

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.307/2001

(X)

Hon'ble Shri V.K.Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 16th day of March, 2001

Shri S.L.Kothari
s/o Shri K.D.Kothari
Business Executive
Journals Unit
R.K.Puram
Directorate of Publications
New Delhi.
r/o 974, Baba Khadak Singh Marg
New Delhi. Applicant

(By Advocate: Shri K.N.R.Pillai)

Vs.

1. Union of India through
the Secretary
Ministry of Information & Broadcasting
Shastri Bhavan
New Delhi - 110 001.
2. Smt. Surender Kaur
Director
Publications Division
Patiala House
New Delhi - 110 001. Respondents

(By Advocate: Shri A.K.Bhardwaj)

O R D E R

Hon'ble Shri Shanker Raju, Member (J).

At the outset, this OA deserves to be dismissed on the ground that the applicant at the time of admission, the applicant misrepresented the facts before the Tribunal and managed to obtain interim orders whereby directions were issued to continue the applicant as Assistant Business Manager (ABM for short) on ad hoc basis.

2. The applicant who had been reverted from the post of Assistant Business Manager to Business Executive and thereafter the applicant took up the charge of Business Executive (BE for short) w.e.f.

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the same day, i.e., 2.6.2000. Accordingly, his pay was also fixed vide order dated 7.6.2000. Since 2.6.2000, the applicant was holding the post of BE. The applicant has also filed this OA by showing his designation as BE. In his prayer for interim order mentioned at Para 9 of the application relying upon the similar order passed by the Tribunal vide Annexure A-VI, dated 6.6.2000 passed in OA No.1097/2000 requested for extension of that decision contending that it is also applies to him. Wherein in the order passed on 6.6.2000 in the case of Shri V.S.Rawat, the Tribunal on the basis of reply filed by the respondents in another OA 962/99 whereby it is admitted that the applicant along with other had been proposed to be considered for promotion against regular vacancies in the promotion quota for the post of ABM w.e.f. 16.8.1999 and the applicant was to be considered as per the Recruitment Rules granted/ordered in interim relief directing the respondents not to be affected to the Office Order dated 2.6.2000. In the instant case there was no recommendations made by the respondents in OA No.962/99 for considering the applicant for promotion to the post of ABM against three regular vacancies in the promotion quota. As such the case of the applicant was absolutely different from the case of Shri V.S.Rawat. In the present OA, the Tribunal on the basis of the statement made by the counsel that the case of the applicant is squarely covered by an order passed in OA No.1097/2000 managed to obtain a stay whereby he continued as ABM on ad hoc basis. We deprecate the conduct of the applicant and we are of

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the considered view that he had been continued as ABM on mis-representing the facts of OA No.1097/2000.

3. Now we deal the present OA on merits also. The applicant was promoted as Sales Representative on 1.9.1982 on ad hoc basis and as no regular promotion was made by the Departmental Promotion Committee (DPC for short), two persons, namely, S/Shri V.S.Rawat and V.N.Goyal, outside the cadre were brought and appointed as Sales Representatives. But later on the seniority of the applicant was accordingly rectified on 15.5.2000. The applicant was appointed to the post of BE on 16.11.1994 and thereafter he was appointed on ad hoc basis as ABM in June, 1995 and then reverted in October, 1995. The applicant was promoted as ABM again on ad hoc basis w.e.f. 12.1.1998. Vide order dated 2.6.2000 the applicant along with one Shri V.S.Rawat was reverted to the regular post of BE with immediate effect and thereafter he assumed the charge of the post of BE and accordingly his pay was fixed therein.

4. On OA filed by Shri V.S.Rawat, the Tribunal stayed the operation of the impugned order and thereafter vide order dated 4.12.2000 while allowing the OA directed the respondents to hold the DPC for regular promotion to the post of ABM within three months from the date of receipt of a copy of the order and till that time the applicant was allowed to continue as ABM on ad hoc basis. The applicant made

representation against the order of reversion but the same was not disposed of as such he preferred this present OA.

5. The applicant has assailed the order on the ground that for the last 14 years in the Publication Department, no regular DPC had taken place. According to him, the hierarchy in the cadre at the bottom is Sales Assistant by direct recruitment, Sales Representative filled 50% by promotion and 50% by direct recruitment, Business Executive filled 50% by promotion and 50% by direct recruitment and then lastly the post of ABM which is also filled 50% by promotion and 50% by direct recruitment in successive post against the recommendations of the 5th Central Pay Commission, the same was accepted by the Government and accordingly in 1994 Publication Division had taken a decision to abolish the direct quota in the ABM post and accordingly amend the Recruitment Rules. The aforesaid decision is still to be implemented.

6. The applicant contends that his regular promotion had been delayed due to non-holding of DPC for such a long time. The applicant has alleged malafides against the Director of Publication, who had been impled as Respondent No.2 by name in this application, who belong to an officer of Indian Information Service (IIS for short), who had been trying to utilise the vacancies for favouring his colleagues from IIS. In this back ground in a Shadow Board meeting of the Division a decision has taken to

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surrender 10 to 12 Group 'D' posts of the Publications Division and creating two posts of Joint Directors for the IIS. Also the said proposal was not accepted by the Ministry of Information and Broadcasting. It is further alleged that Respondent No.2 had been deliberately not holding a DPC and in her attempt she brought two incumbents in the cadre of Publication, namely, Ms. Kalyani and Shri P.K.Sethi. The applicant alleges ulterior motive of Respondent No.2 to revert him from the post of ABM. According to the applicant, another reasons for impugned reversion is that a report was submitted by Staff Inspection Unit (SIU for short) in 1992 which had been implemented on 27.9.1999 and surplus posts were abolished which did not inter-alia include any post of ABM. As per the SIU recommendations 7 posts of ABM were to be redesignated and one post was to be upgraded. So, according to the applicant, resort to SIU report is just threatened by the respondents to justify inclusion of IIS officers in the cadre. According to the applicant vide Annexure A-IX, dated 17.11.2000 communication sent by the respondents to the Union Public Service Commission (UPSC for short) the Ministry is advised that till the posts are created/abolished as a result of SIU report, the status quo be maintained as regards the number of sanctioned posts. The applicant contends that out of 7 posts of ABM 4 are holding by the promotees out of which 2 are provisional whereas the promotion order did not specify anything. Taking resort to reply of the respondents in MA No.1774/99 in OA No.962/99, it has been contended that there is an anomaly in filling more than 50% posts by promotion quota occurred as a

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result of decision by the Publication Division on 2.11.1994 to fill up two posts of ABMs in direct recruitment quota in the feeder cadre on provisional basis. In the counter filed by the respondents in OA 1097/2000 it has been stated that the DPC would be for 3 vacancies including 2 posts held by promotees S/Shri P.N.Bulkunds and B.D.Prasad. It had been admitted that it is proposed to consider Shri V.S.Rawat for promotion against three vacancies available in promotion quota. In this back ground, it is contended that if the vacancy is one, then according to the instructions of DPC the zone of consideration is 5 and if the vacancies are three the same raises to 10. In any event, the applicant was fifth in the existing vacancies, he would be considered by the DPC. As the applicant had been officiated continuously w.e.f. 12.1.1998 there are no valid reasons shortly before holding the DPC especially when the ministry is directed to maintain the status-quo. The applicant further contended that without affording him an opportunity to show cause, he had been reverted which amounts to violation of principles of natural justice as held by the Hon'ble Apex Court in Bhagwan Shukla Vs. Union of India & Others, JT 1994(5) SC 253 and H.L.Trehan Vs. Union of India, JT 1998(4) SC 464.

7. The respondents, on the other hand, refuted the contention of the applicant and at the outset contended that the applicant had managed for his continued officiation on ad hoc basis as ABM by misrepresenting the facts to the Tribunal as he was reverted on 2.6.2000 and assumed the charge of BE and

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got his pay fixed by the order dated 7.6.2000, however, this facts had not brought into notice of the Bench at the time of passing of the interim order.

8. The respondents contend that there are 7 posts of ABM and the mode of recruitment is 50:50 for direct recruitment quota as well as promotional quota. Till 1.7.1997, the vacancies were earmarked for promotion and direct recruitment quota by rotation and from 2.7.1997 as per the latest instructions of the Government of India the post based reservation has been adopted. Accordingly, among 7 posts of ABM, 3 fall in direct recruitment quota and 4 fall in promotion quota. As against the promotion quota, 3 posts of ABM were given to S/Shri A.K.Duggal, P.N.Bulkunde and B.D.Prasad in position. When last two were promoted as ABM, the procedure adopted was on rotation basis and no vacancy was available and as such all vacancies for promotion quota were utilised by appointing 7 persons against vacancies meant for direct recruitment on provisional basis. Therefore, the appointment needs to be reviewed for regularisation against two vacancies which became available in promotion quota subsequent to their provisional appointment. As one vacancy had become available to the promotion quota, on promotion of Shri Mangat Ram, to the post of Business Manager on 16.8.1999 ABM as per the directions of the Hon'ble Tribunal in OA 962/99, the DPC is underway to process the case. On the basis of SIU report and the reference from Ministry of I&B status-quo needs to be

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maintained on number of sanctioned post in ABM, the UPSC was requested to go ahead that the process of three posts of ABM and others.

9. The respondents' contention is that during the review meeting in pursuance of facts mentioned in OA 962/99 number of anomalies were found in the matter of promotion to the post of ABM but also in lower grades including the post of BE whereby regular promotions were ordered without DPC and that to with retrospective effect and the direct recruitment quota was diverted to the promotees without proper authority. This had been continued w.e.f. 1981 and as such the reference was made to Ministry of I&B. Whereby it has been decided that promotions, regular as well as ad hoc, have been allowed in violation of the extant instructions, have been irregular ab-initio and should be discontinued with immediate effect. As per the advise of the ministry, the records have been scrutinised and it was found that the applicant's appointment as BE w.e.f. 16.11.1994 was not in accordance with the recruitment rules and the same is to be discontinued as such the applicant cannot claim his right to be appointed to the next post of ABM in normal course.

10. The respondents further contend that as turn of the applicant even for the post of BE had not yet come as the post against which he was promoted did not belong to promotion quota and according to the posts falling in quota for promotion only S/Shri B.D.Prasad, V.S.Rawat and P.K.Tyagi could have been appointed.

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11. It is lastly contended that applicant was promoted to the post of ABM only on ad hoc basis till the regular incumbent joins and has no indefeasible right for continuing him on ad hoc basis. It is further contended that the applicant as a regular BE is questionable and his appointment needs to be discontinued as per the advise of the DoPT.

12. The applicant in his rejoinder reiterated the contention taken in his OA and further relying on the ratio of the apex court in Bharat Singh Vs. State of Haryana, JT 1988(4) SC 91 contended that the averments regarding cancellation of regular appointment of the applicant as BE should be shown by documents and mere averment would not be sufficient to record to certain action.

13. We have heard the learned counsel on both sides and carefully considered the rival contentions of the parties and perused the records. It is true that the applicant had been permitted to work on ad hoc basis as ABM w.e.f. 12.11.1998 for a period of six months or till the appointment of a regular incumbent joins, which ever is earlier. The aforesaid appointment has not bestowed the applicant any right to claim regular appointment in the grade or to claim seniority. We have perused the reasons given by the respondents to resort to the reversion of the applicant and are in full agreement with the same. It is true that all the promotions affected by the respondents in the post of ABM were encroaching upon the vacancies earmarked for direct recruitment.

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Although the respondents, in view of the 5th Central Pay Commission had moved a proposal to abolish the direct recruitment quota in ABM but the same is yet to be given affect to. As such till the recruitment rules are not amended, accordingly the ratio of 50% by promotion and 50% by direct recruitment has to be maintained. Accordingly, the proposal has been sent to the UPSC for filling up 3 posts of ABM in the direct recruitment quota. As regards the proposal of the SIU for abolition of the posts of ABM the said proposal is yet to be implemented and the ministry had advised to maintain the status-quo as regards the number of sanctioned posts vide letter dated 7.11.2000. In the instant case, the reversion of the applicant had taken place because he has no right to continue in the said post and also not found fit to be retained in the lower post of BE also. As according to the respondents on a review of the promotions made by the respondents, it had been found that the same were made without holding the DPC and quota of direct recruitment had been diverted to the promotees without proper authority. The ministry of I&B with the approval of the DoPT had decided that these appointments are irregular ab-initio and should be discontinued. In the case of the applicant it was found that his appointment in the lower post of BE made on 16.11.1994 had to be discontinued as he was not appointed in accordance with the rules as his turn of promotion could not have arrived on 16.11.1994. As this post had not fallen in quota for promotion the other three incumbents including Shri V.S.Rawat could have been appointed. It is further clarified that the applicant was appointed on a vacancy ear-marked for

direct recruitment as such he was not found fit to be retained as a regular BE as such the question of lien, on the post of ABM, would not be in accordance with the rules and law. As regards the contention of the applicant that mere averments are not sufficient unless supported by the documentary proof is not legally tenable. It has been demonstrated by the respondents that the vacancy fallen at the time when the applicant had been given promotion to the post of BE the post was meant for direct recruitment quota and moreover the applicant is much junior to Shri V.S.Rawat and other incumbents, who had fallen in the quota for promotion in view of the recruitment rules prescribing 50% promotion quota. In our considered opinion as the applicant had not been found fit for being retained in the post of BE, after a thorough review by the respondents, he has no right to continue as ABM, even on ad hoc basis. Further more, in the case of V.S.Rawat the respondents in OA 962/99, made a specific averment regarding instructions of the applicant for being appointed to the post of ABM on regular basis and accordingly as per the respondents the DPC is in his way to finalise the promotions. As per the seniority position Shri V.S.Rawat is senior to the applicant and as the posts are 3 and as such it is preferential right of Shri V.S.Rawat to be considered for the post of ABM first by virtue of his seniority and secondly on the basis of the statement given by the respondents. The Tribunal has already stayed the reversion of the applicant in OA No.1099/2000 the applicant in no way in parameter with Shri V.S.Rawat and can not claim parity with regard to his being continued as ABM. As regards the status-quo to be

maintained or with reference to sanctioned posts, we are of the considered opinion that Shri Rawat on the basis of the seniority and claim for promotion to the post of ABM as admitted by the respondents in another OA 962/99 supra has been continued as ABM wherein the applicant was not even fit for the post of BE as such he has no indefeasible right to claim continuation as ABM specifically while after reversion he had assumed the charge of BE and accordingly his pay had been fixed.

14. In our considered opinion the action of the respondents in reverting the applicant to the post of BE is founded on sound reasons and cannot be found fault with. The OA is found bereft of merit and the same is accordingly dismissed. Interim orders passed on 12.2.2001 is vacated. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)