

Central Administrative Tribunal  
Principal Bench

OA 61/98

(5)

New Delhi this the 24<sup>th</sup> day of April, 1998

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

Vijay Kumar,  
S/o late Shri Sat Pal,  
House No. 320, Sadar Kabari Bazar,  
Meerut Cantt. ... Applicant.

By Advocate Shri G.D. Bhandari.

Versus

1. Union of India through  
The Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.
2. HQ Central Command,  
(Commandant)  
GS/SD, Lucknow.
3. HQ UP Area,  
GS/SD,  
Bareilly (UP).
4. Station Commander,  
Station Headquarters,  
Meerut Cantt.
5. Budh Parkash,  
Accounts Clerk Station HQ,  
Meerut Cantt. ... Respondents.

By Advocate Shri R.P. Aggarwal.

O R D E R

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

The applicant is aggrieved by the order dated 16.1.1997 passed by the respondents reverting him from the post of Accounts Clerk to the post of Conservancy Safaiwala w.e.f. 17.9.1992.

2. A preliminary objection has been taken by the respondents that the aforesaid impugned order has been issued by the Station Headquarters Meerut Cantonment and hence jurisdiction is with the Allahabad Bench of the Tribunal and

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not the Principal Bench. This has been disputed by Shri G.D. Bhandari, learned counsel for the applicant, who has drawn our attention to the Note below Para 4 of the impugned order in which the review DPC which is under challenge here has been ordered by the Army Headquarters' letter dated 24.7.1996 which was forwarded to the Headquarters Meerut Sub-Area for further action. He, therefore, submits that the cause of action has arisen within the jurisdiction of this Tribunal and hence he has prayed that the preliminary objection may be rejected. Having considered the relevant facts including the fact that the impugned order dated 16.1.1997 has been issued as a result of the letter issued from Army Headquarters dated 24.7.1996, and having regard to the provisions of Rule 6(1) (ii) of the CAT (Procedure) Rules, 1987, we are of the view that as the cause of action has arisen at least in part within our jurisdiction, there is no merit in the preliminary objection. The objection raised on jurisdiction is accordingly rejected.

3. On merits also this application is entitled to succeed for the following reasons:

4. The applicant has submitted that the earlier reversion order passed by the respondents dated 21.4.1994 had been successfully challenged by him in OA 1089/94 (Annexure 'B'). The Tribunal had passed the order after hearing the learned counsel for the parties. In this judgement, the Tribunal had quashed the impugned order dated 21.4.1994 directing that the applicant shall be restored with all consequential benefits of pay, etc. from the date he was reverted to the post of Conservancy Safaiwala and deemed to be in continuous service from the date of assumption of charge as

Accounts Clerk in pursuance of the order dated 17.9.1992.

After perusing the DPC proceedings, the Tribunal had set aside the impugned reversion order and observed as follows:

"In any case, the proceedings of the DPC have been approved by higher authorities i.e. Station Commander Brig. Johri and unless these proceedings are quashed, altered or modified, the promotion given to the applicant cannot be subject to any alteration/modification even at the behest of the highest authority".

4. In pursuance of the aforesaid judgement of the Tribunal, the respondents passed the order dated 19.10.1995 giving him the benefit, as ordered by the Tribunal in the post of Accounts Clerk with effect from 17.9.1992. The applicant has submitted that since then he has been working in the post of Accounts Clerk till the respondents have passed the impugned order cancelling the order dated 19.10.1995 and reverting him from the post of Accounts Clerk to the post of Conservancy Safaiwala w.e.f. 17.9.1992. The applicant has submitted that this has been done in a most arbitrary, illegal and mala fide manner without even giving a show cause notice and that too with retrospective effect.

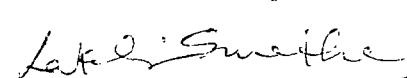
5. We note from the reply filed by the respondents to Paragraphs 4.27 to 4.29, in which the applicant has referred to the judgement of the Tribunal in OA 1089/94 and the consequent order passed by them in pursuance thereof, as only a 'matter of record'. They have submitted that they held a review DPC on 1.10.1996 because the earlier DPC had not followed the Recruitment Rules and subsequently passed the impugned order.

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6. From the facts of the case, it appears that the respondents have unilaterally reversed their earlier decision which, in fact, means that they have sat in appeal against the order of the Tribunal, which they cannot do. Nothing has been placed on record to show that the respondents had filed any review petition against the aforesaid order of the Tribunal or appeal and, therefore, that judgement had become final and binding. The impugned order covers the same period as earlier with retrospective effect. In the facts and circumstances, the impugned reversion order passed by the respondents which is in contravention of the findings of the Tribunal in OA 1089/94 which they had admittedly implemented by order dated 19.10.1995 is untenable and not in accordance with law. The impugned order also suffers from two other infirmities, namely, that the principles of natural justice have been violated as no show cause notice was issued to the applicant before the reversion order was passed and secondly, the reversion has been effected retrospectively from 17.9.1992.

7. In the result, for the reasons given above, O.A. is allowed. The impugned order dated 16.1.1997 reverting the applicant from the post of Accounts Clerk to the post of Conservancy Safaiwala w.e.f. 17.9.1992 is quashed and set aside. The applicant shall be entitled to all consequential benefits in accordance with law. No order as to costs.

  
(K. Muthukumar)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Member (J)

'SRD'