

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

14

O.A. No. 767/98

T.A.No.

Date of decision 18-9-98

Sh.Tulsi Dass

... Petitioner

Sh.Yogesh Sharma

... Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

... Respondents

Sh.V.S.R. Krishna

... 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. 767/98

New Delhi this the 18 th day of September, 1998

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

Tulsi Dass
S/o Shri Ram Kumar,
R/o RZ-44A, Geetanjali Park,
West Sagarpur,
New Delhi.

...Applicant.

By Advocate Shri Yogesh Sharma.

Versus

1. Union of India through
The Secretary,
Ministry of Defence, South Block,
New Delhi.
 2. The Director General,
Quality of Assurance,
Ministry of Defence, Room No. 234,
South Block,
New Delhi.
 3. The Senior Quality Assurance Establishment(S),
Ministry of Defence (DGQA),
Anand Parbat, New Delhi.
 4. The Chairman (DPC-III),
Secretariat SQAD (GS),
Minsitry of Defence, Kanpur(UP).
- ... Respondents.
- By Advocate Shri V.S.R. Krishna.

O R D E R

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

The applicant is aggrieved by the order dated 28.11.1997 passed by the respondents reverting him from the post of Senior Store Keeper (SSK) to Store Keeper (SK), and the order dated 26.3.1998 rejecting his representation against the reversion order.

2. The applicant was appointed on 2.7.1990 as SK in the office of the respondents. In 1996, against the vacancy of SSK which was reserved for SC quota, the community to which the applicant belongs, the applicant was

(16)

promoted w.e.f. 19.8.1996. The applicant has submitted that without giving any show cause notice or opportunity to represent against the proposed action of the respondents, they passed the impugned reversion order dated 28.11.1997. In this order, they have stated that consequent upon the review by the DPC, the order promoting the applicant to the post of SSK w.e.f. 19.8.1996 has been amended and he has been reverted to the post of SK w.e.f. the same date. The applicant has submitted that the contention of the respondents that he had been earlier promoted erroneously is wrong. According to him, he has been promoted in accordance with the Rules after giving him relaxation of experience being available in the post of SSK. Shri Yogesh Sharma, learned counsel for the applicant, has submitted that the action of the respondents in passing the orders dated 28.11.1997 and 26.3.1998 is arbitrary and against the principles of natural justice. He has relied on the judgements in **Dhim Kumar Vs. Union of India** (1995(2) SLR 681; **Udmi Ram Vs. State of Haryana & Ors.** (1996(2) SLR 418; **Sunder Lal Vs. Union of India** (1989 (10) ATC 337); **R. Caliamoorthy Vs. Union of India & Anr.** (1992(1) ATJ 233) and **Banchhanidhi Das Vs. State of Orissa & Ors.** (1973 (2) SLR 499).

3. The respondents in their reply have submitted that under the relevant Recruitment Rules for the post of SSK, the SKs in the feeder, cadre with 8 years regular service are eligible to be considered for promotion. At the time of the DPC held in 1996, the applicant was having only six years of service but he was considered for promotion to the post of SSK by mistake. According to them, the Note-I below the Recruitment Rules relates to the relaxation

regarding qualifications and only applies to direct recruitment and not to promotion. They have, therefore, submitted that the relaxation was given to the applicant erroneously which was later corrected by the review DPC which had recommended his name. They have also in the circumstances submitted that no show cause notice was required as the DPC had applied the Rules erroneously to the case of the applicant in the first instance. (17)

4. We are unable to agree with this contentions of the respondents that in the circumstances of the case the respondents could pass ^{the} reversion order dated 28.11.1997 and that too without giving a show cause notice and taking effect retrospectively from 19.8.1996 i.e. the date when he was originally promoted as SSK. In any case, since the applicant has worked in the post of SSK, w.e.f. 19.8.1996, the respondents cannot revert him by the impugned order dated 28.11.1997 from a retrospective date.

5. The Punjab and Haryana High Court in **Udmi Ram Vs. State of Haryana (supra)** had quashed the impugned orders which had sought to revert the applicants as Constables. The High Court held that in the facts of the case, the petitioners are required to be given an opportunity of hearing before they are ordered to be reverted which has not been done in those cases. Accordingly, the writ petitions were allowed and impugned reversion orders were quashed, leaving it open to the respondents to pass fresh orders after affording an opportunity of hearing to the petitioners. See also the decision of the Orissa High Court in **Banchhanidhi Das Vs. State of Orissa (supra)** wherein it has been held that where the Government had given promotion

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by granting exemption from prescribed qualifications; they are estopped from withdrawing the orders of exemption, no matter that it was rightly or wrongly passed. The other judgements of the Tribunal relied upon by the learned counsel also support the case of the applicant. (18)

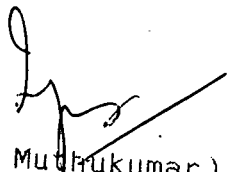
6. Note-I under the Rules for promotion to the post of SSK provides as follows:

"The qualification regarding experience is relaxable for reasons to be recorded in writing at the discretion of the competent authority in the case of candidates belonging to the schedule castes or scheduled tribes if at any stage of selection, the competent authority is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the vacancies reserved for them".


7. The contention of the learned counsel for the respondents that the relaxation is only with regard to two years experience required for store keeping and store accountancy as provided in Column. 8 of the Rules and not to the experience otherwise, does not appear to be correct. They have also stated that the applicant's contention that there was only one vacancy of SSK against the SC quota which was available at the time when the DPC met in 1996 is correct. From the reply filed by the respondents, it also appears that the respondents themselves had considered the case of the applicants under the provisions for relaxation of the Rules and thereafter promoted him as SSK which now

they claim to be erroneous. We are unable to accept this contention because the experience referred to in Note-I can also be taken as experience with regard to the number of years required in the feeder category of SK. As held by the Orissa High Court in **Banchhanidhi Das's case (Supra)**, the respondents, having taken a decision to relax the Rules in favour of the applicant when the DPC was held in 1996, cannot now retract from their order and revert the applicant; especially when the applicant himself is not to be blamed for the actions of the respondents. In this view of the matter, the reversion order cannot be sustained on this ground also.

8. In the result, the application succeeds and is allowed. The reversion order dated 28.11.1997 is quashed and set aside and the applicant shall be entitled to all consequential benefits in accordance with the law and Rules. No order as to costs.


(K. Muthukumar)
Member (A)

SRD


(Smt. Lakshmi Swaminathan)
Member (J)