

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

17/37

O.A. NO.406/89

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HON. SHRI A.V. HARIDASAN, VICE-CHAIRMAN 'J'  
HON. SHRI R.K. AHOOJA, MEMBER 'A'

NEW DELHI, THIS 6TH DAY OF DECEMBER 1996

SHRI S.C. GUPTA  
S/O Lt. Shri R.C. Gupta  
R/o 13 D Delhi Administration Flats  
Timarpur  
DELHI

...APPLICANT

'By advocate Shri G.D. Gupta'

VERSUS

1. Lt. Governor  
Delhi Administration  
Raj Bhawan  
DELHI - 54
2. The Chief Secretary  
Delhi Administration  
5 Shyam Nath Marg  
DELHI - 54.
3. The Director of Social Welfare  
Delhi Administration  
ITI Building  
Ferozshah Road  
NEW DELHI - 1

..RESPONDENTS

'By advocate Shri S.K. Gupta, proxy  
for Shri B.S. Gupta, counsel  
the respondents.'

ORDER 'ORAL'

A.V. HARIDASAN, VICE-CHAIRMAN 'J'

This application is directed against the order dated 8.2.89 by which the applicant was reverted from the post of Senior Superintendent Grade Rs.3000-4500 to the post of Superintendent Grade Rs.2000-3500,

contd. .. 2/-

and the order dated 10.2.89 by which he was suspended from the reverted post of Superintendent. He has prayed that the records pertaining to these orders may be called for, the orders may be quashed and the respondents be directed to regularise him on the post of Senior Superintendent (Rs.3000-4500). The applicant who was holding the post of Superintendent in the scale of Rs.2000-3500 on ad hoc basis was further promoted on ad hoc basis as Senior Superintendent in the scale of Rs.3000-4500 by order dated 11.4.88 along with certain others including one Smt. Prabha Mathur who was junior to the applicant. While the ad hoc promotion was extended and while the applicant and others including Smt. Prabha Mathur were continuing officiation on the post of Senior Superintendent on ad hoc basis, the impugned orders dated 8.2.89 reverting the applicant and that dated 10.2.89 suspending him from the reverted post were issued. The applicant has filed this application assailing these orders. The main grounds on which the order of reversion is assailed is that if the reversion was for a misconduct, without holding an enquiry it was not permissible to revert him to the lower post and if that is not the case, then his reversion while his junior Smt. Prabha Mathur was retained in the higher post offends the equality provisions contained in Article 16 of the Constitution. The order of suspension is impugned on the ground that if the reversion of the applicant is without legal validity, the authority who could have suspended him was the Lt. Governor and not the Chief Secretary and

contd. .. 3/-



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therefore the order is invalid, since it is issued by an incompetent authority. The applicant was placed under suspension on the ground that a criminal offence was under investigation.

2. The respondents in their reply seek to justify the impugned order of reversion on the sole ground that the applicant who was holding the post of Senior Superintendent purely on ad hoc basis was reverted on account of misconduct committed by him while functioning as Head of Office in respect of HLTB and HAIB. The suspension is sought to be justified on the ground that as the impugned order of suspension was issued while the applicant stood reverted to the post of Superintendent, the Chief Secretary was the competent authority.

3. The applicant has raised an additional ground that as the investigation had come to an end in October 1990 when the Crime Branch Police referred the matter as untraced, leaving it to the Department to initiate departmental proceedings, the continued suspension of the applicant thereafter was wholly unjustified. The chargesheet in the departmental proceedings was given to the applicant only on 29.7.93. During the period while the applicant was under suspension, his junior Smt. Prabha Mathur was regularised in the post of Superintendent w.e.f. 13.7.82 vide order dated 22.3.91 and was further regularised in the post of Senior Superintendent vide order dated 14.7.95 w.e.f.

contd. .. 4/-



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28.5.95. The applicant has prayed that he may also be given the similar benefit of regularisation and promotion.

4. We have perused the materials on record and have heard Shri G.D. Gupta, ld. counsel for the applicant, and Shri S.K. Gupta, ld. proxy counsel for Shri B.S. Gupta, counsel of respondents Shri G.D. Gupta with considerable tenacity argued that since the respondents in their reply have taken the stand that the reversion of the applicant was for certain misconduct, the action taken by them to revert the applicant without resorting to any enquiry is vitiated for violation of the principles of natural justice enshrined in Article 311(2) of the Constitution. He further argued that if it is assumed that the reversion of the applicant was not for misconduct but on account of the fact that the applicant was only holding the post in ad hoc basis, then reverting the applicant while his junior is retained offends the equality provisions enshrined under Article 14 and 16 of the Constitution. In support of this legal contention, the ld. counsel invited our attention to the decisions of the Hon. Supreme Court in State of U.P. Vs. Sughar Singh 1974(1) SLR 435 as also in Jarnail Singh and Ors. vs. State of Punjab & Ors. 1986(2) SLJ 157. The facts of the case in Jarnail Singh are similar to the case of the applicant here. In that case, the

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termination of ad hoc promotion was on the basis of adverse remarks and allegations of embezzlement without holding any enquiry. It was held that the termination was by way of punishment and the same affected without compliance with the provisions of Article 311(2) of the Constitution was bad in law. It was also observed that if the termination was not for misconduct then retention of a junior while reverting the senior violated Article 14 and 16 of the Constitution. The dictum of the ruling applies on all fours to the facts of this case. It is not disputed by the respondents that Smt. Prabha Mathur was junior to the applicant and that she was retained in the post of Senior Superintendent while the applicant was reverted and that the reversion of the applicant was for misconduct. Therefore, we have no hesitation to hold that the reversion of the applicant from the post of Senior Superintendent by the impugned order dated 8.2.89 was wholly unjustified and is liable to be struck down.

5. Once the order of reversion cannot stand, the applicant has to be deemed to be holding the post of Senior Superintendent and his suspension by Chief Secretary cannot be sustained because in such case the competent authority to suspend a Senior Superintendent in the grade of Rs.3000-4500 was the Lt. Governor, and the respondents have not chosen to refute this ground taken by the applicant. Even assuming that the order of suspension dated 10.2.89 is valid, the moment


the investigating agency has stopped the investigation in the criminal case, that is, in November 1990, the respondents should have immediately recalled the order of suspension unless they wished to continue the suspension for holding departmental proceedings. If they wished to place the applicant under suspension for contemplated departmental proceedings, they should have passed a separate order in that behalf. This having not been done, the continued suspension of the applicant from 1990 is wholly unjustified.

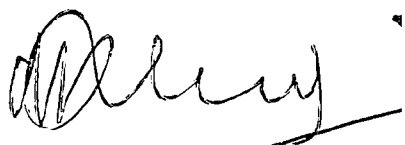
6. On the date on which Smt. Prabha Mathur, the junior of the applicant, was regularised as Superintendent by order dated 22.3.1991 w.e.f. 13.7.1982, there was neither any criminal investigation nor departmental disciplinary proceedings pending against the applicant, because the chargesheet in the departmental proceedings was served on the applicant only on 29.7.93. When Smt. Prabha Mathur was regularised on the post of Senior Superintendent vide order dated 14.7.95, the applicant had been facing departmental proceedings, the applicant's case for promotion was not considered. Even if the applicant had been considered, he could not have been promoted for the reason that he was facing disciplinary proceedings. But the proper course open for the respondents was to consider the case of the applicant and place the findings of the DPC in his case in a sealed cover.

7. In the light of what is stated above, we are of the considered view that the applicant is bound to succeed to a great extent. The impugned order of reversion dated 8.2.89 is set aside. In view of the setting aside of the order of reversion, the applicant should be deemed

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to have continued on the post of Senior Superintendent and therefore the suspension order dated 10.2.89 being by an incompetent authority is also set aside. The respondents are directed to treat that the applicant continued in service as Senior Superintendent and to pay him the arrears of pay and allowances. The respondents are also directed to consider the applicant for regularisation in the post of Superintendent w.e.f. 13.7.82, the date on which his junior Smt. Prabha Mathur, was regularised vide order dated 22.3.91 and if found otherwise not unsuitable, to regularise him in service as Superintendent with effect from the same date with consequential benefits. The respondents are also directed to have the case of the applicant considered for promotion to the post of Senior Superintendent with effect from the date on which his junior Smt. Prabha Mathur was considered and keep the findings of the DPC in a sealed cover and proceed to act in accordance with law after the completion of the departmental proceeding which are said to be pending against the applicant. No costs.

  
'R.K. AHUJA'  
MEMBER 'A'

  
'A.V. HARIDASAN'  
VICE-CHAIRMAN 'J'

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