

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 522/98

T.A. No.

Date of decision 21-8-98

Shri Govind Gupta

... Petitioner

Shri P.P. Khurana

... Advocate for the  
Petitioner(s)

VERSUS

UOI

... Respondents

Shri Rajinder Nischal

... Advocate for the Respondents

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or  
not?.

Yes

2. Whether it needs to be circulated to  
other Benches of the Tribunal?

No.

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan)

Member (J)

Central Administrative Tribunal  
Principal Bench

O.A. 522/98

New Delhi this the 21st day of August, 1998

(10)

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

Shri Govind Gupta son of  
Shri Ganga Parshad Gupta,  
R/o 16-UF, Tansen Marg,  
New Delhi.

... Applicant.

By Advocate Shri P.P. Khurana.

Versus

Union of India through the  
Secretary to the Govt. of India,  
Ministry of Information and  
○ Broadcasting, Parliament Street,  
New Delhi.

... Respondent.

By Advocate Shri Rajinder Nischal.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 8.9.1997 reverting him to the post of Assistant Director in Song and Drama Division (S&DD) w.e.f. 5.9.1997.

○ Admittedly, the applicant was posted as Deputy Director in that Division on ad hoc basis till 6.9.1997 and the impugned Notification dated 8.9.1997 has been passed with retrospective effect from 5.9.1997 which they cannot do. It is settled law that executive instructions cannot take effect from a retrospective date and from the impugned Notification itself it is seen that the respondents have not passed a valid order on this account. Apart from this, Shri P.P. Khurana, learned counsel for the applicant, has submitted that the reversion order is illegal because in the reply filed by the respondents they have submitted that one Shri I.K. Chaku who was junior to him had continued in the ad hoc post of Deputy Director while the applicant was reverted. Further, in the reply the respondents

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have stated that the applicant had been reverted from the ad hoc appointment because he was found *prima facie* guilty of the charge levelled against him by a lady casual artist of S&DD. We note that Shri I.K. Chaku, has also been reverted by the respondents by order dated 19.3.1998 w.e.f. 4.1.1998. Shri Rajinder Nischal, learned counsel for the respondents, has submitted on instructions from the departmental representative Shri Satish Mahna, Superintendent, Song and Drama Division, who is present in the Court, that the applicant has since been charge-sheeted with regard to the above complaint of the lady casual artist on 04.8.1998. Shri P.P. Khurana, learned counsel, submits that before issuing the chargesheet to the applicant, the respondents could not have reverted the applicant by the impugned order dated 8.9.1997 when admittedly his junior Shri I.K. Chaku, had been continued also on ad hoc basis as Deputy Director in the same Division. He, therefore, claims that on this ground also the impugned order is liable to be set aside.

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2. During the hearing, learned counsel for the respondents has submitted that there were two posts of Deputy Director during the relevant period against which both the applicant as well as Shri I.K. Chaku had been appointed separately on ad hoc basis. In the circumstances, we are unable to agree with the contention of Shri P.P. Khurana, learned counsel for the applicant, that merely because the applicant's junior, Shri I.K. Chaku was appointed on ad hoc basis and thereafter reverted by order dated 19.3.1998 w.e.f. 4.1.1998, the applicant should also have been continued on ad hoc basis at least till 4.1.1998, if not till 19.3.1998. The situation might have been different if there was only one post of Deputy Director

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at the relevant time and the applicant being senior was reverted while his junior was appointed or retained in that post later, which is not the situation here.

(2)

3. The other main contention of the learned counsel for the applicant is that the respondents could not have reverted the applicant on the ground which they have disclosed in the reply, namely, that it was on the basis of the complaint received from the lady casual artist in S&DD. This does not appear to be relevant taking into account the facts mentioned in the impugned Notification. The ad hoc appointment of the applicant was only till 6.9.1997 and the applicant having been promoted to the higher post on ad hoc basis, does not have any vested right in being continued in that post after that date. However, as mentioned above, the Notification dated 8.9.1997 cannot be given effect to with retrospective effect and, therefore, it shall be deemed that the applicant continued on the ad hoc appointment as Deputy Director in S&DD till the date of the Notification i.e. 8.9.1997. To this extent, the impugned Notification dated 8.9.1997 is liable to be quashed and set aside.

4. The learned counsel for the applicant has relied on the judgement of this Tribunal in **S.C. Khurana and Anr. Vs. Lt. Governor, Delhi** (1991 (16) ATC 191). In that case the Tribunal has held that the impugned order of reversion dated 16.4.1990 on the ground of pendency of vigilance case which was under investigation had been stayed which was made absolute. In this case, however, we have been informed that a chargesheet has also been issued to the applicant on 4.8.1998 which was based on the complaint of the lady casual artist. In the circumstances, we cannot ignore the fact that in the present case the chargesheet has already been issued to the applicant. Therefore,

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the claim of the applicant that he should have been allowed to continue in the ad hoc higher post of Deputy Director with all consequential benefits, is neither legally tenable nor justified. (B)

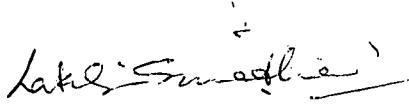
5. The second main relief claimed by the applicant is to fill up the posts of Deputy Director on regular basis in accordance with law. In this connection, the respondents have submitted that they have also initiated action for filling the posts through the UPSC. Shri Rajinder Nischal, learned counsel for the respondents, has submitted that there are two posts of Deputy Director which are to be filled by direct recruitment and not by promotion, as contended by the applicant.

6. In view of the above and noting that the respondents have stated that they have initiated the process for filling up the posts of Deputy Director on regular basis, we do not consider it necessary to give any further directions to the respondents except to the extent that they may complete the process as expeditiously as possible.

7. For the reasons given above, the impugned order dated 8.9.1997 is quashed and set aside to the extent that the applicant shall be deemed to continue as Deputy Director on ad hoc basis till the date of Notification i.e. 8.9.1997 and shall be entitled to consequential benefits for the intervening period till that date. O.A. accordingly disposed of. No order as to costs.

  
(K. Muthukumar)  
Member(A)

SRD

  
(Smt. Lakshmi Swaminathan)  
Member(J)