

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.3447/2001

New Delhi this the 17th day of September, 2002.

Hon'ble Mr. S.A.T. Rizvi, Member (Adminv)

Hon'ble Mr. Shanker Raju, Member (judl)

Shri I. Kapila,
S/o Sri S.P. Kapila,
R/o 2063 D.A. Flat,
Gulabi Bag, New Delhi.

-Applicant

(By Advocate Shri S.K. Pabbu)

-Versus-

1. Delhi Pollution Control Committee,
through its Chairperson,
Players Building, ITO,
New Delhi.

2. N.C.T. of Delhi through
the Chief Secretary,
Environment, Players Building,
ITO, New Delhi.

-Respondents

(By Advocate Shri George Parackal)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant in this OA impugns reversion order dated
10.12.2001.

2. Applicant joined Central Pollution Control Board (CPCB)
as an Environmental Engineer on 23.7.88. CPCB delegated all its
powers to a Committee specified by the Central Government.
Accordingly applicant went on deputation as Senior Scientific
Officer and was functioning as Director Environment-cum-Member
Secretary, Delhi Pollution Control Committee (DPCC) since 1992.

3. In February 1993 DPCC on creation of posts with the
approval of the Central Government advertised three posts of
Environmental Engineer on 9.6.93.

4. Five posts of Senior Environmental Engineer are existing
in DPCC for which recruitment rules of CPCB were adopted. Applicant
was promoted on ad hoc basis by an order dated 14.1.98 as Senior
Environmental Engineer in absence of any notified recruitment

rules and continued by extension of the period with the approval of the Chairman, DPCC.

5. Applicant was placed under suspension on account of investigation of criminal case registered through FIR RC No.0023 under the provisions of Prevention of Corruption Act and I.P.C. on the recommendation of the CBI. Though the applicant's name figured as an accused in the FIR but on completion of the investigation the CBI filed a chargesheet where the name of the applicant does not figure in the list of accused persons sent for trial but figured as a prosecution witness. By an order dated 10.12.2001 applicant was reverted to the post of Environmental Engineer w.e.f. 14.1.98 and the emoluments from 14.10.98 till reversion were ordered to be recovered from the applicant. Against this order applicant made a representation but without any response from the respondents.

6. By an order dated 28.12.2001 operation of the impugned order was stayed and the applicant continued as Senior Environmental Engineer. Subsequently the order was vacated on 16.4.2002. However, the recovery part has been stayed subject to the outcome of the OA.

7. Learned counsel for the applicant Sh. S.K. Pabbu assailed the impugned order on the ground that applicant after approval from the competent authority was, along with two others, promoted on ad hoc basis. The aforesaid promotion continued by orders issued by competent authority and lastly by an office order dated 27.7.99 on the approval of Chairman, DPCC posting orders have been issued. In this view of the matter it is stated that the applicant was continuously working on the promotional post with the approval of the competent authority. Shri Pabbi further stated that the order passed by the

respondents is not legally sustainable as the ground of his involvement in the criminal case is no more existing as after filing of chargesheet he has not been indicted as an accused but rather as a prosecution witness which obliterated him from any stigma attached on account of the involvement in the criminal case. Furthermore, it is stated that the reversion is retrospective whereas period upto 14.10.98 was authorised and duly approved by the competent authority and beyond this period he has worked on ad hoc basis with the approval of the competent authority. Sh. Pabbi further stated that the order passed by the respondents is not legally sustainable as violative of principles of natural justice as applicant has been visited with the civil consequences and put to disadvantage and a favourable order has been cancelled it was incumbent upon the respondents to have afforded a reasonable opportunity to show cause in due compliance of the principles of natural justice.

8. It is further stated that recovery cannot be effected without putting an employee to a show cause notice. As the order is punitive it has to be preceded by a show cause notice.

9. Sh. Pabbi also stated that in absence of any notified recruitment rules he was promoted on regular basis for all practical purposes and was even granted increments. It is stated that during suspension reversion cannot be resorted to.

10. On the other hand, Sh. George Parackal, learned counsel appearing for the respondents denied the contentions and took a preliminary objection as to non-impleadment of CBI as a necessary party. It is contended that CBI recommended the suspension of the applicant and further through their letter dated 19.6.2001 have recommended that

applicant should not be reinstated in so far as the plea of ~~the~~ applicant of his non-inclusion as an accused in the chargesheet the CBI is the competent authority to comment upon and in their absence the respondents are not in a position to answer this.

11. Shri Paracken further stated that the applicant was reverted on account of his involvement in the criminal case as well as non-accord of approval of further extension of ad hoc promotion and applicant continued to draw the salary of Senior Environmental Engineer without the approval beyond 15.10.98. However, it is stated that the applicant is not reverted on the ground of disciplinary proceedings but by referring to OM dated 24.12.96 it is stated that where the appointment is made on ad hoc basis for administrative reasons and the same cannot be continued beyond one year if the proceeding is initiated. Applicant had held the higher post only on ad hoc basis for nine months and his continuance beyond nine months was unauthorised. As such the reversion resorted to is in accordance with law. As there was no sanction beyond 14.10.98 applicant ceases to be Senior Environmental Engineer. Apart from it the permission of DOP&T was to be sought.

12. In so far as discrimination is concerned, it is stated that B. Kumar stands on a different footing as neither he was involved in any CBI case nor was placed under suspension. Lastly, it is contended that as no specific express authorisation to continue the applicant on ad hoc basis as Senior Environmental Engineer was accorded by the competent authority the orders have been passed to revert the applicant after the authorised period was over.

13. We have carefully considered the rival contentions of the parties and perused the material on record. Though the applicant was placed under suspension on account of his

involvement in a criminal case registered by CBI and as the CBI recommended not to revoke the suspension of the applicant the respondents have resorted to his reversion on the ground of involvement in the criminal case as well as on account of non-authorisation of further continuance on ad hoc basis or approval by the competent authority. However, we find that the FIR culminated into a chargesheet filed by the CBI; therein the name of the applicant does not figure in the list of accused person sent for trial but rather reflected in the list of witnesses. This chargesheet was filed after the CBI has recommended not to revoke the suspension of the applicant. As CBI is not a party in the present case, it cannot be affirmed whether the applicant is still involved in the criminal case or not. However, we also find that the applicant continued on ad hoc basis beyond 14.10.98 and the competent authority, i.e., Chairman, DPCC has also issued office order on 27.7.99, issuing posting orders to the applicant and others. Had there been no authorisation by the competent authority or the intention was not to continue the applicant beyond 14.10.98 there was no occasion for the competent authority to issue posting orders of the applicant as Senior Environmental Engineer.

14. However, without going into the merits of the case we find that the order passed by the respondents, reverting the applicant, cannot be countenanced on the ground that the reversion has been given effect retrospectively w.e.f. 14.1.98 whereas even assuming without admitting the plea of the respondents as correct the applicant who had continued on ad hoc basis as Senior Environmental Engineer on duly authorisation and sanction of the competent authority till 14.10.98. Moreover, he also continued to work as such on the strength of the order passed by the Tribunal on 28.2.2001, which was ultimately vacated on 16.4.2002.

15. We are constrained to observe that the order is vague and has been passed without due application of mind and is not also happily worded. A very strange order has been passed by the authorities. Moreover, we also find that before issuance of this order the applicant has not been afforded an opportunity to show cause.

16. As this order has curtailed the existing advantage or benefits enjoyed by the applicant and as the recovery has been ordered, which has visited the applicant with civil consequences, in consonance with the principles of natural justice applicant should have been afforded a reasonable opportunity of being heard, which admittedly was denied to him.

17. Apex Court in H.L. Trehan v. Union of India, (1989) 1 SCC 764 observed as follows:

"It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employee of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot therefore, be sustained as it offends against the rules of natural justice."

18. Moreover, the Apex Court in Bhaqwan Shukla v. Union of India & Ors. 1995 (2) SLJ 30 re-iterated the aforesaid principle of law.

19. If one has regard to the aforesaid rulings any action of the Government which deprives the government servant his right or takes away the advantage already enjoyed and visits him with civil consequences should be preceded by an opportunity of being heard to the concerned person which is in consonance with the principles of natural justice and also in the line of principles of fairplay.

20. As the applicant has been deprived of this opportunity to show cause, he has been greatly prejudiced and on that count alone the impugned order cannot be legally sustained.

21. Other legal pleas are not adjudicated upon in view of the aforesaid observation.

22. In the result and having regard to the reasons recorded above, the OA is allowed. Order dated 10.12.2001 is quashed and set aside. Respondents are directed to accord to applicant all the consequential benefits. However, this will not preclude the respondents to take an appropriate action against the applicant in consonance with the principles of natural justice as indicated above. No costs.

S. Raju
(Shanker Raju)
Member(J)

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

'San.'