

(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
OA 1508/99

New Delhi this the 21st day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Kishan Dass
Son of Shri Khjan Singh
r/o V&PO Katha, Distt. Bagpat (UP)

(By Advocate Shri H.C. Sharma)

.. Applicant

Versus

UOI through :

1. Secretary,
Department of Revenue
Ministry of Finance,
North Block, New Delhi.
2. Director,
Dte. of Statistics & Intelligence,
Central Excise & Customs,
Govt. of India, Ministry of Finance,
DLF Centre,
G.K. II, New Delhi-110048

.. Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R (ORAL)

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

The applicant has assailed the Order dated 12.4.1999 whereby his representation against his reversion from the post of Deputy Office Superintendent Level II (hereinafter referred to as DOSL-II) to UDC without any notice have been rejected. The applicant was promoted to the post of DOSL-II w.e.f. 28.7.98 after following the prescribed procedure by the D.P.C. on regular basis. He was reverted to the post of UDC w.e.f. 22.3.1999 without affording any opportunity or show cause notice.

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He represented against the aforesaid reversion by his representation dated 23.3.1999 (Annexure A-III) in which he has contended that he belongs to reserved category and could not have been reverted without any show cause notice in terms of the DOP&T Circular dated 2.7.1997 under which Para 7 envisages:-

" Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed."

Learned counsel of the applicant relying on SLJ 1995(2)SC 30 in Bhagwan Shukla Vs. UOI & Ors.

~~He~~ contended that the applicant could not have been reverted without any show cause notice. He further states that even at this stage the respondents can issue show cause notice to the applicant resorting to reverting the applicant after considering his representation as per the correct procedure.

2. In the counter the respondents have maintained that the applicant was promoted as DOSL-II on 22.7.98 on the basis of vacancy based roster earlier operated. On representation filed by one Smt. Indu Bala Ohri, UDC, against the applicant's promotion in view of the instructions contained in the DOP&T Circular dated 2.7.1997 in which the earlier operated vacancy based roster was ordered to be converted into post based roster. Accordingly, a review DPC was held on 17.3.1999 on the basis of post based roster and the applicant was reverted.

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The reasons for reversion of the applicant have been incorporated in respondents order dated 22.3.99(Ann.A-V) stating that applicant's reversion was consequent to the review DPC ordered by the Ministry letter dated 2.2.99 wherein strict implementation of Govt.of India DOP&T OM dated 2.2.97 post based roster was directed. It was conveyed to the applicant also that it was not possible to accede his request for grant of promotion to the post of DOSL-II. The post based roster followed contains 13 points ~~roster~~^{1/2}, wherein point No.3 does not fall on SC. An extract of the roster had also been enclosed. This order was conveyed by Director of Statistics and Intelligence Central Excise and Customs on the basis of the orders of Ministry of Finance (Department of Revenue) letter dated 14.12.1998.

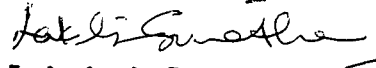
3. We have considered the rival contentions of both sides and the material on record carefully. We find that the applicant had been promoted as DOSL-II on 28.7.98 on the basis of vacancy based roster prescribed under DOP&T OM dated 2.7.97, under which the post based roster has become final. This was established on the part of the respondents who have promoted the applicant on vacancies based roster and not on the basis of post based roster. The applicant has now been reverted on the basis of review DPC and the post based roster followed contains 13 points roster in which the point No.3 does not fall on SC. The order dated 12.4.99 whereby the applicant's representation dated 30.3.99 was rejected which is a detailed and reasoned order which also indicates the

correct principle of Law have been followed by the respondents while reverting the applicant.

4. As regards the other contention that even at this stage show cause notice could be issued to the applicant and by following correct procedure he could be reverted. We are unable to agree to the same in the light of the ratio in the case of Managing Director, ECIL, Hyderabad and Others Vs. B. Karunakar and Others (1993) SCC(L&S) 1184 in which it has been held that the theory of reasonable opportunity and the principle of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial ^{of opportunity} to him has to be considered on the facts and circumstances of each case. Even after issuing the show cause notice, no different consequence would have followed as the respondents have resorted to review DPC on the basis of ^{change of} vacancies based roster ^{of} to post based roster as per the Rules. Issue-ing/show cause notice at this stage as contended by the learned counsel for the applicant would amount to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

5. Having regard to what has been stated above, we find no merit in the OA. The same is accordingly dismissed. No costs.


(V.K. Majotra)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)