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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1465/88

Dated:

29.10.93

K.N. BAWA

APPLICANT

VS.

UNION OF INDIA

RESPONDENTS

PRESENT: SHRI S.S. RANA, COUNSEL FOR THE APPLICANT
SHRI N.S. MEHTA, COUNSEL FOR THE RESPONDENTS


CORAM:

1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGMENT

(BY HON'BLE MR. B.K. SINGH, MEMBER (A))

This O.A. No.1465/88, K.N. Bawa Vs. Union of India & Others has been filed against order No. Nil dated 13th July, 1988 (passed by Justice G.R. Luthra, Chairman, Monopolies & Restrictive Trade Practices Commission) and communicated by the Secretary, Shri Ravindra Sharma vide letter No.8(210/EST/86 dated 13.7.88. By the said letter the respondents No.2 and 3 held up the appointment of the applicant without jurisdiction, void ab initio and decided that his name be deleted from his service book and that the respondent No.4 shall rank senior to him and that the D.P.C. shall meet within one month from 13.7.88 to decide the matter regarding the applicant's confirmation. This has disturbed the seniority of the applicant as on 1.7.88 and being aggrieved by the said order of the Chairman he has approached this Tribunal for redressal of his grievances.



2. The applicant was serving as a permanent employee in the Indian Institute of Public Administration, an autonomous institute, as Stenographer in the scale of Rs.200-340. That scale was revised subsequently to Rs.425-800 w.e.f. 1.1.73. He took extraordinary leave without pay from that Institute for one year. During that leave period he was appointed as Private Secretary to a Member of the MRTP Commission on ad-hoc basis by the Commission w.e.f. 1.9.73 in the scale of pay Rs.350-900 which was subsequently revised to Rs.650-1200. When the applicant, Shri Bawa, was appointed as PS the recruitment rules relating to the staff of the MRTP Commission were not finalised. That is why the appointment of Shri K.N. Bawa as P.S. to a Member was purely on an ad-hoc basis. He was not considered a deputationist since the formalities of requisitioning his services by MRTP Commission and placing his services at the disposal of the MRTPC by the IIPA and the question regarding lien etc. were not observed. The IIPA served several notices on Shri Bawa, the applicant to revert to his parent department failing which they threatened to terminate his services. The applicant did not go back to the Institute and consequently his services were terminated w.e.f. January 15, 1975. The applicant continued to work as PS to a Member of the Commission.

3. The recruitment rules relating to the staff of the Commission were framed by means of notification No.GSR-95(E) dated February 28, 1977. The relevant rules relating to RRs of PS in the MRTPC reads as under:-

"(i) 33-1/3% by promotion -

Stenographers Grade-II in the Commission with 14 years regular service in the grade.

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By Transfer/transfer on deputation (including short-term contract) -

Officers belonging to Selection Grade of CSSS, Grade-I CSSS with 6 years regular service, Grade-II of the CSSS with 14 years' regular service or Senior Stenographers in the scale of Rs.425-700/800 with 14 years' regular service in that scale under the Central Government/State Government/Recognised Research Institutions/Public Sector Undertakings/Reserve Bank of India/State Bank of India/Universities.

(Period of deputation/short-term contract ordinarily not exceeding 5 years."

4. During the relevant period it is admitted that the quota of absorption by transfer /transfer on deputation was filled by ~~appointing~~ S/Shri R.P. Srivastava, S.A. Ranganathan on transfer basis since both were senior to the applicant, Shri K.N. Bawa. They also fulfilled the requisite qualifications of having 14 years regular service in Grade-II Stenographer. Only the quota of one post by promotion was available. But Shri Bawa could not be considered for absorption against this post because he had not complete 14 years of service in Grade-II Stenographer. As a matter of fact, when the RRs came into force his service stood terminated by the IIPA.

5. In appendix 30 (Consultation with UPSC Regulation, 1958) clearly lays down that all appointments made from time to time in each Ministry/Department (including attached and subordinate offices) without reference to the UPSC should be reviewed by an officer not below the rank of Joint Secretary by the 25th of every month and action must be taken immediately thereafter to consult the UPSC

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wherever it is necessary to do so under the rules. These instructions are contained in Decision No.8 (below Regulation 6) in Appendix 30. It was further clarified in the Regulation that the appointing authorities are under wrong impression that they can make temporary/ officiating appointments upto one year without consulting UPSC. It was made clear in paragraph 5 of the Appendix that where no RRs exist, it should be ensured by the appointing authority that RRs are finalised in consultation with the Commission within a maximum period of 6 months from the date the appointment is made and action should be initiated soon thereafter to fill up the post in accordance with RRs so finalised. These instructions were brought to the notice of all the Ministries/Departments (attached/subordinate offices) who were requested to observe strictly the provisions of Regulation 4(1) of the UPSC including reference regarding exemption from consultation under this Regulation. Government of India's decisions were also communicated to the various Ministries/Departments to the effect that ^{consultation} Under Regulation 3 of the UPSC (Exemption from Consultation) Regulation, was necessary ^{where} the recruitment rules for such posts and services had not been finalised or framed in consultation with UPSC. Under Art.320 (a) and (b) of the Constitution, the method of recruitment of all such posts have to be settled in consultation with the UPSC and unless rules of recruitment are finalised it would not be correct to make individual appointments without consultation with UPSC under the pretext of exemption from consultation. Regulation without recruitment rules having been finalised. It has been found to be a correct proposition that no Ministry/Department/attached office/ subordinate office can avail of the benefit of Regulation 3 of UPSC (exemption from consultation) Regulation where RRs have not been finalised under Art.320 (a) and (b) of Constitution. The provisions of Regulation 3 can be availed of only when the RRs have been finalised in

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consultation with UPSC and there is an exemption from consultation with the UPSC in regard to personal staff of the MRTPC. The Govt. of India have therefore held the view that consultation with the UPSC will be necessary even in case of appointments which would normally be covered by regulation 3 of the UPSC (exemption from consultation) Regulation if the method of recruitment for the grade/service in question has not been finalised in consultation with the UPSC.

6. Under the proviso to Regulation 4 of the new regulation, all temporary appointments made under that regulation have to be reported to the UPSC as soon as they are made and such appointments have to be reviewed if these extend beyond a period of 6 months and an estimate made whether the appointment is likely to exceed one year for which UPSC should be consulted immediately in regard to filling of that post. Ministry of Home Affairs vide their Memo No.12/18/48/EST dated 20th August, 1948 decided in consultation with the UPSC that all heads of attached and subordinate offices should in future directly correspond with the Commission on matters relating to recruitment, promotion to the posts for which they are the appointing authorities. It has been further laid down that if new posts are created or the recruitment rules for already existing posts altered consultation with UPSC is a must.

7. In the case of Shri Bawa it was discovered that the appointment was made without consulting the UPSC which was necessary since recruitment rules had not been finalised as is evident from the foregoing para.



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graphs. After the finalisation of the RRs vide notification No.GSR-95(E) dated February 28,1977 and taking into consideration that the very existence of Shri K.N. Bawa, the applicant, was nebulous since it was difficult to describe him either a deputationist which he was not since his services had been terminated by his parent department, IIPA and since the formalities of deputation have not been observed and therefore the only option left was to treat him a direct recruit but even this was not possible till the recruitment rules were amended. To clear the way of Shri Bawa, the applicant, for absorption, recruitment rules were amended and Rule 3(b) in the RRs was inserted

- "3B-Special Provision to appoint certain class of persons against promotion quota posts - Notwithstanding anything contained in these rules, in the case of posts for which promotion is one of the methods of recruitment and no person eligible for promotion is available till the date of commencement of the MRTPC (Recruitment of Members of Staff) Amendment Rules, 1979, the Commission, may, before resorting to any other method of recruitment, fill up the quota for promotion by appointing, with the concurrence of the UPSC, any person who has been working on any such post for a period of less than seven years."

This amendment was notified on the 29th December, 1979 and came into force from that day itself.

8. In the reliefs, Mr. Bawa has sought the quashing of the order dated 13th July 1988 (annexure A-8) declaring the seniority list as on 26.7.88 (annexure A-10) null and void and to direct the respondents No.1,2 and 3 to prepare fresh seniority list and to declare the applicant as senior-most PS and to place him at Sl. No.1. He further

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prayed that respondents No.1,2 and 3 be restrained from holding DPC meeting in pursuance to order dated 13.7.1988 and if any finding of the DPC meeting goes against the applicant the same maybe quashed. The applicant further added to the reliefs sought that he be declared to have been appointed on a regular basis w.e.f. March 1, 1970 and that the respondent No.4 be declared junior to him in the order of seniority of Private Secretaries.

9. Heard the learned counsel Shri S.S. Rana for the applicant and Shri N.S. Mehta for the respondents and perused the record of the case, pleadings and various citations of the Hon'ble Supreme Court and High Court given by the contending parties and the various annexures enclosed by the parties. The learned counsel for the applicant gave the following rulings in support of his contentions:-

- (i) AIR 1988 SC 268, GC Gupta Vs. N.K. Pandey.
- (ii) AIR 1990 SC 405, P. Mahadran & Ors. Vs. State of Karnataka.
- (iii) AIR 1983 SC p.1143, A. Calton Vs. Director of Education.
- (iv) AIR 1986 SC p.638 Narinder Chadha Vs. U.O.I.
- (v) AIR 1983 SC p.852, Y.V. Rangiah & Ors. Vs. J. Sreenivas Rao
- (vi) Civil Appeal No.4806 of 1992 in the Supreme Court of India, Shri Ramvir Singh Vs. Union of India & Ors.

10. We have carefully perused these rulings but they have no bearing on the issue and have no relevance in respect of the vexed question of seniority of the applicant. The learned counsel for the respondents placed reliance on the very exhaustive and lucid description of the case given by Justice Luthra, Chairman of MRTPC. He also took pains to examine the claims of the various PSs working in the MRTPC, gave personal hearing to them and finally came to a definite finding. He was not satisfied with his own decision and therefore he also appointed DPC to look into the claims of the contending Private Secretaries to come to a correct finding regarding their placement in the seniority list. It is against this decision

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of Justice Luthra, Chairman, MRTPC, that the applicant is aggrieved and has come up to the Tribunal for redressal of his grievances.

11. It is admitted by both the parties that the applicant was appointed purely on ad hoc basis as PS to a Member of the MRTPC w.e.f. 1.9.70 when he was on extra-ordinary leave without pay from his parent department, i.e. IIPA, which is an autonomous body. It is also admitted by the contending parties that the services of the applicant were terminated w.e.f. 15.1.75 by the IIPA. It is also admitted by both the parties that there were no RRs when the applicant was appointed in the MRTPC and that the RRs were notified only on 28th February, 1977. We have also perused the provisions of the decision of Government of India contained in Appendix 30 on Consultation (Regulation) 1958 especially paragraphs 5,6 and 7. Para 5,6, and 7 are relevant in this connection. The instruction issued by the Ministry of Home Affairs supplement Rules made under Art.320 (a) and (b) of the Constitution. A synoptic view of the various provisions contained in Appendix 30, UPSC (Consultation) Regulation 1958 will indicate that MRTPC violated the provisions contained in Appendix 30 and the various instructions of the Ministry of Home Affairs, Deptt. of Personnel and A.R. which have the force of the statute since they are issued in the form of a Memorandum which go to supplement the rules framed under proviso to Rule ³⁰⁹ of the Constitution. Before the finalisation of the RRs the Regulation 3 as stated above which grants exemption from consultation cannot

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come into force. The exemption will operate only when the RRs have been framed and finalised with the concurrence of the UPSC. Even Rule 3(b) inserted in the recruitment rules made it obligatory on the part of the MRTPC to consult UPSC.

12. It is clear that the UPSC was ^{neither} consulted in regard to this appointment when the applicant was appointed on purely ad hoc basis on 1.9.70 nor did the MRTPC consult the UPSC immediately thereafter. The mandatory requirement of consultation was given a go-bye. Unless an appointment is sanctified by the process of consultation, it will not entitle or confer a right on a person to claim seniority and his very existence becomes difficult to explain either as a deputationist or as a direct recruit. Non-observance of the mandatory provisions of consultation with UPSC in all the cases i.e. for recruitment/appointment/appointments by transfer/appointment by deputation or exemption from consultation etc will literally prove fatal to the appointments so made. Procedural safeguards are regarded mandatory and it is fatal to disregard them. When there is statutory duty to consult UPSC this must be genuinely adhered to and UPSC must be afforded opportunity to give its comments. When the matter was referred to UPSC at a belated stage for ex-post-facto sanction UPSC rightly declined to give its concurrence and sent a stinking note dated April 9, 1984. The operative portion of that letter is worth-
quoting:-

void "In view of the circumstances, the UPSC do not approve of the appointment of Shri K.N. Bawa in the post of Private Secretary. This appointment is being treated as irregular ab-initio and is being included in the UPSC's Annual Report as such."

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13. The Department of Legal Affairs (Ministry of Law, Justice & Company Affairs) also came down heavily on the MRTPC for having violated the provisions of consultation with the UPSC. The operative part of the letter addressed by Shri R.D. Mukherjee, Under Secretary, Deptt. of Company Affairs-in his D.O. dated May 30, 1983 to Admn. Officer, MRTPC reads as under:-

"Accordingly, we are of the view that before appointing the incumbent against the point meant for promotion, the concurrence of UPSC was a must and if it has not been taken so far, the appointment cannot be said to be valid. Accordingly, we cannot say that point meant for promotion has been extinguished."

By implication it meant that promotional quota did not stand exhausted because the very appointment of Shri K.N. Bawa against the promotion quota was declared as invalid even by the Ministry of Law and Justice.

14. The matter got further complicated because the Department of Company Affairs vide their letter No. A-45011/40/85-Admn. dated 25th November, 1986 informed the MRTPC that the approval of the Deptt. of Personnel and A.R. subsequently named Department of Personnel, Training, was never obtained for adding Rule 3-B which was mandatory as per established rules of the Transactions of Business in Govt. of India. Therefore the very insertion of Rule 3-B became irregular and it was difficult to obtain their ex-post-facto approval in regard to this amendment. Thus it is clear tht MRTPC not only violated the rules regarding consultation with UPSC but also made an amendment in the rules of recruitment which were finalised without consulting the Department of Personnel & A.R. There has been breach of rules of consultation and there

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has been ~~clear~~ clear breach of rules of Transaction of Business of Government of India. The MRTPC is not vested with excessive delegation of power.

15. Every act of the public authority in exercise of public powers must be bonafide. As observed by Hon'ble Supreme Court in para 6 of their judgment in Pratap Singh Vs. State of Punjab supra that an impugned order is ultra vires and that it violates the rules that every power vested in a public body or authority has to be used honestly, bonafide and reasonably often slide into each other. Malafide use of authority is null and void ~~xxx~~ ab initio. Justice Luthra's comments have only highlighted the glaring misuse of authority by his predecessor in office without following rules, procedures and practically throwing everything to winds. There is nothing called unfettered ^{discretion} immune from judicial review and judicial invalidation.

16. Thus it would be seen there was lack of inherent jurisdiction in respect of the appointment of the applicant, Shri K.N. Bawa inasmuch as jurisdiction to appoint could be only strictly in accordance with rules and not otherwise. Rule 3-B was inserted in the RRs finalised in consultation with UPSC which made it mandatory for the MRTPC to consult UPSC in matters of all recruitments/promotions. And this rule 3-B cannot be inserted without consulting the Ministry of Personnel & Training as per rules of Transaction of Business of the Govt. of India. Thus the mandatory requirement of consultation in regard to the appointment of the applicant initially and subsequently regarding his absorption in the MRTPC w.e.f. 22nd December 1977 without consulting the UPSC was in total violation of rules. The provision of Rule 3-B is against the rules of Transaction of Business of Govt. of India since consultation with them was a mandatory requirement. The non-observance of these rules and the lack of inherent jurisdiction

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on the part of the MRTPC strikes at the very root of the appointment of the applicant and makes it ab-initio void and non-existent in the eyes of law. As was held by the Hon'ble Supreme Court in Kiran Singh & Ors. Vs. Chaman Paswan (AIR 1954 SC 340), the very appointment of Shri K.N. Bawa, the applicant made on 22.12.79 will be treated null and void. The relevant observation of the Hon'ble Supreme Court in the operative portion is as under:-

"It is a fundamental principle well established that decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."

17. The realisation did dawn on the appointing authority regarding lack of jurisdiction. Shri K.N. Bawa was appointed on 1.9.70 on purely ad-hoc basis. The appointment order reads as under:-

"OFFICE ORDER NO.10/7

The Chairman, MRTP Commission is pleased to appoint on an ad hoc basis, Shri Kidar Nath Bawa as Private Secretary to Member in the Commission, in the scale of Rs.350-25-500-30-590-EB-30-800-EB-30-830-35-900, with effect from 1st September, 1970 (forenoon) until further orders. He will be on probation for six months.

The earlier Office Order No.10/70 issued by the Commission on 30.9.70 should be treated as cancelled.



SD/-
(D. Subramanian)
Member, NRTPC
16.10.1970

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18. When there was an attempt^{to}/~~consult~~ UPSC in 1985, the Commission must have been baffled and they informed the MRTPC that they could resort to Regulation 3, Exemption from Consultation, in order to regularise the appointment of Shri K.N. Bawa. The D.O. letter from the Department of Company Affairs No.A-11013/7/70-Admn.I dated 2.9.70 addressed by Shri Q.A. Ahmad, the then Jt. Secretary to Mr. Justice A. Giriswamy had amply clarified that the MRTPC is an attached office of Department of Company Affairs, Ministry of Law & Justice. The letter had also clearly mentioned the powers of MRTPC to make appointment in regard to their staff but the MRTPC Act of 1969 does not make an express provision in respect of the powers of appointment of the staff of the Commission. The creation of the posts will be the prerogative of the Department of Company Affairs. Rule 8 of the CCS(CCA) 1965 vests in the President of India the power to appoint the Central Govt. Civil Servants in Central Government Civil Posts Class I. This rule is made by the President in exercise of the powers conferred by proviso to Art.309 of the Constitution and is subject to law made by the President. The MRTPC was requested in this letter to make recruitment rules in consultation with the UPSC in order to regulate the service conditions of the staff whose appointments were to be made by the Commission. It would appear that the existence of Shri K.N. Bawa, the applicant, till 22nd December 1979 remained nebulous because of the inherent lack of jurisdiction on the part of the MRTPC. Shri Bawa was neither a deputationist nor could he be described

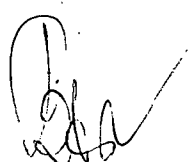
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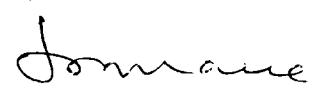
a direct recruit since his appointment was ab initio, null and void, having been made in total disregard of the mandatory rules of consultation with UPSC and even the insertion of rule 3-B without consulting the Ministry of Personnel & A.R. as per the Rules of transaction of business of Government of India. He could neither be treated to be on probation for six months in 1970 nor could he be treated as a deputationist or direct recruit being kept on probation. One can be kept on probationer only when there are recruitment rules regulating the service conditions of the employee. This was not so in 1970. If he was treated as an ad-hoc appointee, it will not confer any right to hold it for all time to come and this will also not count for seniority. This absorption also on 22.12.79 without consulting UPSC was null and void. The insertion of rule 3-B without consulting the Ministry of Personnel and A.R. was also null and void. His very existence from 15.1.75 when his services were terminated by his parent employer, IIPA, became doubtful. Shri R.P. Srivastava and Shri S.A. Ranganathan were appointed in a substantive capacity against 66-2/3% of the recruitment by transfer quota and thus this quota was exhausted. This has also been confirmed by Mr. Mukherjee, Under Secretary, Department of Company Affairs. The third post was to be filled by promotion but none of the Stenographers Grade-II in the MRTPC were eligible to be appointed as P.S. because none of them

had completed 14 years regular service in the grade which was a mandatory requirement of the recruitment rules for the post of P.S. The applicant Shri K.N. Bawa could not be considered for appointment as P.S. since he had not completed 14 years service as Grade-II Stenographer. The insertion of Rule 3-B to legitimise his existence envisages consultation with UPSC which was not done. The insertion of Rule 3-B itself became ultra vires since as per Rules of Transaction of Business of Govt. of India, the Ministry of Personnel & A.R. were not consulted.

19. In the light of what has been stated above, we are not inclined to interfere with the seniority list finalised by Justice Luthra on the basis of the recommendations of a duly constituted committee which examined the claims and counter claims of the contending parties placing Respondent No.4 above the applicant and accordingly this O.A. is dismissed as devoid of any merit and substance. The interim order passed on 25.8.1988 stands vacated.

No order as to costs.


(B.K. Singh)
Member (A)


(J.P. Sharma) 22.10.93
Member (J)

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21.10.93