

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2158/98

New Delhi this the 24<sup>th</sup> day of August, 1999.

(8)

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)  
HON'BLE MR. N. SAHU, MEMBER (A)

Shri Jagdish Prasad Sejwal,  
S/o Shri Late Charan Singh,  
R/o 68 Shahpur Jat,  
New Delhi.

...Applicant

(By Advocate Shri M.L. Chawla)

-Versus-

1. Lt. Governor,  
Raj Niwas,  
Delhi.
2. Secretary (Helath),  
Govt. of N.C.T. of Delhi,  
Sham Nath Marg,  
Delhi.
3. Medical Superintendent,  
Guru Teg Bahadur Hospital,  
Shahdara, Delhi.

...Respondents

(By Advocate Shri S.K. Gupta, proxy for Shri B.S. Gupta)

O R D E R

By Reddy. J.-

Heard the learned counsel for the applicant and the respondents. The applicant joined the services of respondent No.3 on 21.7.89 as Nursing Orderly. He submits that he was selected by a process of selection. The applicant was regularly promoted on the basis of seniority to the post of O.T. Attendant by order dated 28.11.96 (Annexure A-3). A formal order dated 1.1.97 (Annexure A-4) was communicated to him stating that in view of the selection made by the DPC the applicant and 26 others have been promoted to the post of OT Attendant w.e.f. 28.11.96. However, by the impugned order dated 23.10.98 (Annexure A-1) the applicant and others were sought to be reverted with immediate effect. The applicant questions the impugned order in this OA.

*[Handwritten signature]*

The first question raised by the learned counsel for the applicant is that the applicant having been regularly promoted by the DPC on the basis of seniority cannot be reverted without notice, particularly after serving in the present post for above two years. The learned counsel for the respondents, however, submits that since the respondents found that there was mistake in promoting the applicant and others in 1996 the said mistake is sought to be corrected by the impugned order. The question of notice does not arise, as it is a mere order of reversion on account of a mistake in the earlier order of punishment. The impugned order dated 23.10.98 (Annexure A-1) is an office memorandum given by the Administrative Officer. The reason assigned for the immediate reversion was that the applicant was given the benefit of reservation in the OBC category, for his promotion. But, as per the instructions given by the Government of India, the OBC category candidates are not entitled to the benefit of reservation at the promotion stage. They are only allowed reservation at their initial appointment. It was stated that the applicant was promoted by an inadvertent mistake and the said mistake was occurred due to misinterpretation of instructions and guidelines. In the reply filed by the respondents it was clearly stated that the OBC candidates were inadvertently promoted from Nursing Orderly to Lab Assistants/OT Attendants and that this mistake was later on found and now the impugned order was issued to correct the mistake.

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Admittedly, there was no notice prior to the impugned order. The applicant was promoted in 1996 and the order of promotion reads that he was promoted on the basis of seniority. Annexure A-4 dated 1.1.97 also says that he was promoted consequent upon his selection by the DPC. We are only on the question of notice. Admittedly, the applicant is sought to be reverted on the ground of some mistake in view of misinterpretation of the instructions given by the Government of India. The question may arise whether in fact there was any misinterpretation or the applicant was rightly promoted? In this state of circumstances we feel that the applicant should have been asked to explain his case. Had a notice been served the applicant and others persons, similarly situated, may have explained their stand and they may have even justified their promotion. This is not a case where there is an obvious error in fact or in law. This mistake occurred, according to the respondents, due to misinterpretation of the instructions. We are satisfied that principles of natural justice require that the promotees who have been working for over two years should have been asked to explain their stand in this regard. The decision, (1999 (2) AISLJ 43 - Raj Ujarey v. Union of India (SC)), cited by the learned counsel for the applicant appears to be opposite. The benefit of service for 1964-72 was given and the applicant therein was promoted but the said benefit was said to be withdrawn and was sought to be reverted without notice, on the ground of mistake. It was held that had the applicants given an opportunity they would have justified their stand. It was held that it was not open to make their minds unilaterally.

CAB



The learned counsel for the respondents relied upon a judgement of the Principal Bench in OA-424/98 - Smt. Kamla Devi & Others v. Govt. of N.C.T. & Others decided on 23.09.98 where the applicants were sought to be reverted by the impugned order without notice. Relying upon the decision in Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan & Ors. (AIR, 1997 SC p.152) the Bench held that the orders of promotion being obviously erroneous and illegal, and since the order was passed due to inadvertence, the impugned order reverting the applicant was to be passed to correct the error, no notice was necessary. The learned counsel for the respondents heavily relies upon this decision, as the facts are said to be similar and the question of law is the same. We have gone through the decision carefully. On similar facts the Bench held that the Nursing Orderlies promoted earlier could be reverted without notice. The Bench, while taking the above view relied upon the above Supreme Court decision but in our view the said decision has no application to the facts of the present case. It relates to encroachment proceedings and the necessity giving notice before ejection. It cannot also be said that the same facts are obtaining in both the cases. In the present case it was clearly established that the applicant was promoted by the DPC on the basis of his seniority without reference to his reservation. Now the impugned order was passed on the ground that giving the benefit of reservation the applicant was promoted. In view of the above distinguishing features, the above decision is distinguished. It is true that in all cases of reversion

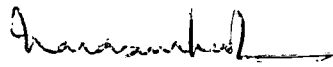
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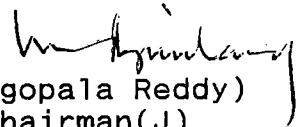
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notice need be given. Since we have taken the view, in the particular facts of this case that it is fair and to be in accord with the principles of natural justice, an opportunity ought to have been afforded before passing the impugned order. We have, therefore, no hesitation in holding that the impugned order is vitiated on the ground of want of notice.

The O.A. is, therefore, allowed. No costs.



(N. Sahu)  
Member(A)



(V. Rajagopala Reddy)  
Vice-Chairman(J)

'San.'