

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2046/96

New Delhi, this 22nd day of March, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Yoginder Nath
Ex.Sub-Inspector

A-4/82, Paschim Vihar, New Delhi. ... Applicant
(By Shri Shyam Babu, Advocate - not present)

versus

1. Commissioner of Police
Police Hqrs., New Delhi
2. Dy. Commissioner of Police (HQ-I)
Police Hqrs., New Delhi ... Respondents
(By Shri Raj Singh, Advocate - not present)

ORDER(oral)

By Reddy, J. -

The applicant is present. ASI Satish Kumar appears for the respondents. Counsel on either side are absent.

2. The applicant challenges the order of reversion dated 27.9.88 as arbitrary and unjustified and seeks for a declaration that he was entitled to be treated as working in the post of Inspector continuously from 27.9.88 till 31.7.95 when he was superannuated, granting all consequential benefits.

3. The applicant was working as Sub-Inspector/MT (Operational) with effect from 7.2.80. He was promoted to the post of Inspector/MT(Chargeman) on 23.5.88 purely on temporary and ad hoc basis under Rule 19(1) of the Delhi Police(Promotion & Confirmation) Rules, 1980 (for short, RULES). Subsequently, disciplinary proceedings (DP, for short) were initiated against him on certain allegations. In view of the pendency of the DP he was reverted to his substantive rank of SI/MT(Operational) by order dated 3.10.88. The departmental enquiry (DE, for short) resulted in removing the applicant from

service by order dated 6.6.96. The said order was questioned by the applicant in OA 1710/91 before the Tribunal. The Tribunal by order dated 9.11.95 set aside the order of removal, finding that there was a procedural error as the enquiry officer had relied upon the statements made in the preliminary enquiry without supplying the same to the delinquent. The respondents were directed to reinstate the applicant in service, with liberty to continue the departmental proceedings in accordance with the provisions of the RULES, if they so choose.

4. In pursuance of the judgement, the applicant was reinstated, by which time he had retired from service on 31.7.95. By order dated 15.1.96, the intervening period of the applicant from the date of removal till the date of retirement was treated as spent on duty for all intents and purposes, with full benefits of pay and allowances for the said period.

5. Thereafter, the applicant made a representation to the respondents that the order of reversion dated 27.8.88 be withdrawn on the ground that he came to know on 30.1.96 that the post of Inspector/MT(Chargeman) was filled up on regular basis with effect from 30.1.96 only and his junior has been promoted on regular basis as Inspector/MT(Chargeman) with effect from 1.2.96 by order dated 14.2.96. The representation however was rejected by the impugned order dated 12.6.96.

6. Two grounds are taken by the applicant in the OA. One that the order of reversion is bad as Rule 19(1) of the RULES contemplates reversion of a police official only when a qualified man becomes available. As on the date when the applicant was reverted i.e. 27.9.88, no

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qualified man became available and no regular appointment was made for the post of Inspector and hence the applicant should not have been reverted and two, in view of the DE resulting in his favour, whereby he has been fully exonerated and the order of reversion having passed only on the ground that DE was pending against him, the applicant should have been allowed to continue in the same post of Inspector, in which he has been promoted. 9

7. The respondents raised preliminary objection as to the maintainability of the OA on the ground of limitation. On merits, it is the case of the respondents in the reply that as the allegations against the applicant were serious and as the applicant was holding the rank of Inspector on purely temporary and ad hoc basis, he was rightly reverted to his substantive post. The subsequent order of the Tribunal in setting aside the order of removal would not entitle the applicant to continue in the promoted post. It is stated that the Tribunal has only quashed the order of removal but not quashed the charge against the applicant and the respondents were given liberty to proceed with the DE as there was only procedural error. As the applicant upon reinstatement being superannuated even before the judgement of the Tribunal, the department decided not to continue with the DE against him.

8. We have considered the pleadings in this case and also the points raised by the applicant. We have also considered the written arguments filed by applicant's counsel and perused the documents filed by the respondents on 13.3.2000.

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10

9. The main grievance of the applicant is that the order of reversion dated 27.9.88 from the post of Inspector/MT to the substantive rank of SI/MT is illegal. He relies upon, for this submission, on Rule 19(1) of the RULES. It is true that Rule 19(1) specifies that under special circumstances when there are no approved names in the promotion list and vacancies exist, promotions can be made to next higher level temporarily and that they are liable to be reverted without notice as soon as qualified men become available. It is the case of the applicant that qualified men became available only in 1996, and when the applicant was reverted on 27.9.88 no regular promotions were made, hence he could not have been reverted. It is also the case of the applicant that he came to know of the fact that qualified men were available only on 30.1.96. But the applicant cannot question the order of reversion, on this ground, after a lapse of about 8 years as the OA was filed on 23.9.96. Under section 21 of AT Act the date of knowledge of any particular fact is not the criterion for the purpose of limitation. As the adverse order was passed on 27.9.88, the cause of action had arisen in 1988 when the applicant was reverted. The starting point for limitation is 27.9.88. He should have filed the OA within the period of limitation as stipulated in Section 21 of AT Act. Section 21 does not provide that the cause of action is the date of knowledge of the applicant how the order becomes bad, with reference to a provision of law. The fact of reversion is adverse to the applicant. If it has to be questioned he should do so within the period of limitation. Lest he would lose

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11

his remedy. In the circumstances, we are of the view that the OA on this question is hopelessly barred by limitation.

10. The second contention raised by the applicant is wholly baseless. It is seen from the order of the Tribunal in the OA filed by the applicant against the order of removal that the OA was allowed only on the ground that the statements relied upon by the EO in the DE were not supplied to the applicant. Respondents were given liberty to proceed with the DE in accordance with the rules. The charge-memo has not been set aside. In the circumstances, it cannot be said that the applicant was exonerated of the charge. The second point is urged upon on the premise that the applicant has been exonerated by the Tribunal. Since he was not exonerated, the applicant is not entitled to be reinstated in the same post as there was order of removal/reversion when the charge was still at large against the applicant. Moreover, as the promotion to Inspector was on ad hoc basis, it was open to the respondents to revert him as serious charges were levelled against him. He has no right to continue in the promoted post. It may be true that in the absence of any other such circumstances, ordinarily he will not be reverted unless regular appointments are made. In the circumstances, the second contention is also rejected.

11. In the result, the OA dismissed. No costs.

Shanta
(Smt. Shanta Shastry)
Member(A)

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

/gtv/