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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Registration No. C.A.1507 of 1987

Date of order 23.2.1990

Prabir Dass

.. Applicant

Ms S. Janani

.. Counsel for the applicant

- versus -

Union of India and others

.. Respondents

Mr. S.N. Sikka

.. Counsel for the respondents

CORAM:

Hon'ble Shri G.Sreedharan Nair, V.C.

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

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

(G.Sreedharan Nair)

Vice-Chairman

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Applicant

- versus -

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Respondents

CORAM:

Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.C. Jain, Member (Administrative)

Counsel for the applicant : Ms S. Janani.

Counsel for the respondents : Mr. S.N. Sikka.

ORDER

(Passed by Hon'ble Shri G.Sreedharan Nair, Vice-Chairman):-

The applicant while working as Senior Clerk in the Personnel Department of the Northern Railway was sent on deputation to its Vigilance Organisation by the notice dated 28.8.1985. In July, 1986, he was appointed as Senior Vigilance Inspector. By the order dated 18.2.1987, the Additional Chief Vigilance Officer placed the applicant under suspension in contemplation of disciplinary proceedings. The suspension was revoked by the Chief Vigilance Officer on 29.6.1987, but on the same day the applicant was repatriated to his parent department. It is alleged by the applicant that though he reported for duty before the Senior Personnel Officer, from 30.6.1987 to 10.7.1987, no orders were issued and that in the meanwhile on 7.7.1987 the Senior Personnel Officer passed an order placing him under suspension in contemplation of disciplinary proceedings.

2. It is stated that though representations were submitte

by the applicant against the said order, no action has been taken.

3. The applicant prays for quashing the order of suspension issued on 7.7.1987 and also for quashing the order dated 29.6.1987 repatriating him to the parent department. A direction is also prayed for regarding the arrears of salary for the period from 18.2.1987.

4. It is urged that the order of reversion is punitive as it was with mala fide intention. It is pointed out that so far no memorandum of charges has been served on the applicant, ~~and that~~ the continued suspension is illegal.

5. In the reply filed on behalf of the respondents, it is stated that as the applicant was caught red-handed by the C.B.I. while he was demanding and accepting illegal gratification on 16.2.1987, a case has been registered against him under section 161 of the I.P.C. read with section 5 of the Prevention of Corruption Act.

6. After hearing counsel on either side, we are satisfied that the grievance of the applicant is genuine.

7. It was only in August, 1985 that the applicant was sent on deputation to the Vigilance Organisation. It is not disputed that normally he was eligible to continue there for a period of four years. It is on record that while on deputation he was appointed as Senior Vigilance Inspector in the grade of Rs.550-750, a higher grade than what the applicant was holding in his parent department. There is also a specific averment

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in the application that the order of reversion is punitive. The circumstances well support the averment. On 18.2.1987 the applicant was placed under suspension by the Additional Chief Vigilance Officer in contemplation of disciplinary proceedings. After the lapse of three months the applicant wrote to the Chief Vigilance Officer for enhancement of the subsistence allowance. Without taking action thereon, the suspension was revoked by the order dated 29.6.1987. On the same day the applicant was repatriated to his parent department. No reason is stated in the order for such an abrupt repatriation. The respondents have no case that the post was abolished or that there was a demand from the parent department for repatriating the applicant. In paragraph 15 of the application the applicant has set forth the various grounds in support of the application. They have not been met in the reply filed by the respondents.

8. Counsel of the applicant invited our attention to the decision of the Supreme Court in K.H. Phadnis v. State of Maharashtra [1971(2) SLR 345]. The decision is on all fours with the present case. It is held therein that in a case of this nature, the matter has to be viewed as one of substance and all relevant factors to be considered in ascertaining whether the order of repatriation is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. It was further held that if there is ~~not~~ evidence that the order of reversion is not a pure accident of service, but an order in the nature

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of punishment, Article 311 of the Constitution will be attracted.

9. In the instant case as it is not disputed that the applicant was holding a higher grade in the post of Senior Vigilance Inspector, the reversion was to a lower grade. There is also the circumstance that the order of reversion was passed in the wake of certain criminal proceedings instituted against the applicant and following the order placing him under suspension in contemplation of disciplinary proceedings. In the circumstances, we accept the plea of the applicant that the order of repatriation was punitive. As such it has to be quashed, and we do so. However, there is no scope for continuation of the original deputation arrangement, for even according to the applicant the deputation could not have lasted for more than four years, which period has already expired.

10. The relief claimed by the applicant for quashing the order of suspension issued on 7.7.1982 also deserves acceptance. From the order it is seen that it ~~is~~ ^{was} in contemplation of disciplinary proceedings that the applicant was placed under suspension. Evidently, the reference in the order to the particular rule empowering the suspension is wrong. In the reply filed by the respondents there is no statement as to why the applicant was placed under suspension. There is only the reference to the registration of a criminal case against the applicant. Admittedly, no memorandum of charges has been issued till date under the Railway Servants (Discipline and Appeal) Rules. There is no case for the respondents that any review was conducted or any decision taken to continue the suspension. In the circumstances, the continued suspension

of the applicant is not at all justified. Hence, we direct the second respondent, the Senior Personnel Officer (Headquarters), to revoke the suspension forthwith and to permit the applicant to join duty.

11. The original order of suspension was passed on 18.2.1987 and without stating any reason it was revoked by the order dated 29.6.1987. Even thereafter the applicant was not admitted to duty in his parent department and the order of suspension was issued on 7.7.1987 in contemplation of disciplinary proceedings, which proceedings have not yet been instituted. As such, the respondents are bound to pay the applicant the salary from 18.2.1987 till he is admitted to duty less the subsistence allowance that has been paid. The respondents shall do so within two months from the date of receipt of copy of this order.

12. The application is disposed of as above.

C. C. 23/4/90
(P.C. Jain)
Member (A)

20/2/1990
(G. Sreedharan Nair)
Vice Chairman.