
Corporate Office, MTNL
Jeevan Bharti Building
Connaught Place, New Delhi

- Applicant

(By Advocate: Shri V.S.R. Krishna)

Versus

1. Union of India: through
The Secretary
Department of Telecommunication (DOT)
Sanchar Bhawan,
20, Ashoka Road
New Delhi

2. The Director General
Department of Telecommunication (DOT)
Sanchar Bhawan,
20, Ashoka Road
New Delhi

3. The Chief Managing Director (CMD)
MTNL, 12th Floor, Tower-I
Jeevan Bharti Building
Connaught Place, New Delhi

- Respondents

O R D E R (ORAL)

By Justice Ashok Agarwal, Chairman

By an order passed on 22.5.2001 (page 12), applicant had been promoted from the post of STS to the post of JAG of ITS Group 'A'. Promotion was purely on ad-hoc and temporary basis. By the impugned order passed on 16.10.2001 (page 11), he has been reverted to his substantive post of STS of ITS Group 'A'. Aforesaid order of reversion is impugned by the applicant in the present OA. A perusal of the order of promotion shows that the promotion was purely on ad-hoc and temporary basis. Para 5

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of the order stipulates as under:

"5. In case of disciplinary/vigilance case is pending against the officer(s) or any punishment of stoppage of increment is in operation; or the officer(s) is/are on deputation to TCIL etc., the officer(s) should not be promoted without obtaining the specific approval of this office. Information in this regard may be brought to the notice of the office forthwith.

2. It is undisputed that on the date of the order of promotion, a vigilance enquiry was pending against the applicant as is clear from the directions of the Central Vigilance Commission (in short 'CVC') of 29.5.2000 (page 26). Moreover, a chargesheet has been issued against the applicant on 28.8.2001 (page 18). Vide O.M. of 24.12.86 issued by the Ministry of Personnel, P.G. and Pensions (page 28), it has inter alia been provided as follows:

"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 by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him." (emphasis provided)

Underlined portion of the
3. *1* aforesaid provision, in our view, will be applicable to the applicant even though his promotion was not against a short-term vacancy or leave vacancy. Aforesaid clause is made applicable to Government servants appointed to officiate until further orders in any other circumstances. The order of reversion has relied upon the aforesaid O.M. of 24.12.86 for ordering the reversion of the applicant. In our view, no exception can be had to the

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aforesaid impugned order of reversion.

4. Reliance is placed on a direction issued by the Indian Posts & Telegraphs Department of 6.4.84 for advancing an argument that the aforesaid O.M. of 24.12.86 is inapplicable to the applicant. Aforesaid order of 6.4.84 inter-alia recites as under:

"The question has been examined in great details and the view is that if an official who has been promoted on ad-hoc basis is served with a chargesheet he should not be reverted to his original post merely on the ground that a chargesheet has been served on him. If the chargesheet results in penalty of censure or even stoppage of increment, or recovery from pay, the official need not be reverted solely on the ground of the penalty, as the penalty can be given effect to in the higher grade in which he is officiating."

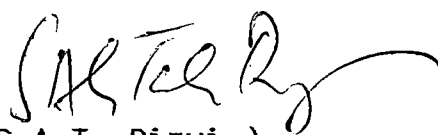
5. In our view, aforesaid order of 6.4.84 will no longer hold the ~~field~~ after the issue of the O.M. of 24.12.86, that too by the nodal Ministry of Personnel, P.G. and Pensions (Deptt. of Personnel & Training). The aforesaid O.M. of 24.12.86 will, therefore, govern the case of the applicant. In our view, the initial order of promotion cannot be said to be a regular order of promotion in view of the pendency of the vigilance proceedings pending against the applicant. No specific approval of the competent authority has been relied upon for sustaining the order of promotion. The order of promotion, in the circumstances, we find cannot be said to be a regular order of promotion. Moreover, the order of reversion, in our view, is fully justified in view of the subsequent chargesheet issued against the applicant in terms of the aforesaid O.M. of 24.12.86. Looked at from any angle, the

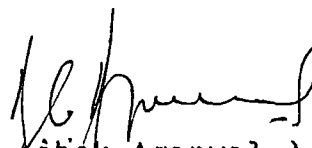
order of reversion in our view, cannot be successfully assailed.

6. By placing reliance on a decision of the Bangalore Bench of the Tribunal in the case of Shri N.N. Chakraborty vs. the Director General, Deptt. of Telecommunications & ors. (O.A.No.1127/94) decided on 16.8.94 (page 30), it has been contended that the order of reversion is unsustainable as the same has been issued without putting the applicant to notice. We have perused the said order and we do not find that any proposition of law has been laid down in the said decision.

7. As far as the present case is concerned, facts are undisputed namely that a vigilance enquiry was pending on the date of passing of the order of promotion. Similarly, it is undisputed that a chargesheet has been issued against the applicant.

8. In view of the aforesaid undisputed facts, we do not find that any prejudice can be said to have ensued for want of issue of a show cause notice. Aforesaid contentions, in the circumstances, we find are devoid of merit. The same are accordingly rejected. Present OA, in the circumstances, is dismissed in limine.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

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