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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 123/87 1987
T.A. No.

DATE OF DECISION 19.4.1988

Shri K. Sivaswamy Petitioner

Ms. Mridula Ray Advocate for the Petitioner(s)

Versus

D.G.S. & D. Respondent

Shri N.S. Mehta Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

S.P. Mukerji
19.4.88
(S.P. Mukerji)
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman(Judl.)

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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-123/87

Date: 19.4.1988

Shri K. Sivaswamy Applicant

Versus

D.G.S. & D. Respondent

For Applicant Ms. Mridula Ray, Advocate.

For Respondent Shri N.S. Mehta, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The short point for consideration in this application filed under Section 19 of the Administrative Tribunals Act, 1985 is whether the retrospective reversion of the applicant from the post of Assistant Director of Supplies (Grade I) to the post of Assistant Director of Supplies (Grade II) by the impugned order dated 29th March, 1985 and consequent recovery of a sum of Rs.1090.30 as a result of the said order is legally sustainable.

2. The facts of the case are not disputed. The applicant has been working as Assistant Director of Supplies (Grade II) continuously w.e.f. 8.4.1965 in the DGS&D, New Delhi. By an order dated 12.5.1983, he was promoted to officiate as Assistant Director of Supplies (Grade I) on purely temporary and ad hoc basis for a period of six months w.e.f. 4th May, 1983. By a separate order issued in June, 1983, his pay was also fixed as Rs.1250/- in the post to which he was promoted. He was ^{not as} reverted after the expiry of the six-month period from 4.5.1983. By Office Order dated 13.2.1982, the applicant was allowed to continue to officiate as Assistant Director of Supplies (Grade I) on purely temporary and ad hoc basis for a further period upto 3.5.1984 or till the

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posts were filled on regular basis, whichever was earlier.

3. Thus the applicant was not reverted to the post of Assistant Director (Grade II) after 3.5.1984. He continued to discharge the duties as Assistant Director (Grade I) beyond 3.5.1984. He was also not only paid in the higher scale of Assistant Director (Grade I) beyond 3.5.1984 but was also allowed annual increment in the grade w.e.f. May, 1984. He was paid Rs.1300/- per month in the higher scale of Assistant Director (Grade I) from May, 1984 to March, 1985.

4. By Office Order dated 29.3.1985, the applicant was reverted to the post of Assistant Director of Supplies (Grade II) w.e.f. the forenoon of 4.5.1984. By another office order dated 17.4.1985, his pay was fixed at Rs.1200/- w.e.f. 4.5.1984 in the lower post of Assistant Director (Grade II).

5. The relief sought in the present application is against the recovery of a sum of Rs.1090.30 allegedly overpaid to the applicant during his period of ad hoc officiation in the post of Assistant Director (Grade I). The applicant has also prayed that the amount recovered be refunded to him with interest at the rate of 18 per cent per annum from the date of recovery.

6. The contention of the respondent is that the Union Public Service Commission did not accord approval to the further continuance of the applicant beyond one year even after repeated attempts. The respondent has, however, conceded that the duties assigned to the posts of Assistant Director of Supplies (Grade I) and Assistant Director of Supplies (Grade II) are the same. The reversion order dated 29.3.1985 ^{which is} was issued to the applicant, along with 8 other officers, to the grade of Assistant Director of Supplies (Grade II) w.e.f. the forenoon of 4.5.1984, was made only with a view to regulate their pay.


7. During the arguments, the learned counsel for the respondent urged that the claim of interest at the rate of 18 per cent is in the nature of penalty and the Tribunal has no jurisdiction to award damages which could be awarded only in cases with tortious liability. As to the reversion with retrospective effect, the learned Counsel for the respondents did not cite any authority in support of such reversion.

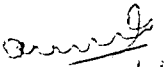
8. The admitted factual position is that the applicant officiated in the higher post from 4.5.1983 to March, 1985, though on an ad hoc basis. In similar cases, the Supreme Court has held that "justice requires that the Government should not claim any refund of any part of the salary paid to the respondents upto today. Partly in view of their understanding and partly because of the requirement of justice, we direct the Government not to do so." (Vide State of Punjab and Others Vs. Balbir Singh, etc., 1976(1) SLR 36 at 48; and Smt. P. Grover Vs. state of Haryana and Another, 1983(3) SLR 473 at 474.) It has been held in State of Haryana Vs. Dev Dutt Gupta and others, 1970 SLR 776, that administrative order of reversion cannot have retrospective effect. Similar view was expressed in Harbhajan Singh Vs. State of Punjab, 1978 SLJ 122. The Supreme Court itself has held in P.W. Aggarwal and others Vs. State of UP and others, AIR 1987(2) SC 121 at 128 that even though the Government has, under proviso to Article 309 of the Constitution, power to frame rules regarding conditions of service with powers to amend the rules with retrospective effect, that power should not take away or impair vested rights. Accordingly, retrospective reversion and recovery of pay consequential thereon in this case, to our mind, have been totally illegal.

9. The relief claimed by the applicant regarding

interest on the amount wrongly recovered can be adjudicated upon by the Tribunal as it also concerns "service matters" within the meaning of Section 3(q) of the Administrative Tribunals Act, 1985. In exercising its jurisdiction, the Tribunal shall be guided by the principles of natural justice and we are of the opinion that the Tribunal is competent to award interest in appropriate cases.

10. In the light of the above, we are of the view that reversion of the applicant with retrospective effect was bad in law and that the applicant is entitled to the refund of the sum of Rs.1090.30 which has been recovered from his pay. In addition, we also direct that the said amount should be refunded to the applicant with interest calculated at the rate of 10 per cent per annum from the date of recovery to the date of refund. The refund should be made within a period of three months from the date of issue of this order. In the circumstances, there will be no order as to costs.


(S.P. Mukerji)
Administrative Member


18/4/88
(P.K. Kartha)
Vice-Chairman (Judl.)