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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2121/1999

New Delhi, this the 15th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. Shri Ansuya Prasad
aged about 45 years
S/o Shri Shiv Prasad
Sales Assistant
Public Division
Ministry of Information & Broadcasting,
New Delhi.

R/o G-282, Nanakpura,
New Delhi - 110 021.

...Applicant

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

V E R S U S

1. Union of India through
Secretary,
Ministry of Information & Broadcasting
Shastri Bhawan, New Delhi.
2. The Director
Publications Division,
Patiala House,
New Delhi.

...Respondents

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

O R D E R (ORAL)

Smt. Lakshmi Swaminathan, Vice-Chairman (J)

The applicant is aggrieved by the order passed by the respondents dated 25-8-99 reverting him to his regular post of Junior Store Keeper (for short 'JSK') w.e.f. 6-8-99 from the post of Sales Assistant (for short 'SA') on ad hoc basis from 18-6-85.

2. The brief relevant facts of the case are that the applicant was working as JSK w.e.f. 14-7-78. He was appointed on promotion on ad hoc basis as S.A. by order dated 18-6-85. Admittedly, the applicant was placed under suspension by order dated 6-7-93, on the

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ground that a departmental enquiry was contemplated against him. This suspension order was revoked later by order dated 6-8-99. Shri K.N.R.Pillai, learned counsel has submitted that in the seniority list of JSKs issued by the respondents in August 1990, the applicant is shown at Serial No.2 and one Shri J.C.M.Jaiswal, who was similarly appointed as S.A. (ad hoc) was shown at Serial No. 1. Shri K.N.R.Pillai, learned counsel has submitted that during the relevant period, as Shri Jaiswal was also facing disciplinary proceedings, he had not been regularised for the post of S.A., which had been done subsequently by the respondents' order dated 17-10-2000 w.e.f. 23-8-95, which is the date when his juniors were so regularised. He has also submitted that in the draft seniority list of SAs as on 1-1-96, juniors to the applicant, namely, Shri Sunil Sinha and Shri Ram Kumar have been regularised as SA w.e.f. 23-8-95. The reason why the applicant had not been so regularised is because of the fact that he had been placed under suspension and departmental proceedings were pending against him.

3. Learned counsel for the applicant has submitted that the respondents have taken a long time to complete the proceedings against the applicant. The applicant's Headquarters were transferred to Calcutta during the period of suspension, where three Enquiry Officers had been appointed, but could not complete the proceedings. He has submitted that finally the Enquiry Officer submitted his report in April, 2000, copy of which was sent to the applicant, and he also submitted his reply. He has submitted

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that the Enquiry Officer has exonerated him of the charges levelled against him vide memo dated 21-7-93. Learned counsel has submitted that even after submission of the Enquiry Officer's report and his reply thereto, no final decision has been taken by the respondents till date.

4. In the above circumstances, learned counsel has submitted that relying on paragraph IV of the Government of India's Decision under Rule 11 of the CCS (CCA) Rules, a direction may be given to the respondents to reinstate him as ad hoc S.A. till the proceedings are completed by quashing the impugned office order dated 25-8-99. He also submits that by this order, the respondents have reverted the applicant to the regular post of JSK from a retrospective effect i.e. from 6-8-99, when they had revoked the suspension, which they cannot do as the order itself has been issued only on 25-8-99 and received by him on 16-9-99.

5. The above averments have been controverted by the respondents. We have also heard Shri V.S.R. Krishna, learned counsel. He has submitted that paragraph IV of the Government of India's Decision below Rule 11 of CCS (CCA) Rules, 1965 will not be applicable to the facts of the present case, as the reversion of the applicant has been taken on the basis that a disciplinary proceeding is pending against him. Learned counsel has submitted that in fact even others were reverted to their regular posts on 1-1-98 and hence there is no illegality in the order dated 25-8-99 reverting the applicant to his regular post

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w.e.f. 6-8-99 i.e. the date when the suspension order passed against him was revoked. He has also submitted that in the circumstances of the case, the respondents will have no objection to completion of the departmental proceedings in as short a time as possible and thereafter, to consider the case of the applicant in terms of the recommendations of the DPC held earlier in which his juniors were promoted w.e.f. 23-8-95 as SAs.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. The suspension order passed against the applicant on 6-7-93 has been revoked w.e.f. 6-8-99. The respondents have stated that even though the applicant has been reverted to his regular post on 1-1-98, but he has been directed to be appointed in his regular post of JSK only w.e.f. 6-8-99, whereas the order has been passed on 25-8-99. It is settled law that an order of reversion cannot be given effect to retrospectively and to this extent the impugned order cannot be sustained. Since the respondents themselves have thought it fit to continue the applicant on the promoted post of SA, even though he was under suspension and after reverting his seniors on 1-1-98, the order of reversion to his regular post of JSK can be given effect to only from 25-8-99 and not earlier. To this extent, the applicant shall be entitled to the consequential benefits of allowances in the post of SA (ad hoc) as on suspension.

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8. From the facts mentioned above, it is noted that the respondents have initiated disciplinary proceedings against the applicant vide order dated 21-7-93, which are still pending. The Enquiry Officer is also stated to have given his report on 25-4-2000 to which reply has also been submitted by the applicant. The question of opening the sealed cover and further action to be taken based on the recommendations of the DPC held in 1995, in which juniors to the applicant were promoted as SAs will arise after the respondents complete the departmental proceedings which have been pending for a considerably long time.

9. Taking into account the facts and circumstances of the case, the prayer of the applicant for directions to the respondents to reinstate him as SA on ad hoc basis is untenable, as the respondents have not reverted the applicant simply because of the pending disciplinary proceedings. This prayer is, therefore, rejected.

10. In the facts and circumstances of the case, the OA is disposed of with the following directions :-

- i) The impugned order dated 25-8-99 is partly quashed and set aside to the extent indicated in paragraph 7 above, that the reversion of the applicant to the regular post of JSK shall be treated w.e.f. 25-8-99 with consequential benefits in accordance with law;
- ii) The respondents to pass final orders in the pending disciplinary proceedings within six weeks from the date of receipt of a copy of this order. Thereafter, they may consider the

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case of the applicant for promotion to the
post of Sales Assistant on regular basis in
accordance with the relevant rules and
instructions. No order as to costs.

(Govindan S. Tampi)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)