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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI

O.A. 413/86

Dated of decision: 27.11.89

Karam Chand

Applicant

vs

Lt. Governor of Delhi & Ors

Respondents

CORAM:

Hon'ble Mr Justice Amitav Banerji, Chairman

Hon'ble Mr B.C. Mathur, Vice Chairman (Admn.)

For the Applicant

Shri S.C. Gupta, Sr. Advocate
with Shri M.K. Gupta, counsel

For the Respondent

Shri B.R. Prashar, counsel.

(Judgement of the Bench delivered by
Hon'ble Mr Justice Amitav Banerji, Chairman)

A short question arises in this case. The Delhi Administration while considering the recommendation of the Departmental Promotion Committee appointed Thakur Surinder Singh, Senior P.E.T. to the post of Supervisor (Phy. Education) Class II Gazetted in the pay scale of Rs. 650-1200 on officiating basis w.e.f. 1.6.72 notionally and modified its order No. F.26/12/70-S.I. dated 14.6.72 stating that the intervening period in respect of Thakur Surinder Singh will count for seniority and increments but no arrear of pay shall be admissible. Consequent upon the promotion of Surinder Singh, ^{they} reverted Shri Karam Chand, the junior-most Supervisor (Physical Edn.) to the post of Sr. P.E.T. w.e.f. 1.6.72. It is this order of reversion of Shri Karam Chand to the post of Senior P.E.T. w.e.f. 1.6.72

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which is the subject matter of the present Application.

This order was passed on 15.5.1986.

There is no manner of doubt that the applicant was originally appointed Physical Training Instructor and thereafter had been promoted to the rank of Supervisor (Physical Education) on regular appointment on officiating basis vide order dated 14.6.72 and was also marked to be on probation for two years from 1.6.72. That period was over on 1.6.74. On the expiry of the two years, his position improved for the probation period was over and had not been extended. He had worked as Supervisor (Physical Edn.) for 14 years when the order of reversion was passed reverting him to the rank of Physical Education Teacher. On these facts, which are not disputed, the reversion of the applicant was not permissible in law at all.

We will, however, revert to another aspect of the matter. Although the promotion order dated 2.6.71 clearly mentioned the fact that the applicant's promotion was decided on the basis of the recommendation of the D.P.C., his promotion was described as ad hoc for the reason that a Writ Petition had been filed by one Thakur Surinder Singh claiming seniority over several persons including the applicant. The Writ Petition was numbered CW 148/71 in the High Court of Delhi. In that Writ Petition, Thakur Surinder Singh had not chosen to make the applicant a party.

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In 1979, the Administration chose to grant Thakur Surinder Singh seniority above the applicant, notwithstanding the pendency of the Writ Petition. The applicant filed a Writ Petition in the Delhi High Court (C.W.P. No. 179/79). He challenged the Administration's action of giving Thakur Surinder Singh seniority above him and consequently reverting him. The Administration's plea was that if Thakur Surinder Singh was given seniority above the applicant, there was no other post of Supervisor on which the applicant could be continued. Both these Writ Petitions were heard and decided by a Learned Single Judge on 9.11.79. Applicant's Writ Petition was allowed and that of Thakur Surinder Singh was dismissed. The latter filed a Letters Patent Appeal. The Appeal was allowed and the Single Judge order was set aside and Thakur Surrinder Singh's claim of seniority was upheld. The effective result was that Thakur Surinder Singh was to get seniority above the applicant and some others but there was nothing therein to say that the applicant was required to be reverted. The applicant had not challenged the Letters Patent Appeal judgement for he knew that Thakur Surinder Singh would become due to retire on 31.5.85 on attaining the age of 58 years. In keeping with the Division Bench Judgement, the Administration issued an order on 14.1.86 intimating all concerned that Thakur Surinder Singh had been sanctioned

seniority at Sl. No. 2B and that his case for promotion would be taken up for the post of Supervisor. But Thakur Surinder Singh was not given promotion after the judgement dated 11.10.85. On 15th of May, 1986 an order was passed saying that Thakur Surinder Singh would stand promoted to the post of Supervisor (Phy. Edn.) notionally w.e.f. 1.6.72. He declined the promotion. Even after the above order dated 15.5.86, the applicant has been ordered to be reverted. Thakur Surinder Singh retired w.e.f. 31st May, 1986 and even if he was to be given seniority above the applicant and consequential promotion, there were 4 vacancies in existence. Consequently, it was urged that his promotion did not in any way disturb the applicant who had been promoted 14 years earlier.

It may be mentioned here that Thakur Surinder Singh filed the O.A. No. 689/86 before the Principal Bench where he had prayed for the quashing of the word "but no arrear of pay shall be admissible" in the order dated 15.5.86 passed by the Joint Secretary (Education).

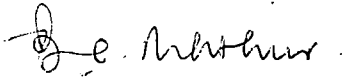
The Division Bench of which one of us was a Member heard the matter and allowed the O.A. and directed the respondents to pay the applicant his pension, provident fund, gratuity etc., the retiral benefits to which he is entitled under the Rules, if not already paid. He would, therefore, be entitled to arrears of pay.

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Learned counsel for the respondents, Shri Prashar argued that the Delhi Administration was of the view that they will have to pay the arrears of pay to Thakur Surinder Singh and thereafter they had passed the order of reversion. This stand is untenable. A man who has been promoted by a regularly constituted DPC could not be reverted after 14 years of service when his probation period of two years had expired on 1.6.74.

In the case of Narender Chadha and others vs. Union of India and others (AIR 1966 (1) SC 49) their Lordships of the Supreme Court were of the view "if as a result of the preparation of the seniority list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary to accommodate him." The principle enunciated in that case was based on the long period of officiation. Here too, even if the promotion of the applicant was on an officiating basis, he could not be reverted after 14 years. The principle laid^{down} in Narender Chadha's case (Supra) would be applicable. We are, therefore, of the view that the order of reversion made in the instant case cannot be upheld and must be struck down.

We will reiterate that if there was no post, a supernumerary post may be created, if necessary, to accommodate him. We, therefore, quash the impugned order dated 15.5.1986. Since the order of reversion was not implemented due to intervention of the Tribunal, no further relief is necessary except that the applicant would be entitled to his due benefits for holding the post of Supervisor. There will be no order as to costs.


(B.C. Mathur)
Vice Chairman


(Amitav Banerji)
Chairman

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