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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 220/87
T.A. No.

198

28-5-1987

DATE OF DECISION

Shri S.C. Saini

~~Petitioner~~ Applicant

Shri Kulwant Swarup,

Applicant

Advocate for the ~~Petitioner(s)~~

Versus

The Inspector-General (Prisons)
Central Jail, Tihar, Delhi & Urs.

Respondents

Shri B.R. Prashar

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether to be circulated to all the Benches ? *N*

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)
JUDICIAL MEMBER
28-5-1987

S.P. Mukerji
(S.P. MUKERJI)
ADMINISTRATIVE MEMBER
28-5-1987

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Date of Decision: 28.5.1987.

VS.

CORAM:

Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

For the respondents: Shri B.R. Prashar, Counsel.

JUDGMENT.

2. While working as an Upper Division Clerk, the applicant

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was transferred as Assistant Superintendent (Central Jail) in the pay scale of Rs. 425-700 by the Delhi Administration vide order dated 22.9.1986. On 27.9.1986, the office of the Inspector-General of Prisons, Central Jail, Delhi, posted him to Jail No. 2. According to the applicant, the Superintendent of Jail No. 2, Shri V.K.S. Chauhan obliquely demanded some gratification on 13.11.1986 and on his not being able to oblige the Superintendent, he incurred the animus of the Superintendent and was posted for night duty work. He recorded some odious remarks in the Daily Diary alleging that the Superintendent will manipulate some thing wrong against him and he also recorded some ^{irrelevant} remarks in the night duty register. [^] The Superintendent called for his explanation on 17.11.1986 to which he replied on the same day that he could not please the Superintendent and was against illegal gratification. On 3rd December, 1986, the applicant was relieved of his duties as Assistant Superintendent and posted to Jail No. 4 and within a month thereafter, on 9.1.1987, he was relieved from Jail No. 4 also and directed to report to the Deputy Secretary (Services), Delhi Administration, Delhi. The Deputy Secretary (Services) posted him back as Assistant Superintendent, Jail with a direction to the D.I.G. Prisons that since the applicant was selected for the post of Assistant Superintendent, Jail, by a duly constituted D.P.C./S.S.B., he could not be surrendered in a summary fashion. According to the Respondents, the Inspector-General, Prisons, after considering the performance of the applicant and the relevant remarks recorded by him and getting the matter enquired into, found him "temperamentally unfit for the job in Jail" and relieved him. After the Deputy Secretary (Services) posted him

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back to the Jails Department, the full facts culminating in the applicant's transfer from the Jails Department were conveyed to the Services Department on 13.1.1987 and the applicant was not permitted to join duty on 12.1.1987. The Services Department acceded to the request of the Delhi Administration and posted the applicant to the Delhi College of Engineering against a vacant post on 29.1.1987. The applicant submitted a representation to the Chief Secretary, Delhi Administration, on 28.1.1987 and also sent a telegram to the Lieutenant Governor, Delhi, for releasing his salary for the month of January, 1987. The applicant has also alleged that in his absence on 13.1.1987, three unknown persons threatened his wife while he was away, saying that the applicant should stop going to the Jails Department. The applicant did not join the Engineering College and was not allowed to work in the jails Department. According to the respondents, the applicant was appointed as Assistant Superintendent, Central Jail, Delhi, vide order dated 12.9.1986 "on transfer on deputation basis in the scale of Rs. 425-700 as purely ad-hoc and emergent arrangement for a period of six months only or till the posts are filled on regular basis, whichever is earlier." It was also mentioned that this appointment "will not confer any right on these officials for seniority or for regular appointment to this post or any other equivalent post in this Administration." After joining Jail No. 2, the applicant was found indulging in loose talks with the Warders, thus affecting the jail discipline. He wrote irrelevant and uncalled for comments in the night duty register. The applicant was called by the D.I.G. Prisons and it was found that he was temperamentally unfit for serving in Jails.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main issue before us is whether the applicant could have been reverted from the post of Assistant Superintendent, Jails, to a lower post without any show cause notice. The contention of the learned counsel for the respondents is that since the applicant was sent on deputation in purely temporary and ad-hoc capacity for a limited period, his repatriation cannot be deemed to be punishment and violative of Article 311 or Articles 14 and 16 of the Constitution. We need not labour this point as we have a cut and dry precedent decided by the Principal Bench presided over by the Hon'ble Chairman, Mr. Justice K. Madhava Reddy, in O.A. No. 41/87 SHRI NARAIN SINGH Vs. THE LT. GOVERNOR, DELHI & Ors. This case pertained to another employee of the Delhi Administration, who was working as Deputy Superintendent, Social Welfare, in the pay-scale of Rs. 550-900 and, like the applicant in the instant case, deputed to the Central Jail Delhi in the ^{& higher} pay-scale of Rs. 650-1200. Like the instant case, that appointment was also made on a purely ad-hoc and emergent basis and in that case too, the Inspector General of Prisons ^{& after some time} relieved him of his duties and directed him to report to the Services Department for further posting. The Services Department advised him to report to his parent Department of Social Welfare where he was posted to a lower scale of Rs. 550-900 as against the scale of Rs. 650-1200 to which ^{had been} he was transferred on deputation in the Jails Department. It was held by the Principal Bench that repatriation to the parent Department to his original grade did not constitute imposition of any penalty. The Principal Bench observed as follows in the above case:-

"2. The applicant, admittedly, belongs to the Social Welfare Department and was in the pay-scale of Rs. 550-900.

He was, so to say, on deputation to the District Jail and was posted as Deputy Superintendent, Grade-I, in the said Jail. He was merely repatriated to his parent Department and on repatriation was posted against a post carrying a pay scale of Rs. 550-900. He does not suffer any detriment that way. The benefit which he had secured by virtue of his deputation to the District Jail as Deputy Supdt. Grade I, he could not claim as of right in his parent department. No deputationist can claim to be continued as of right on deputation and refuse to be repatriated to the parent department.

3. No doubt, he was posted as Dy. Superintendent, Grade I, Central Jail, Delhi, by an order dated 25th July, 1986; but as already noticed above, that was on purely ad hoc and emergent basis. The period of deputation was for six months or till the posts are filled on regular basis, whichever was earlier. No doubt, the period of six months was not expired. But the order itself clearly states that the appointment was purely on ad hoc and emergent basis and would not confer on them any right for seniority or for regular appointment to the post or to any other equivalent post.

4. Reliance was placed upon the judgment of the Supreme Court in State of UP Vs. Sughar Singh, AIR 1974 SC 423. That is a case where promotions were made on officiating basis and reversions of seniors were ordered while retaining the juniors. Reversion from the officiating post to the substantive post in the circumstances of that case was held to constitute reduction in rank and the order violative of Article 311. That was not a case of repatriation of an officer to his parent department. That judgment cannot be of any assistance to the applicant.

5. The applicant also relied upon another judgment of the Supreme Court in Jarnail Singh & Ors. V. State of Punjab, 1986 (2) SLR 278 in which the Supreme Court held that where an order terminating the services of ad-hoc employee simpliciter (innocuous) is challenged was penal and it was grounded on misconduct, it is competent upon the court to lift the veil and see the real circumstances as well as the basis and foundation of the order. This case, too, is of no avail to the applicant, for it dealt with an order of termination of services of an ad hoc employee. The applicant's services have not been terminated; he has only been repatriated to the parent Department which could never be termed as punishment. It is an innocuous order which casts no stigma.

6. The applicant next contended that the impugned orders have been made by an authority lower in rank than the appointing authority. No doubt, the order dated 25th July, 1986 appointing the applicant as Dy. Supdt., Central Jail, Gde-I, Delhi was made by the Administrator and the applicant was relieved from that post by Inspector-General, Prisons. But the Inspector-General merely directed the applicant to report to the Secy. (Ser.) Delhi Admn. It was the Secy. (Services) Delhi Admn. that relieved the applicant and not the Inspector-General, Prisons. Even otherwise, this contention does not merit acceptance because as already held above by us, the repatriation to the parent department does not constitute imposition of any penalty by way of disciplinary action. Hence, no question of the applicant being relieved by an authority lower rank than the appointing authority vitiating the order arises."

4. The circumstances in the instant case being more or less identical, we hold that the applicant has no right to continue on

deputation as Assistant Superintendent, Jails and his
reversion and ^{his} posting to the Delhi College of Engineering
^{to}
cannot be faulted. He should be given a notice to join his
new posting within a specified period of receipt of the notice
and the period between his date of relief from the Jails
Department ^{and} ~~to~~ the date of his taking over in his new posting
should be regularised by granting him such leave as is due to
him, if the applicant so chooses.

5. The application is disposed of in the above terms,
with no order as to costs.

Ch. Ramkrishna Rao
(CH. RAMAKRISHNA RAO) 28.5.87
JUDICIAL MEMBER
28-5-1987.

S.P. Mukerji
(S.P. MUKERJI) 28.5.87
ADMINISTRATIVE MEMBER
28-5-1987.