

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2232/1989

~~TAX No.~~

199

DATE OF DECISION 13-3-91GOPAL SINGH

Petitioner

SHRI B. B. RAVAL

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ANOTHER

Respondent

SHRI P. P. KHURANA

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P. K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. P. C. JAIN, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *X*

*P. C. Jain*  
( P. C. JAIN )  
MEMBER (A)

*P. K. Kartha*  
( P. K. KARTHA )  
VICE CHAIRMAN (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

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O.A. NO. 2232/1989

Date of Decision March 13, 1990

GOPAL SINGH

... APPLICANT

Vs.

UNION OF INDIA & ANOTHER

... RESPONDENTS

Shri B. B. Raval

... Counsel for the Applicant

Shri P. P. Khurana

... Counsel for the  
Respondents

CCRAM : HON'BLE SHRI P. K. KARTHA, VICE CHAIRMAN (J)  
HON'BLE SHRI P. C. JAIN, MEMBER (A)

.....

J U D G M E N T

Shri P. C. Jain, Member (A) :

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed office order No. 359-Pers.11/89 dated 27.10.1989 (Annexure A-3) and has prayed that the same be quashed on the grounds of the order being arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. He has also prayed for an interim relief to the effect that the operation of the aforesaid order be stayed and the respondents be directed not to obstruct the applicant in the discharge of his daily duties.

2. When the application came up for hearing on admission and interim relief on 5.12.1989, on the statement made by the learned counsel for the applicant that the applicant had not joined in the lower post pursuant to the impugned order dated 27.10.1989, status quo was directed to be maintained till 17.1.1990. The interim

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order was thereafter continued till the same was vacated by an order passed on 8.8.1990. The applicant filed a review application (R.A.133/90) against the order dated 8.8.1990 by which the interim order was vacated. This review application was disposed of by an order passed on 11.1.1991 with the direction that the O.A. be heard finally on the merits expeditiously.

3. Skipping unnecessary details and controvercies, the facts relevant to the main issue which fall<sup>to</sup> for determination<sup>in</sup> in this case may be briefly stated as below.

4. The applicant joined the Research and Analysis Wing, Cabinet Secretariat, Government of India, as Assistant Field Officer (General Duty) (A.F.O. (G.D.)). At the relevant time, he was posted as Deputy Field Officer (General Duty) (D.F.O. (G.D.)) at S.B. Tezu (under S.B. Dibrugarh). Vide office order No. 288-Pers. 11/89 dated 16.8.1989 (Annexure A-1) the applicant was given officiating promotion to the post of Field Officer (F.O.) and posted to the Headquarters. He reported to the Headquarters as F.O.(G.D.) on 26.9.1989 (FN) (Annexure A-2). In partial modification of order dated 16.8.1989 (supra) his promotion-cum-transfer as F.O. was cancelled vide office order No. 359-Pers.11/89 dated 20.10.1989 (Annexure A-3). By another office order No.360-Pers.11/89 dated 27.10.1989 (Annexure A-4) he was posted as D.F.O. (G.D.) with effect from that date. It is <sup>against</sup> the order of cancellation of his promotion-cum-transfer as F.O. that the applicant has filed this application.

5. We have perused the material on record and heard the learned counsel for the parties. The respondents while filing their reply have contested the application  
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but the facts as stated above are not disputed. Their <sup>is</sup> case/that the promotion was to be an officiating one and it was to take effect from the date of joining the post of F.C. at Headquarters, New Delhi after being formally relieved by the Deputy Commissioner, SB Dibrugarh for transfer to New Delhi. It is stated that while reporting at Headquarters on 26.9.1989 and submitting his joining report, the applicant cleverly omitted to mention that he was not relieved by the Deputy Commissioner, SB Dibrugarh for movement to New Delhi and that, in fact, he simply slipped away and joined at Headquarters. It transpired only later that he had not been relieved <sup>as</sup> as above and joined unauthorisedly at Headquarters. However, with a view to avoid inconvenience and hardship to the applicant, he was taken on the strength of the Headquarters with effect from 26.9.1989 but as D.F.C. vide office memorandum dated 27.10.1989. It is also stated that between his receiving the promotion-cum-<sup>and</sup> transfer order on 30.8.1989/his unauthorisedly reporting at Headquarters on 26.9.1989, it was brought to the notice of Headquarters by the Commissioner, SB Shillong, who is also the disciplinary authority for the post of D.F.O., that the conduct of the applicant had been under detailed investigation since October, 1988 for certain acts of moral turpitude involving a tribal woman which had caused much anguish to the local people, and the Commissioner accordingly proposed that disciplinary proceedings under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 should be initiated against the applicant. The charges are stated as being drawn up. In this connection, the respondents have also stated that in accordance with para 17.9 of the instructions circulated by the D.P. & T. vide O.M.

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No.22011/5/86-Estt-D dated 10.4.1989, in case of a Government servant against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the C.B.I. or any other agency, departmental or otherwise, if he is recommended for promotion by the Departmental Promotion Committee (DPC) but the facts of investigation as above arise ~~after~~ after the recommendation of the DPC are received but before he is actually promoted, it will be considered as if his case had been placed in sealed cover by the DPC and he shall not be promoted until he is completely exonerated of the charges against him. Accordingly, it is pleaded that the applicant is not eligible even for officiating promotion unless he is exonerated of the charges against him.

6. In the promotion order dated 16.8.1989 (Annexure A-1), it is stated that the appointing authority for the post of F.O. had approved the filling of five posts of F.O. in promotion quota, for occupying which the persons cleared by concerned DPC(s) for regular promotion are not available on account of being away on special assignment, by officiating promotions of the D.F.O.s who were found fit for holding the post of F.O. by DPC 1989. The name of the applicant appears at sl. No. 3 of the five D.F.O.s who were given officiating promotion as above. It is also stated in this order that the "benefit of these promotions will be till such time as those due for promotion, on a regular basis, are available to hold the post of F.O., or till the next DPC is convened unless the persons being promoted <sup>as in this order are promoted</sup> on a regular basis by the subsequent DPC while still officiating as F.O." and "the service as F.O. will count

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for the purpose of increment and for computing eligibility for promotion as S.F.O. and for one year period of trial". It is also stated that "these officiating promotions will take effect from date of joining the post of FO". It is clear from a perusal of this order that the applicant had been found fit for holding the post of F.O. by the DPC-1989, and that the service during officiating period of promotion was to count for computing eligibility for further promotion as well as for one year period of trial. Further, the applicant was one of the five DFOs so promoted, two above him and two below him, and the promotion could be terminated on the availability of <sup>another</sup> ~~a~~ DFO who <sup>was</sup> ~~was~~ due for promotion on a regular basis or till the next DPC is convened. The material placed by the respondents on record does not show that any officer who was due for regular promotion had become available to warrant reversion of any of these five officers including the applicant. There is also nothing on record to show that another DPC had been held in which the applicant might have been found unfit for officiating promotion. The applicant had received his promotion order on 30.8.1989 and had reported for joining the promotion post on 26.9.1989. There is nothing to show that he was <sup>not</sup> ~~was~~ allowed to join as FO on that date. The contention of the applicant in paras 4.4 and 4.5 of the O.A. to the effect that from 26.9.1989 he was asked to attend the Pers.11 Branch and accordingly he did the same and signed the attendance register daily from 26.9.1989 to 6.10.1989 when he proceeded on casual leave from 7.10.1989 to 15.10.1989 in order to bring his family from his native place to Delhi, and that when he reported on 16.10.1989 he was asked by the Section Officer not to sign the register

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and sit in the Library, but on 26.10.1989 the Section Officer put his name separately as DFO and asked him to sign, have been admitted by the respondents in their reply to the aforesaid paras.

7. The respondents have not been able to establish by means of any document that the applicant "slipped away" from his old place of posting to join his promotion post as there is no averment or document to show that he had not been verbally permitted by his officer at the old place of posting to report to Headquarters. Once he had been allowed to proceed to Delhi and he reported for duty and allowed to join and function as FO, the contention that he had not been formally relieved is not very relevant for determination of the issue before us.

8. The other contention of the respondents that in view of the orders of the DP & T in O.M. dated 10.4.1989 (already referred to above) the applicant was not eligible even for officiating promotion is also not tenable. It is clearly provided in these instructions that these are applicable before a Government servant falling in that category is actually promoted. In this case the applicant had already been promoted and joined on the promotion post and at that stage recommendation of the DFC in his case could not have been placed in a sealed cover by the DFC. The respondents might have taken action in pursuance of the aforesaid instructions of the DP & T before issuing his orders of promotion. The applicant has also relied in this regard on a judgment of the Gujarat High Court in the case of Mrs. J. S. Pandya vs. Director General of Police and Inspector General of Police, Gujarat (SLJ 1986(1) 473) in which

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it was held that the promotion cannot be cancelled subsequently on the ground that it was passed in ignorance of a pending departmental inquiry. In the case before us, on the date the promotion order was cancelled, no disciplinary proceedings are stated or shown to have been pending.

9. It is clear from the pleadings of the case that no show cause notice was given to the applicant before his promotion was cancelled. It is also clear that officers junior to the applicant who were promoted along with the applicant have continued to work on the promotion post. The applicant relied on a judgment of Calcutta Bench of the Central Administrative Tribunal in the case of Shri Ramali vs. Andaman and Nikobar Administration through Lt. Governor and Ors. (ATR 1986(2) CAT 34), and the judgment of the Supreme Court in the case of Jagdish Prasad Shastri vs. State of U.P. and Ors. (AIR 1971 SC 1224). In the case of Shri Ramali (supra) it was held that even reversion from ad-hoc promotion while juniors promoted on the same basis are allowed to continue was neither in consonance with principles of fair play nor in accordance with the rules. In the case of Jagdish Pd. Shastri (supra) the facts of the case were significantly different and as such the case is not directly on all force with the case before us. However, their lordships of the Supreme Court observed in that case as below :

"10. It may be observed that according to the decisions of this Court the mere form of the order reverting an officer to his substantive post even if he is appointed temporarily or in an officiating capacity to a superior post, is not decisive. If the order is made for a collateral purpose, or in making the order the officer is actuated by malice, the order is liable to be set aside. Again if the order

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involves a penalty, even if on the face of it the order does not bear any such impress, the Officer prejudiced by the making of that order is entitled to prove that he has been denied the protection of the guarantee under Article 311 of the Constitution, or of the protection of the rules governing his appointment. An order of reversion made due to exigencies of the service in consequence of which an officer who was temporarily appointed or appointed in an officiating vacancy may not be challenged. But the order passed maliciously or on collateral considerations or which involves penal consequences, or denied to the civil servant the guarantee of the Constitution or of the rules governing his employment, is always open to challenge by appropriate proceedings."

10. No administrative exigency has been averred or shown for cancelling the promotion of the applicant to the post of FO inasmuch as neither the promotion of all the five officers who were promoted by the same order has been cancelled on any ground or mistake etc. nor any officer due for regular promotion was available for reverting any of the five officers who were promoted on officiating basis because of non-availability of such officers. No opportunity was given to the applicant to show cause before the order of cancellation of his promotion was issued. The impugned order of cancellation of promotion is, therefore, arbitrary and violates the principles of equality in public employment as enshrined in Articles 14 and 16 of the Constitution.

11. In the light of the foregoing discussion, we hold that the impugned office order No. 359-Pers.11/89 dated 27.10.1989 (Annexure A-3 to the O.A.) cannot be sustained and the same is quashed. Accordingly, the applicant will be entitled to work on the post of F.O. in an officiating capacity subject to the conditions to which his promotion was made vide office order No. 288-Pers.11/89 dated 16.8.1989

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(Annexure A-1 to the C.A.), or till he is reverted therefrom in accordance with law.

12. The application is accordingly allowed leaving the parties to bear their own costs.

*Case 13/3/1991*  
( P. C. JAIN )  
MEMBER (A)

*Annex*  
*13/3/91*  
( P. K. KARTHA )  
VICE CHAIRMAN(J)