

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Regn. No. OA 577 of 1986

Date of decision: 9.8.1990

Satya Paul Rajput

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri K.N.R. Pillai, counsel for the applicant.

Shri N.S. Mehta, Sr. Standing Counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri S.R. Sagar, Member (Judicial).

(Judgement of Bench pronounced by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri Satya Paul Rajput, Junior Accounts Officer/Senior Accountant in the RPAO, Civil Aviation, Safdarjang Airport, New Delhi, against the demotion of the applicant without any order.

2. Brief facts of the case, as stated by the applicant, are that he was appointed as Upper Division Clerk on 26.10.1953 in the office of the Accountant General Central Revenues, New Delhi and got his first promotion as selection grade clerk with effect from 20.2.71. After the bifurcation of Audit and Accounts Department, his designation was Senior Accountant and he was posted to the Ministry of Tourism and Civil Aviation and though he was promoted as Junior Accounts Officer w.e.f. 17.8.1981, the respondents have treated ^{him} as Senior Accountant with effect from 1.4.1984. As per the orders of Controller General of Accounts dated 4.6.1977, vacancies in the cadre of Junior Accounts Officers are to be filled up by promoting Senior Accountants or Junior Accountants who have put in more than ten years service on the

9

basis of seniority-cum-fitness. A copy of the circular is at Annexure I to the application. The applicant got promotion as Junior Accounts Officer during the periods 3.10.1978 to 23.2.1979 and 1.5.1979 to 12.3.80, but on both the occasions, the applicant was reverted for want of ^avacancy. He was again promoted as Junior Accounts Officer on 17.8.1981 vide orders dated 1.1.1982 (Annexure A-II to the application) which means that the work and conduct of the applicant as on 17.8.81 was good otherwise he would not have been promoted. While working as Junior Accounts Officer, the applicant was served an order dated 14.7.83 communicating to him an adverse entry purported to have made for the year 1982 (Annexure III to the application). According to the applicant, the entry was illegal because it was not communicated to him within the stipulated time i.e. by 28.2.1983 and the respondents themselves presumably ignored the entry and allowed the applicant to continue as Junior Accounts Officer even after the communication of the adverse entry. The applicant made a representation on 3.8.1983 against the illegality of the entry, but the applicant received no reply for more than one year. No adverse entry was communicated to him for the year 1983 and the applicant continued on the post of Junior Accounts Officer. Since the respondents kept silence, the applicant presumed that his representation about the adverse entry for the year 1982 was accepted. On 21.12.83 an order purporting to revert the applicant was issued but no reversion took place and the applicant continued on the post of Junior Accounts Officer. A copy of the order is at Annexure VI to the application. The applicant went on leave w.e.f. 5.3.84 to 7.4.84 and one Shri G.P. Gupta, Junior Accounts Officer was posted in his place, but neither the posting order nor any record stated that the applicant had been reverted while he proceeded on leave. The applicant was transfer^{red} from Civil Aviation Department, Safdarjung Airport to the Internal check Unit of the Principal Accounts Officer, Ministry of Tourism and Civil Aviation. He was directed to report to that office on the expiry of the leave, but that order also did not contain anything to show that the applicant was

reverted while on leave. The applicant joined back duties on 24.3.84 and the facts that he was shown as Junior Accounts Officer in the tour programme of internal check party for May, 1984, an amount of Rs. 1400/- was sanctioned to him for duty tour in his capacity as Junior Accounts Officers and the pay and allowances for the period 1.3.84 to 4.3.84 and from 24.3.84 to 31.3.84 were paid to the applicant as Junior Accounts Officer. It is indicated that the applicant had joined as Junior Accounts Officer and not as a Senior Accountant. The respondents themselves treated the applicant as Junior Accounts Officer even after the order of reversion. Without any orders of reversion being served upon the applicant, in an office order No. 2000 dated 24.4.1984 the applicant's designation was shown as Senior Accountant (Annexure A-VIII) and an adverse entry for the 1981 was served upon the applicant on 26.4.1984 as the applicant, who was President of the Staff Association, was picked up for victimisation. The applicant made a representation against the adverse entry on 1.5.84, but the respondents kept silence. The applicant made another representation against describing him as Senior Accountant in ^{the} order dated 24.4.1984, but ignoring this representation and without any valid order, the respondents started paying the applicant the salary of a Senior Accountant w.e.f. 1.4.84. The grievance of the applicant is that while his juniors were continuing on the post of Junior Accounts Officer, he was treated as Senior Accountant which is violative of Articles 14 and 16 of the Constitution and that the two adverse entries communicated to him were not valid as they were ^{not} communicated to him in time and were not made in conformity with the procedure.

2. The respondents in their counter have stated that the applicant's grievance is against the order dated 21.12.1983 about his reversion from the ad hoc posting and hence his application is barred by limitation. The contention of the applicant that he is being illegally persecuted by the respondents by denying promotion as Junior Accounts Officer so that he receives reduced pensionary

(11)

benefits on retirement is misconceived and incorrect. Promotion to the next higher post of Junior Accounts Officer is made from amongst the JAO(C) Examination passed Jr./Sr. Accountants and if they are not available, clear long term vacancies occurring in a year may be filled by promotion of senior accountants and selection grade Divisional Accountants who have rendered not less than 10 years service on the basis of selection by merit vide Rule 5(4)(b) (i) of CGAS (Group C) R.R. 1978. Short term vacancies in the leave chains are filled up by making ad hoc acting promotions of Sr./Jr. Accountants with a minimum of 10 years service on basis of the seniority-cum-fitness in terms of CGA's O.M. dated 4.6.77 which clearly stipulates that such ad hoc promotees are liable to be reverted without notice, as soon as persons qualified in the said examination or eligible for regular promotion in terms of Rule 5(4)(b)(i) of CCAS (Group C) R.R. 1978 become available. The applicant did not pass JAO (C) Examination and his case was also not covered under rule 5(4) (b)(i) *ibid*. His posting as J.A.O. was in a purely ad hoc capacity and as a temporary measure, pending posting of regular qualified JAO.. He was accordingly reverted as Sr. Accountant when the vacancy ceased to exist on the posting of a regular qualified JAO in his place. CGA's O.M. dated 4.6.1977 clearly stipulates that ad hoc promotions do not bestow any claim on the promotee for regular appointment as JAO. Further, the service rendered as ad hoc JAO would neither count towards senior/ity in that grade even if and when he is promoted to the grade on regular basis subsequently nor render him eligible for promotion to or confirmation in the grade. Also, the promotee remains liable to be reverted without notice as and when a qualified and eligible JAO becomes available. Hence, the action taken by the respondents was strictly in conformity with the above instructions.

4. The applicant's C.R., for the year 81-82, according to the respondents, was written on 21.6.83 and the adverse entry was communicated to the applicant on 8.7.83 which is well within 30 days from the receipt of his A.C.R. and during this period the applicant continued as ad hoc Junior Accounts Officer on the basis of his ACRs for the period preceeding 31st December, 1980

and the adverse remarks for 1982 were to be taken into account for determining his suitability or otherwise for future promotions. With reference to the applicant's claim of hard work and previous good record referred to in his representation dated 3.8.83, his performance record was reviewed for the years 1965 to 1982 which revealed that the applicant got a series of 'average' or 'poor' gradations. During 1963 to 1965, he was censured for his carelessness in handling cash and for ^{non-}accountal of Govt. money (Annex. R-2) and during 1975-76, he was also warned to be more careful (R-4) for non-adjustment of his LTC advance as per Govt. rules. According to the respondents, the applicant resumed duty as Sr. Accountant in the Internal Check Unit w.e.f. 24.3.83 as there was no vacant post of a Junior Accounts Officer. His reversion as Sr. Accountant is supported by the evidence in service records viz. service book, pay bill register etc. which are the basic records in such matters and that the T.A. advance of Rs. 1,400 sanctioned to him was in his capacity as Sr. Accountant and while submitting T.A. claim vide bill dated 5.6.84, the applicant himself signed the bill and other certificates recorded therein as Sr. Accountant. (Annexure R-6). The acquittance roll acknowledgment of salary etc. have been signed by the applicant as Sr. Accountant. The pay and allowances for the period from 1.3.84 to 31.3.84 were drawn by the applicant from the Regional Controller of Aerodrome. An amount of Rs. 30.75 overdrawn by him has also been recovered from him by the DDO concerned. The applicant's contention that he was victimized on account of his having been President of the Staff Association is not correct. His promotion was acting JAO in a purely ad hoc capacity was governed by the CGA's O.M. dated 4.6.77 and his reversion was in no way connected with his having been an office bearer of the Staff Association. At the time of issue of order dated 21.12.1983, reverting the applicant as Sr. Accountant, all his juniors were also reverted for want of posts. However, on finding that a further vacancy had arisen due to leave chain amongst JAOs the applicant was permitted to continue to function as JAO till 4.3.84. As the applicant was

reverted alongwith his juniors on the availability of qualified JAOs, the question of discrimination under Articles 14 and 16 of the Constitution does not arise. Since the applicant never passed JAO (C) Examination, he was not qualified to hold post of JAO on a regular basis. The action taken by the respondents to revert him w.e.f. 5.3.84 was not on account of any adverse C.Rs, but due to non-availability of post.

5. The learned counsel for the applicant said that although orders had been passed reverting the applicant as Senior Accountant on 21.12.83 the same were not implemented. The applicant went on leave from 5.3.84 to 7.4.84 but he cut short his leave and joined duties on 24.3.84 as Junior Accounts Officer. He said that an order was passed only on 24.4.85 to the effect that on his return from earned leave from 5.3.84 to 23.3.84, Shri S.P. Rajput, Senior Accountant, was posted to the Internal Check Unit of the Principal Accounts Officer, Ministry of Tourism & Civil Aviation with effect from 24.3.1984. He said when he had gone on earned leave as Junior Accounts Officer, unless he was reverted as Senior Accountant, he could not be shown in the Office Order No 200 dated 24.4.85 as Senior Accountant which is clearly malafide on the part of the respondents.

6. Shri N.S. Mehta, Sr. Standing Counsel for the respondents, however, said that the applicant held the post of Senior Accountant. In fact, he went on leave only because no post of Junior Accounts Officer was available. On return from leave, the applicant joined as Senior Accountant, he drew his T.A. as Sr. Accountant and continued to work as Sr. Accountant till he retired. Shri Mehta also referred to letter No. FE/15(3)/84/6579 dated 27.4.84 from Delhi Development Authority (Finance & Expenditure) wherein it has been specifically stated that the three seniormost Senior Accountants were Shri J.P. Saxena, Shri Daljit Singh and Shri S.K. Soni and the applicant who was senior to them was not considered fit for promotion. He said that the applicant had gone on leave

15

in the hope that he would be allowed to continue as JAO. He had actually been reverted due to there not being any vacancy of over 45 days against which he could be continued as JAO, but, unfortunately, the Department also did not find him suitable to continue as JAO. One Shri Verma joined as JAO on 19th April 1984 and has been working as such. He said that Government had every right to consider whether the applicant was fit even on ad hoc basis and there was no vacancy of Junior Accounts Officer till May 1984. Therefore, he could not be continued as JAO and had become Sr. Accountant and drew his salary as Sr. Accountant and cannot claim as Jr. Accounts Officer after his return from leave. The DPC had considered names of Sr. Accountants for promotion for vacancies which may arise from time to time. Shri KNR Pillai said that if the DPC had relied on the A.C.Rs. for the years 1981 or 1982, the findings of such DPC will be defective. He said that the DPC would meet only if there was vacancy and the contention of the respondents that there was no vacancy cannot be accepted since the DPC met. The adverse entries of 1981 were communicated to him in 1984 and the adverse entries of 1982 were communicated to him in 1983 and his representation against these has still not been disposed of. He said that the adverse action against the applicant had been taken only because he was a Union leader. In any case, there was no order reverting him as Sr. Accountant at any time and he was allowed to continue as JAO till March 1984.

7. We have gone through the pleadings and considered the arguments of learned counsel on both sides. We have no reason to doubt the statement that at the time when the applicant returned from leave there was no vacancy of 45 days duration or more where the applicant could have been continued. In the case of ad hoc appointees, the question of issuing orders of reversion is not necessary. This being a non-gazetted post, there is normally no question of handing over and taking over charge. Once the applicant went on earned leave, it is presumed that he handed

13

over the charge of the post of JAO. The only point to decide is whether the applicant had a right to be continued as JAO on ad hoc basis when vacancies arose. The respondents have clearly stated that his reversion was not on account of adverse entries for the years 1981 or 1982. The ACR for the year 1981 was written late and the communication of adverse entry was made in time. We are not convinced that there was any manipulation in the writing of the ACRs. We also note that the applicant had never passed the required examination meant for JAOS and exemption for passing such an examination cannot be a matter of right. It can be considered if otherwise found suitable. The applicant was reverted as Sr. Accountant with effect from 19.12.83 vide Office Order No. 167 dated 21.12.83 but was allowed to act as Junior Accounts Officer in the capacity of Divisional Accountant as Shri G.P. Gupta, JAO, who was transferred vice Shri Rajput proceeded on leave from 19.12.83 to 21.2.84 and could join the Division only on 5.3.84. Thereafter, the applicant went on leave upto 24.3.84 and as per reversion orders dated 21.12.83, joined duties on 24.3.84 vide Office Order dated 24.4.84, but the fact is not disputed that he joined duties in the new office on 24.3.84 whether it was on the basis of the original order dated 21.12.83 or orders dated 24.4.84. In both these orders the applicant has been shown as Sr. Accountant. We do not want to go into the question under what circumstances the DPC did not find the applicant fit even for ad hoc promotion as Jr. Accounts Officer. It has been denied by the respondents that the non-selection was due to the adverse entries of 1981 or 1982. Since the applicant has been considered for promotion, we see no reason to interfere with the orders passed by the respondents. In the circumstances, no case for granting relief as prayed for by the applicant has been made out. The application is accordingly dismissed. There will be no orders as to cost.

(S.R. SAGAR)

Member (J)

Proposed in open
Court by me

(B.C. MATHUR)

Vice-Chairman

9.5.91