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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.609/86

Date of decision:- January 1985

Shri S.K.Singhal .. Applicant

versus

Union of India through
Secretary,
Ministry of Communications & anr.. Respondents

CORAM: THE HON'BLE SHRI P.C.JAIN, MEMBER(A)
THE HON'BLE SHRI J.P.SHARMA, MEMBER(J)

For the Applicant .. In person.

For the Respondents .. Sh.A.K.Behera, proxy
counsel for Sh.P.H.
Ramchandani, Sr.Counsel

JUDGEMENT

Hon'ble Shri P.C.Jain, Member(A):-

The applicant while posted as Assistant in the Ministry of Communications, New Delhi, filed this OA under Section 19 of the Administrative Tribunals Act, 1985 assailing the Office Memorandum dated 8.8.84(Annexure A) by which he was informed, with reference to his representations dated 4.7.84 and 31.7.84, that he was appointed as Section Officer only on ad hoc basis upto 31.7.84, and that the ad hoc appointment does not confer any right for his continuance as Section Officer and on review, it was decided not to continue the ad hoc appointment beyond 31.7.84. He prayed for a declaration that the impugned order dated 8.8.84

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is null and void and deserves to be quashed and that the applicant be granted continuity of seniority on regular basis from 1.8.84 with all monetary benefits as allowed under C.C.S.

Rules to the Section Officers in the Ministry of Communications.

2. The respondents have contested the OA by filing a reply to which rejoinder was also filed by the applicant. We have perused the material on record and also heard the applicant, who argued his case in person and the learned proxy counsel for the counsel for the respondents.

3. Briefly stated, the facts relating to the adjudication of the issue before us are that the applicant was appointed as Assistant in the cadre of Assistants in the Ministry of Communications, Government of India on 7.5.73 after passing an examination conducted by the UPSC. His case is that he was promoted in the grade of Section Officer on 9.10.80 after holding of the Departmental Promotion Committee in the Ministry of Communications and that his confidential record carried no adverse remarks or adverse entry and, therefore, the Department of Personnel and Administrative Reforms issued the order for inclusion of the applicant's

name in the select list of Section Officer for the year 1982 and he was also ordered to be transferred in the capacity of Section Officer to the Ministry of Energy, Department of Power, on 30.12.83. He was, however, not allowed to join the Department of Power and when he tried to find out the reason for the same, he was informed that there were certain adverse remarks against him which shall be communicated to him. Thereafter, he was communicated on 9.3.84, the following adverse remarks:-

" Mediocre officer who takes leave frequently". It is on account of the above adverse remarks that the applicant contends that his name was not included for confirmation as Section Officer though he was the senior-most and fit for appointment. It is further contended that once he had been selectd by the D.P.C, there was no basis for holding the second D.P.C for considering the case of the applicant for the post of Section Officer. The impugned order dated 8.8.84 is said to have been received on 14.8.84. It is stated to be the impugned reversion order by which he was reverted to the post of Assistant with effect from 1.8.84. This order is stated to be arbitrary and mala fide. This

It is also submitted that the Assistants who are junior to the applicant have been placed on select list and have been officiating as Section Officer in the Ministry of Communications.

The names of such juniors have also been mentioned in the OA. The impugned order of reversion is said to be amounting to penalty. It is also contended that this amounts to reduction in rank and as such is violative of the provisions of Article 311 of the Constitution as no show cause notice was given to him. He made a representation to the Minister of Communications on 5.7.84 and another on 14.3.85. He also gave a legal notice to the Secretary, Government of India, Ministry of Communications, on 30.12.84.

4. The respondents in their reply raised a preliminary objection about the OA being barred by limitation. This objection, however, does not survive now in view of the order passed by a Bench of the Tribunal on 8.12.86 wherein it is stated that "in the facts and circumstances revealed before us we feel that in the interest of justice, delay if any, in the filing of the application should be condoned" and accordingly, the OA was admitted. The case of the respondents is that in September, 1980, the D.P.C. of the cadre of Ministry of Communications assessed

the applicant as fit for promotion to the grade of Section Officer on ad-hoc basis(emphasis supplied) and in the order of his seniority, he was promoted to officiate as Section Officer on purely ad hoc basis, against a short-term vacancy w.e.f.8.10.80 to 27.12.80. He was again promoted as Section Officer purely on ad hoc basis w.e.f.19.5.81 to 10.7.81. Thereafter, he was appointed from time to time on different short-term vacancies,purely on ad hoc basis as indicated in the reply. The details given in this regard show that the applicant worked as Section Officer on ad hoc basis from 11.7.81 till 31.7.84, though in 10 spells yet hardly with any real break. It is further stated that the suitability of the applicant along with other Assistants of the cadre of Ministry of Communications for inclusion in the select list of Section Officer grade for 1982 was assessed by the D.P.C.of the cadre in December,1983 and the D.P.C. adjudged the applicant as 'unfit' for inclusion in the said select list. The recommendations of the D.P.C. were communicated to the Department of Personnel & Training on 20.12.83(Annexure R-1),but in the meanwhile, that department issued a list containing the names of 125 persons, including the applicant,

who were within the prescribed range of seniority to fill up the 1982 select list vacancies earmarked for the seniority quota vide OM No.5/1/82-C.S.I(Vol II) dated 30.12.1983(Annexure R-2). However, in this OM it was stipulated that before appointing these persons as Section Officer, it should be ensured, *inter alia* that the D.P.C.duly approved the persons for inclusion in the select list and in case the conditions specified in the OM were satisfied, the applicant was to be relieved for being appointed as Section Officer in the Department of Power. As the applicant had been found 'unfit' for inclusion in the select list the official was not relieved for appointment as Section Officer in the Department of Power and the reasons for the same were communicated to the Department of Power and the Deptt.of Personnel and Training vide Ministry's OM dated 27.1.84. It is conceded that the adverse entry in the ACR of the applicant for the year 1982 was communicated to him in March,1984. But it is stated that according to the records this was not taken into consideration by the D.P.C which met in December,1983. It is also stated that applicant was censured by an order dated 13.10.83 on the proven charge of wilfully disobeying Government orders issued to him to proceed to Assam on election duty. The applicant

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is stated to have represented against the adverse entries in his ACR and after examining the same a reply is said to have been sent to him vide letter dated 18.6.85(Annexure R-5). It is further stated that the purpose of the DPC held in September, 1980 was to assess the suitability of available officers, in order of their seniority, to prepare a panel of Assistants on ad hoc promotion to the grade of Section Officer while the purpose of the DPC held in December, 1983 was for considering the fitness of the senior-most Assistants, including the applicant, for inclusion in the select list of Section Officers Grade, 1982 from the seniority quota. As the D.P.C. held in December, 1983 had found the applicant 'unfit' for inclusion in the select list of Section Officers grade, it was felt necessary to resubmit his case before the D.P.C for assessment for his continued appointment as Section Officer on ad hoc basis and the D.P.C. considered the applicant as 'not fit' for continued ad hoc appointment in Section Officers grade and in view of this recommendation, applicant's ad hoc appointment was not renewed beyond 31.7.84. He represented against the decision of the D.P.C and a suitable reply was given to him vide order dated 8.8.84. It is further stated that while considering the officials within the zone of

consideration for inclusion of their names in the select list of Section Officers grade against seniority quota for the years 1983, 1984 and 1985 suitability of the applicant was assessed by the D.P.C. of this cadre but on all the three occasions, he was assessed 'unfit' for inclusion in the select list but the officials junior to him who were within the zone of consideration and found fit by the D.P.C. for regular promotion to Section Officer grade have been promoted. The case of the respondents is that the applicant's reversion to the post of Assistant on the D.P.C. not finding him fit to continue to hold the post of Section Officer does not amount to any penalty.

5. We have given our careful consideration to the rival contentions of the parties. There is nothing on record to rebut the contention of the respondents that the selection of the applicant by the D.P.C. in 1980 was only for an ad hoc appointment and that applicant continued to work as Section Officer till 31.7.84 only on ad hoc basis. Reversion from such ad hoc appointment to the substantive post does not amount to a penalty of reduction in rank and as such the question of violation of the provisions

of Article 311 of the Constitution does not arise.

6. The applicant has a right to be considered for inclusion in the select list for the year 1982 as also during the subsequent years. He had no legal right to be selected if not otherwise found fit. The question for consideration is whether the censure by order dated 13.10.83 or adverse remarks in the ACR for 1982 which were communicated to him in March, 1984 had anything to do with his non-selection by the D.P.C which met in December, 1983 for preparing the select list for the year 1982. For this purpose, we have perused the relevant departmental file which was made available to us. The relevant note referred to the D.P.C. clearly mentioned that as per the administrative instructions issued by the Department of Personnel & Administrative Reforms vide their note No.21/5/70-Est(A) dated 15.5.71, the penalty of censure has not to be treated as a bar for promotion. It is further mentioned in the note that the following adverse remarks made in his CR for the year 1982:

"A mediocre officer. Avails leave frequently". ,

it is seen that this entry has not been communicated to the official and the same has to be ignored. Thus, it is clear that the

uncommunicated adverse remarks were not taken into account by the DPC while assessing the suitability of the applicant for inclusion of his name in the select list for the year 1982. It may be mentioned that there may be good reasons for the non-selection of the applicant for inclusion of his name in the select list on the basis of the quality of the reports earned by him. The applicant has alleged mala fides but no particulars whatsoever of the alleged mala fides have been given nor any person against whom mala fides might have been alleged has been made a party by name. Accordingly, the plea of mala fides cannot be stated to have any basis. Even after applicant's reversion his case was referred to the D.P.C. specifically on this point.

7. In the light of the foregoing discussion, we are of the considered view that the OA is devoid of merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

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

P.C.Jain
(P.C.JAIN)
MEMBER(A)

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