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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A. No.1958 of 1988

New Delhi this the 04th day of January, 1994.

HON'BLE MR. J.P. SHARMA, MEMBER(J).
HON'BLE MR. B.K. SINGH, MEMBER(A).

Chander Bhan,
son of Shri Bhagwan Singh,
U.D.C.,
Excise Department,
2, Battery Lane,
Delhi Administration, Delhi.

r/o: 615/2, Janta Flat, Paschim Puri,
New Delhi-110063.

...Applicant

Versus

Delhi Administration, through
Deputy Secretary (Service),
Delhi Administration,
Delhi-54.

...Respondent.

O R D E R (ORAL)

Hon'ble Mr. J.P.Sharma, Member(J):

The case was called and none appears for the applicant as well as for the respondents. Since this is an old case, we have gone through the pleadings and proposed to decide the case on merits. The applicant was appointed in Gr.IV L.D.C. vide order dated 17-3-1973. He was promoted after recommendation of D.P.C. held on 16-11-69 by the order dated 29-11-79 and posted in the Land and Building Department. His promotion was regularised by the order dated 17-2-87 and thereafter transferred to Excise Department. Subsequently, on the basis of a complaint, it was found that as per terms and conditions of appointment by the letter dated 17-3-1973, the applicant was to qualify the typing test with 25 words per minute in Hindi or

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30 words per minute in English from the Directorate of Training and Technical Education, Delhi Administration within a period of one year from the date of his appointment failing which his services will be liable to be terminated. The applicant, however, failed to pass the typing test at the prescribed speed and his annual increments were not released. However, on the basis of the report of the Development Department who sponsored the particulars of the applicant where it was mentioned that the official has qualified in the type test both in Hindi and English in the prescribed speed, he was promoted to the grade of U.D.C. Subsequently, Chief Secretary (Services), who is the cadre controlling authority made promotion of the applicant on 29-11-79 based on wrong information supplied by the Development Department and the said promotion orders were ordered to be cancelled by the impugned order dated 28-9-1988.

2. The applicant has assailed the aforesaid ^{order} who prayed for the grant of reliefs that the order of reversion of the applicant from the post of UDC to the post of LDC may be set aside and the applicant be allowed to work as UDC. The present application was filed on 10-10-1988. By the order dated 24-10-1988, the prayer for grant of interim relief was considered by the Bench and the operation of the impugned order dated 28-9-88 was stayed. That stay continues till today. A notice was issued to the respondents who contested the application and opposed the grant of relief on the ground that

the promotion of the applicant to the grade of UDC was erroneously considered on the basis of the report of the Development Department reporting that the officer has qualified in the type test both in Hindi and English in the prescribed speed and, therefore, the order of ad hoc promotion dated 29-11-79 and subsequently regularisation by the order dated 17-2-82 cannot be said to be passed on correct information as the applicant has not qualified the type test. The Chief Secretary, Delhi Administration, therefore, by the order dated 28-9-88 reverted the applicant. The applicant proceeded on leave. The order was actually served on the applicant on 24th October, 88. Thus, according to respondent, the applicant has no case.

3. Since none appeared for the parties, we proposed to decide the case on merits. The applicant in the rejoinder has stated that he has been working as UDC in the Excise Department and the impugned order cancelling his promotion has remained inoperative. We find that there is a memo dated 30-1-87 which is on record issued by Under Secretary, Delhi Administration regarding promotion to the grade of UDC - eligibility of LDCs who did not have proficiency in typewriting. This letter clearly lays down that there is no order banning grant of annual increment in the grade of LDC to UDC who is promoted as UDC but has not passed the typing test while in service in the grade of LDC. This letter also goes to show that there is no

order banning promotion as UDC of LDCs who do not acquire the requisite speed in typing and debarred from quasi-permanent or confirmation. The order of 28-9-88, therefore, cannot be said to be an order according to the aforesaid memo dated 30-1-87 bearing no.F.2/110 as (13/66-S(C). The Dy. Secretary(Services), therefore, cannot exercise the power either on behalf of his own or as delegated authority of Chief Secretary, Delhi Administration.

4. From another angle also, we find that the applicant was allowed to work as UDC from November, 79 and has also been regularised in 1982 and, therefore, any reversion would amount to punitive order which could not have been passed without giving any opportunity to the applicant. The respondents without giving any opportunity to the applicant have passed the impugned order which is against the principles of natural justice, equity and fairplay.

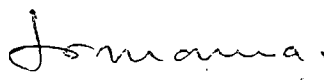
5. The respondents in their reply have not anywhere stated that it was any overtact on behalf of the applicant that the Development Department has given a wrong and incorrect report that the applicant has qualified in the typing test. The respondents have to blame their own concerned staff for submitting such a report to the D.P.C. The D.P.C. which was held in November, 79 must have also seen the service record of the applicant and whether his increments were withheld for

not passing the typing test within the required period after one year. When the DPC has already recommended the promotion of the applicant to U.D.C., the cadre controlling authority cannot pass an order disadvantageous to the applicant in the nature of penalty.

6. In view of the above facts and circumstances, the impugned order of reversion dated 28-9-88 is quashed and set aside with all consequential benefits to the applicant, leaving the parties to bear their own costs.


(B.K. SINGH)
MEMBER(A)

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(J.P. SHARMA)
MEMBER(J)