

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1055/86
T.A. No.

199

DATE OF DECISION 27.5.1991

Shri M.R. Singh

Petitioner

In Person

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L. Verma,

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? —
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether it needs to be circulated to other Benches of the Tribunal ? —

AB
(AMITAV BANERJI)
CHAIRMAN
27.5.91.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA-1055/86

DATE OF DECISION: 27.5.1991.

SHRI M.R. SINGH

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

IN PERSON

FOR THE RESPONDENTS

SHRI M.L. VERMA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

Shri M.R. Singh, the applicant, working in the Ministry of Urban Development, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order No.8/32014/2/85 Adm.I dated 12.11.1986, posting him as Section Officer (Special) in the Works Division w.e.f. 12.11.1986. The case of the applicant is that he was working as Section Officer, CSS in the office of Director General (Works), Central Public Works Department when he was appointed as Desk Officer and posted in the Delhi Division in the Secretariat vide Ministry of Works and Housing Office Order No.231/83 issued on 28th December, 1983. The appointment of Desk Officer entitles a special pay of Rs.75/- per month (since revised to Rs.150/- p.m.) from the date of assuming the charge. He applied for 72 days leave on average pay w.e.f. 7.7.1986 to 16.9.1986 for appearing in the Limited Departmental Competitive Examination, 1986. He reported

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for duty on expiry of his extended leave in the forenoon of 22nd September, 1986 and awaited for posting orders as Desk Officer for 51 days. On 12th November, 1986, the applicant was adjusted against the post of Assistant Director in the Directorate of Estates for the period 22.9.1986 to 11.11.1986 which carried no special pay. Thereafter he was appointed as Section Officer (Special) in the Works Division w.e.f. 12.11.1986 where his pay was to be regulated in accordance with the Department of Expenditure's OM No.F.10(24)-E.III/B-60 dated 4th May, 1961. On receipt of the order posting him as Section Officer (Special) instead of Desk Officer, he met the Director (Admn.) and explained to him that he had not given his consent for appointment to an ex-cadre post of Section Officer (Special) in the Works Division and that being senior to some of the existing Desk Officers in the Ministry he should not be deprived of his regular appointment against the post of Desk Officer. He also made a written request vide his representation dated 12.11.1986 addressed to Secretary, Ministry of Urban Development. This was followed by another representation dated 17.11.1986 requesting the respondent to withdraw the unconstitutional and arbitrary order, posting him as Section Officer (Special) immediately but not later than 21.11.1986, failing which he would seek legal remedy. The applicant contends that on his return from leave the juniormost Desk Officer should have been reverted to accommodate him as Desk Officer, keeping in view his seniority. He claims that he is senior to 7 Desk Officers in the Ministry as listed in paragraph (xv) (c) (page 8 of the paper book). For his reposting as Desk Officer on return from leave he relies on the Department of Personnel & Training OM No.12/1/85-CS(1) dated 19.9.1983 which stipulates that the appointment of a Section Officer as Desk Officer against a leave vacancy will be made on ad hoc basis and that he would be reverted as Section

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Officer when the regular incumbent resumes duty on return from leave.

By way of relief the applicant has prayed that:

- a) the order dated 12.11.1986 issued by the respondents be quashed with the direction to the respondent to repost the applicant as Desk Officer w.e.f. 22.9.1986 (F/N) without any break;
- b) the respondent should be further directed not to appoint the applicant on the ex-cadre post of Section Officer (Special) against his will.

2. The stand of the respondent as evident from the written statement is that the petitioner has not exhausted all the departmental remedies available to him and that he should have waited for a reasonable time for disposal of his representation before filing his application in the Tribunal on 26.11.1986. It is further contended that the application is not maintainable for non-joinder of affected parties. The post of Desk Officer is a non-promotion post for Section Officer and therefore there is no question of any reversion being involved in his being posted as Section Officer (Special). It is further submitted that had the applicant awaited the disposal of his representation there would have been no need to move the Tribunal, as he has already been appointed as Desk Officer w.e.f. 3.12.1986. The respondent also deny that the officer has any inherent right that once a Desk Officer will always be a Desk Officer.

The applicant has filed a rejoinder, reiterating his position.

Shri M.L. Verma, the learned counsel for the respondent also cited the following case law to fortify the case of the respondent :-

- i) AIR 1977 SC 1701 Ranjeet Mal v. G.M., Northern Railway, New Delhi; and
- ii) 1988 (8) ATC 601 Ranjan Paul v. U.O.I. & Ors.

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3. We have heard the applicant in person and Shri M.L. Verma alongwith Ms. Sunita Sagar, the learned counsel for the respondent and considered the submissions made and the record placed before us carefully. We are not persuaded to accept the plea of the respondent that the continuation of the Section Officer as Desk Officer appointed in the leave vacancy of the applicant after his return from leave was in public interest. The instructions on the subject are unambiguous and the respondent should have abided by the instructions contained in the Department of Personnel's O.M. No.12/1/85-CS-I dated 19.9.1985. There is no escape route available to the respondent, as will be seen from the extract of the Department of Personnel's letter dated 19.9.1985 reproduced below:-

"OM No.12/1/85-CSI dated 19.9.1985

Sub: Desk Officer Scheme - Clarification

The undersigned is directed to refer to Rehabilitation Division OM No.8-32014/4-/85-Adm.I dated 27th May, 1985 on the subject mentioned above and to clarify the position seriatim on points raised in para 2 thereof as under:-

- (i) The appointment of a person as Desk Officer against a leave vacancy will be on adhoc basis and he will be reverted as Section Officer when the regular incumbent resumes duty on return from leave. The arrangement of names of persons in the panel is not necessarily be in the order in which they are to be appointed as Desk Officers;"


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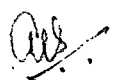
In the above view of the matter, the applicant on his return from leave on reporting for duty w.e.f. 22.9.1986 should have been reposted as Desk Officer. We order accordingly.

In the facts and circumstances of the case, we set aside paragraph 10 of the impugned order dated 12.11.1986, relating to the posting of the applicant as Section Officer (Special). We further direct that the applicant shall be deemed to have been reposted as Desk Officer for the period from 22.11.1986 to 2.12.1986, the date preceding the day on which he was reposted as Desk Officer. He shall also be paid all consequential benefits, including payment of special pay and allowances in accordance with rules.

The respondent shall implement this order within four weeks from the date of communication of this order. We further direct that the respondent shall pay costs amounting to Rs.200/- to the applicant who has been compelled to seek justice by knocking at the door of the Tribunal.

The O.A. is disposed of as above.


(I.K. RASGOTRA)
MEMBER(A)


(AMITAV BANERJI)
CHAIRMAN