

Central Administrative Tribunal
Principal Bench

O.A.No.1404/98

(5)

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this the 18th day of November, 1998

Mangal Singh-II
s/o Shri Mam Chand
present address
3985, Roshanara Road
Opposite Place Cinema
Delhi - 110 007. Applicant

(By Shri Shanti Prakash, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Urban Affair and Employment
2. Director of Printing
Ist Floor
Nirman Bhawan
Room No.102
New Delhi - 110 001.
3. Govt. of India Photolithic Press
N.I.T.
Faridabad (Haryana). Respondents

(By Shri Madhav Panikar, Advocate)

ORDER

Hon'ble Shri R.K. Ahooja, Member(A)

The short question which arises for our consideration in this OA is whether the applicant has a right to continue in the higher post even when the vacancy has ceased to exist.

2. The facts of the case briefly stated are that the applicant who had been recruited as labourer was in 1996 promoted to the post of Assistant Binder. He also completed his probation and earned two increments in the pay scale of the higher grade. However by the impugned order, Annexure - I, dated 1.5.1998 he was reverted to the post of Labourer consequent upon the repatriation of one Shri Ram Lal, Asstt. Binder who was earlier on

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(b)

deputation in Government of India Press, Rashtrapati Bhavan. The applicant contests this order on the ground that the reversion amounts to imposition of major penalty of reduction in rank without any disciplinary proceedings. He also contends that the respondents are estopped from reverting him since he had been promoted on a regular basis to the post of Assistant Binder.

3. The case of the respondents is that as no vacancy of Assistant Binder is available on the reversion of Shri Ram Lal, the applicant necessarily had to be reverted to his original post of labourer.

4. We have considered the matter carefully. The learned counsel for the applicant has cited, in support of his case, Supreme Court decision in Basudeo Tiwary Vs. Sido Kanhu University & Others, 1998(7) Supreme 361. The Supreme Court has held in that case that in the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable and that the conferment of absolute power to terminate the services of an employee is antithesis to fair, just and reasonable treatment. It has been also held that natural justice requires that the affected employee should have an opportunity to state his case before adverse action is taken against him since non-arbitrariness is an essential facet of Article 14 of the Constitution. It was contended by the learned counsel that since the impugned order was issued without giving an opportunity to the applicant to show cause the action was arbitrary and liable to be struck down.

(b)

5. We are unable to agree with this line of reasoning in so far as the present case is concerned. Where the State has no choice, the opportunity to show cause becomes a mere formality and serves no purpose other than to raise false hopes on the one hand and delay on the other. The contention of the respondents that the impugned reversion orders became inevitable because of the non availability of vacancy due to repatriation of the deputationists remains undisputed. If no post of Assistant Binder is available in the cadre then it is beyond the competency of this Tribunal to direct creation of an additional or supernumerary post to retain the applicant in the higher post. It has been held by the Supreme Court in State of Himachal Pradesh Vs. S.K.Verma and Another, ATJ 1996(1) SC 618 that in the case of termination from service on account of non availability of work no direction can be issued for re-engagement. Thus when no post of Assistant Binder is available then it is beyond the purview of the Tribunal either to go into question to the extent of work available or to give directions that posts for such work be created.

6. We also find that the contention of the applicant that the respondents are estopped from reverting him having once regularly promoted him also does not rest on sound legal foundation. It has been held by the Supreme Court in D.C.M.Ltd. Vs. Union of India and Another, 1996(5) SCC 468 that if it can be done/shown with regard to the facts as they have transpired that it could be inequitable to hold the Government or the public authority to the promise or representation made by it the Court would not raise an equity in favour of the person

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to whom the promise has been made. Applying this reasoning here also the Government cannot be held to any deemed promise in the event of non-availability of work. (8)

7. We are conscious that the position would be different if any other post of Assistant Binder was available or the applicant had been reverted even though persons junior to him had been retained in the higher post. Such however is not the case here. We have no doubt however that as soon as a post becomes available the applicant would be restored to his position of Assistant Binder and if that is not done, he certainly will have a cause of action available to him.

8. With the above observation, the OA is dismissed.
No costs.

JK
(K.M. Agarwal)
Chairman

R.K.A.
(R.K. Ahooja)
Member(A)

/rao/