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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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C.A. NO. 44C/1986

DATE OF DECISION 29.1.92

SHRI O.P. DHINGRA

....APPLICANT

VS.

UNION OF INDIA AND ANR.

...RESPONDENTS

CORAM

SHRI S.P. MUKERJI, HON'BLE VICE-CHAIRMAN

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI D.L. MALHOTRA

FOR THE RESPONDENTS

...MRS. RAJ KUMARICHOPE

1. Whether Reporters of local papers may be  
allowed to see the Judgement? 48

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JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant working as Draftsman (Civil) Grade-II in the Office of the Executive Engineer posted to Civil Division, New Delhi challenged the order dt. 27.6.1985 reverting the applicant from the post of Draftsman Grade-I in the scale of Rs.650-750 to the post of Draftsman Grade-II (Civil) in the scale of Rs.425-700 w.e.f. 1.6.1985 contending that there is no vacancy of Draftsman Grade-I available and posting the applicant in the Office of SSW-II (Civil) P&T Civil New Delhi as Draftsman, Grade-II. The applicant has claimed

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the relief that the order dt. 19.6.1985 be quashed and set aside and the applicant may be ordered to be held serving as Draftsman Grade-I in the pay scale of Rs.550-750 from 1.6.1985.

2. The relevant facts are that the applicant joined P&T department as Draftsman Grade-II on 3.3.1966. By the order dt. 21.8.1982, the applicant was promoted to the post of Draftsman Grade-I (C). He was posted in the office of the Superintending Surveyer of Works, P&T (Civil), New Delhi against the existing vacancy of Draftsman Grade-I and in the appointment letter, the probation period was <sup>specified</sup> ~~was~~ of two years. The applicant continued to work as Draftsman Grade-I and also earned annual increments for all this period and the period of probation elapsed on 20.8.1984. The applicant was on medical leave from 1.6.1985 to 14.6.1985. Subsequently by the order dt. 27.6.1985 (Annexure A1), the applicant was reverted to Draftsman Grade-II w.e.f. 1.6.1985. It is stated by the applicant that this order of reversion is an order of demotion and Superintending Surveyer of Works, P&T Civil Circle had no authority to pass such an order because the appointing authority of the applicant is Superintending Engineer. The applicant having successfully completed the period of probation and there being <sup>an</sup> ~~existing~~ regular vacancy, the applicant became a permanent employee and so he could not have been reverted. The applicant made several successive representations, but to no effect.

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3. The respondents contested the application. It is admitted by the respondents that the applicant was promoted to the post of Draftsman Grade-I on a temporary basis w.e.f. 21.3.1982. He continued to officiate as Draftsman Grade-I against another temporary vacancy upto 31.5.1985. It is stated that after 1.6.1985, there was no vacancy available and the applicant being the juniormost was reverted to his substantive post of Draftsman Grade-II. He was not reverted as a measure of punishment, but on the non-availability of the post in Grade-I. The applicant, however, proceeded on leave w.e.f. 1.6.1985 consequent upon the joining of Shri Bhardwaj, Draftsman Grade-I. Thus in short, the contention of the respondents is that as there was no vacancy available in Grade-I, the applicant was reverted to his substantive post of Draftsman Grade-II.

4. We have heard the learned counsel of the parties at length and have gone through the record of the case. The main contention of the learned counsel for the applicant is that since the applicant was promoted on regular basis and was placed on probation, so in the event of probation period having not been extended, the applicant earned a lien on the post of Draftsman Grade-I. It is argued that the averment made in the counter regarding non availability of post is absolutely a false statement. When Sh.S.K.Bhardwaj was

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promoted to Grade-I, the applicant was already working in Grade-I of Draftsman and so Sh. Bhardwaj joining after leave on 31.5.1985 would not come in the way of applicant's continuance on the post in Grade-I. According to the learned counsel for the applicant, the respondents have admitted that the applicant was promoted against an existing vacancy in Grade-I and successfully completed the period of probation, so the nature of appointment of the applicant cannot be termed as purely fortuitous or of ad hoc nature. During the course of the argument, the learned counsel for the respondents clarified that though there were posts available in Grade-I, but one of the posts was transferred to Madras and since there was a shortfall in the post of Grade-I, so the applicant was reverted. Though this fact has not been pleaded in the counter, yet it clearly goes to show that the applicant has been discriminated against in as much as the applicant should have been offered a choice of going with the post to Madras and if the applicant had refused, the normal consequences could have followed. But since the applicant was not given a notice of reversion and the existing post was unilaterally transferred to Madras, gross irregularities stand in the way of reversion of the applicant. Accordingly, the respondents cannot justify the reversion as being a simplicitor one. Article 311(2) comes into play where the person is without notice reverted and another person irrespective of the seniority, merit and performance of the earlier one is

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preferred and Articles 14 and 16 also come to the help of such an earlier person. Thus the reversion order of June, 1935 cannot be said to be based on <sup>principles of</sup> equality and natural justice and has, therefore, to be struck down.

5. The applicant had made representations and even on those representations, the applicant was never asked whether he is willing to go to Madras along with the post which had been transferred there. On one of the representations made by the applicant, he was informed by the communication dt. 3.1.1986 that the representation of the official was considered and rejected, but no reasons therefor were assigned. The respondents have only referred to the fact that the applicant has not been superseded and none of the juniors to the applicant has been promoted to the post of Grade-I. However, this is not the case of the applicant. The contention of the applicant has been that since he was regularly promoted and placed on probation of Grade-I, he cannot be unceremoniously demoted when there are posts available for him and if the post is transferred from his present place of posting to another station, then the applicant has inherent right to be considered for transfer with that post. So in such a case, the provisions contained in Article 311(2) of the Constitution of India are attracted and such an order, therefore, cannot be legally sustained.

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6. In view of the above facts, the application is allowed. The impugned order of reversion dt. 27.6.1985 reverting the applicant w.e.f. 1.6.1985 is quashed and set aside. The applicant shall be deemed to have been working in the post of Grade-I and shall be entitled to all consequential benefits of pay, arrears of pay and allowances and shall also be posted on a post of <sup>equivalent</sup> status. The respondents to comply with the order within a period of three months from the date of receipt of the order.  
*Parties to bear their own costs.*

*J.P. Sharma*  
(J.P. SHARMA)  
MEMBER (J) 28.10.82

*S.P. Mukerji*  
(S.P. MUKERJI)  
VICE-CHAIRMAN

*Pranab Kumar*

*J.P. Sharma*  
28.10.82