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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.830/88

Dated: 28.9.88

Hari Krishan

Applicant

Vs.

Union of India

Respondents

Shri Ashish Kalia, proxy for Shri R.L. Sethi, Counsel
for the Applicant.

Shri P.P. Khurana, Counsel for the Respondents.

CORAM

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

JUDGEMENT

(Delivered by Hon'ble Mr. B.K. Singh, Member (A))

This O.A. No.830/88, under Section 19 of Central
Administrative Tribunal Act 1985, Hari Krishan as applicant
Vs. Union of India as respondents, has been filed against
the impugned orders dated 12th April, 1988 and 17.9.87,
placed at annexure A1 and A2 enclosed with the application.
This resulted in the alleged reversion of the applicant
without any notice and without providing any opportunity of
being heard.

2. On 2.4.86 a post of Despatch Rider in the
pay-scale of Rs.260-350 was circulated by the respondents to
be filled up in the Principal Accounts Office, Ministry of
Urban Development, from amongst the Group 'D' employees of
the Ministry possessing the requisite qualifications. The
applicant was working in the Publication Division of
Department of Works & Housing, Ministry of urban Development
as a labour, applied for the said post. Being eligible for
the post in all respects he was selected by a selection board

board securing first position in merit in the written test held by the respondents on 29.4.86 and he joined in pursuance thereof with effect from 6.6.86 (forenoon). (S)

3. The applicant averred that having been selected by a properly constituted selection board and having joined the post against a long-term vacancy, he had the right to hold the post of Despatch Rider, and the respondents had no right to terminate the appointment abruptly. The applicant admits that he joined back in the Publication Division as per the reversion orders passed by the respondents on the 2.9.87.

4. The relief sought, though not specific, is to set aside the repatriation order which also entailed his reversion from higher post to lower post.

5. Heard the learned counsels for the applicant and for the respondents and perused the records of the case. It is admitted by both the parties that in the light of the orders of Under Secretary, dated 2.9.87 contained in letter No.A-12023/2/83-Admn.IV, Govt. of India, Ministry of Urban Development the applicant joined his original post. It is also a fact that the applicant was directed to be taken on the rolls of the Publication Division w.e.f. 21.7.87 (F.N.) i.e. from retrospective effect.

6. In the counter it has been stated that the applicant was 7th pass and not 8th pass as required. It has been denied that the applicant got first position out of 3 candidates. It is stated that he was the lone candidate to qualify for the post. It has also been admitted in the counter that he was selected through an open competition. It has been further stated that he had maintained his lien on

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the post held by him and as such he could not be appointed on a regular basis in the Department and accordingly he was treated as a deputationist and not a regular employee. He had his lien in his parent department for two years. It has been further stated that his name was not removed from the select list by any order.

7. The averments in the counter indicate that the services of the applicant were not terminated but only repatriated. It has been alleged that from the very beginning of his appointment, the applicant was careless in his work adopting dilatory tactics in delivering 'dak' etc. He was verbally warned by the P.A.D. (Admn.)/CA(Admn.)/CCA to be careful in future. No disciplinary action was taken because he was on deputation. His services were only placed at the disposal of the Ministry. Since he was released from the post of Despatch Rider on 20.8.87 and reverted back to his original post on 2.9.87 the reversion and repatriation are now fait accompli. The repatriation of the applicant for payment of salary for the period from 21.8.87 to 1.9.87 and a perusal of the case record will indicate that the representation is not directed against the reversion to the post on which he had a lien. It is only in para 9 that the word 'repatriation' has been used. The last para mentions about deputation of the applicant and his repatriation to the post on which he had lien.

8. Taking a total view of the facts, we find that he was repatriated to his parent Department on the post of Labourer originally held by him on the ground of misconduct as alleged in the counter. Once reversion is based on grounds of carelessness and dilatory tactics as alleged in the counter, it was necessary to serve a show cause notice on

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as alleged in the counter. Once reversion is based on grounds of carelessness and dilatory tactics as alleged in the counter, it was necessary to serve a show cause notice on the applicant before reverting him. This is not a simple repatriation but a reversion from a higher post to a lower post without any show cause notice.

9. Whenever a person goes to a higher post he is allowed to have a lien on his previous post for a minimum period of 2 years. This is a normal practice in Government of India and also in State Governments. Since lien is no bar to hold another higher post which was duly circulated and against which the applicant was selected, then lien would have continued till he was regularised in his new post. The post was not permanent but was likely to last for a longer time and might have become a permanent post in the end. The ground of lien cannot be taken for reverting and repatriating him.

10. A deputationist draws his basic pay plus 10% additional pay if it is in the same station. There is no selection board for taking a person on deputation. When there was open competition by a duly constituted board the plea of deputation cannot be held factually correct. The respondents are putting the cart before the horse by stating that before joining the applicant should have got his lien terminated. It should be the other way round.

11. The principles of natural justice have been ignored in this case. The post was circulated and the applicant was selected through an open competition by a

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selection committee and appointment letter was given to him and in pursuance thereof he joined as Despatch Rider and worked there.

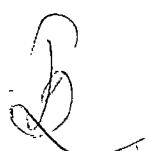
12. One really gets baffled to find nothing in writing to show that his work and conduct were unsatisfactory and one fine morning he is sent back as though in a huff to his parent department to work as Labour again without giving him any opportunity to show cause. The alleged misconduct resulted in termination of services as a measure of punishment and it does attract Article 311(2) of the Constitution. It has been held in A.K. Kraipak Vs. Union of India (1969) 2SCC 262 in which reliance has been placed on the following dicta of Lord Parker, C.J. :-

"Good administration and an honest or bonafide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly, and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly."

The Lordships then added:

"The aim of the rule of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. These principles of natural justice do not supplant the law of the land but supplement it. It has 3 dimensions; (i) no one shall be a judge in his case (nemo debet esse iudex propria causa), (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem) (iii) quasi-judicial enquiries must be held in good faith without bias and not arbitrary or unreasonably."

13. Since the order of reversion entails stigma and also punishment on ground of alleged misconduct, the principles of natural justice ought to have been followed and on account of its non-observance the impugned order of reversion/repatriation are set aside being puhitive in nature and the applicant is reinstated as Despatch Rider with all

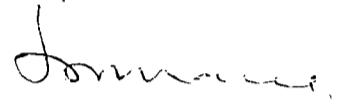


consequential benefits. His lien as per rules will continue till he is regularised and confirmed on the post of Despatch Rider if the post is made permanent. In case there are grounds of misconduct as alleged, the respondents would be free to initiate proceedings giving full opportunity to the applicant which implies adherence to the principles of natural justice.

There will be no order as to costs.


(B.K. Singh)

Member (A)


(J.P. Sharma) 28.7.73

Member (J)

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