

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.687
T.A. No.

1987

DATE OF DECISION 11.7.1988

Shri K.P.Sharma, Petitioner

Shri R.P.Oberoi, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri P.P.Khurana, Advocate for the Respondent(s)

CORAM :

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

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.
(S.P. Mukerji)
Administrative Member

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

P

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

....

Regn.No.OA-687/1987

Date of Decision 11.7.88

Shri K.P.Sharma

... Applicant.

Vs.

Union of India & Others.

... Respondents.

For applicant

... Shri R.P.Oberoi,
Advocate.

For respondents

... Shri P.P.Khurana,
Advocate.

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

JUDGEMENT

(Judgement of the Bench delivered by
Shri P.K. Kartha, Vice Chairman(Judl.)

The applicant who is working in the Directorate of Defence Estates filed this application praying that the impugned order dated August, 1986 whereby he was reverted from the post of Attached Officer, Junior Scale of Group A to the post of Assistant Defence Estate Officer with effect from 30.6.1986, be quashed. He has also prayed for the grant of regular promotion to Group A in accordance with the relevant administrative instructions.

2. The facts of the case in brief are as follows. The applicant joined service in October, 1958 as a Section Officer in C.P.W.D. In 1964 he was selected for appointment as Superintendent Grade I (Group 'C' post) under the Directorate of Military Lands and Cantonments (now called Directorate of Defence Estates) which ^{is} administratively under the Ministry of Defence. He was confirmed as Superintendent Grade I with effect from 1.9.1969.

3. The applicant was promoted as Assistant Military Estate Officer (Group 'D') post initially on ad hoc basis with effect from 26.11.1971 and continued to hold that post without any break till his promotion to a Group 'A' post on 8.6.1981. On 22.2.1983, the Ministry of Defence issued an order stating that on the recommendations of the Departmental

Promotion Committee, it has been decided to promote eight Superintendents Grade I, including the applicant, who are working as Assistant Military Estate Officers (Technical) on ad hoc basis to officiate as Assistant Military Estate Officer (Technical) with effect from 23rd December, 1982 and until further orders. It was also stated that these officers will be on probation for a period of two years. It was further mentioned that three officers including the applicant who had already passed the departmental examination would continue to officiate in the junior scale of Group 'A' on ad hoc basis.

4. The applicant had passed the departmental examination held in April, 1977 and become eligible for confirmation in Group 'B' post and promotion to Group 'A' post in accordance with the letter of the respondents dated 26.2.1980. However, it has been alleged that a number of officers who had passed the departmental examination after the applicant were promoted earlier than him. The applicant was promoted to a Group 'A' post on ad hoc basis only with effect from 8.6.1981.

5. It has been contended that the so-called ad hoc promotions were against regular and long term vacancies and not against short-term or fortuituous vacancies. By letter dated 18.11.1985, the period of ad hoc appointment of the applicant was extended up to 30.6.1986. The applicant has thus held appointment in Group 'A' from 8.6.1981 to 30.6.86. By the impugned order issued in August, 1986, it was stated that on the expiry of sanction of ad hoc promotion on 30.6.86, the applicant will be posted in the same office as Assistant Defence Estate Officer against the vacancy transferred from Gauhati circle to Calcutta. The post of Assistant Defence Estate Officer is a Group 'B' post and the said order in fact meant reversion of the applicant.

6. The applicant has stated that other officers who were also holding ad hoc appointments ^{in Group A posts} and were junior to him were not reverted and were allowed to continue even in the absence of order of extension of the period of promotion.

7. In the counter affidavit filed by the respondents, it has been stated that the regularisation of the applicant and several others has been delayed due to non-finalisation of the recruitment rules and the existence of numerous court cases. Though the respondents have admitted that the applicant has passed the departmental examination in 1977, they have contended that ~~xxx~~ eligibility alone does not qualify for confirmation and promotion. In the absence of a regular vacancy it was not possible to confirm him in Group 'B' post or promote him to a Group 'A' post.

8. As regards the reversion of the applicant, it has been stated in the counter affidavit that it was in fact not a case of reversion but dis-continuance of ad hoc appointment in view of the pendency of the disciplinary proceedings. According to the respondents, ~~the~~ persons involved in the disciplinary proceedings cannot be promoted during the pendency of such proceedings. The applicant was charge-sheeted by the disciplinary authority on 2.4.1986 and his ad hoc promotion was discontinued by the impugned order dated August, 1986.

9. In the rejoinder filed by the applicant, it has been stated that Shri M.S. Rahel, a colleague of the applicant who was also working on ad hoc basis with effect from 22.3.74 was allowed to continue ^{the} in higher post though he was also similarly involved in ~~xxx~~ disciplinary proceedings for major penalty in April, 1981. He was given the promotional post of A.D.E.O. in March, 1974 when a decision to institute a disciplinary proceedings against him had already been taken and a charge-sheet had also been issued before the

issue of promotion orders.

10. We have carefully gone through the records of the case and heard the learned Counsel for both the parties. The admitted factual position is that the applicant has held appointment in Group 'A' for over five years from 8.6.1981 to 30.6.1986 continuously. The question arises whether his reversion from Group 'A' to Group 'B' post by the impugned order issued in August, 1986 is legally tenable.

11. In G.Appa Rao Vs. Deputy Director (Administration), 1977 SLJ 410, the Andhra Pradesh High Court has held that mere pendency of disciplinary proceedings cannot be a ground for withholding promotion, if a Government employee is otherwise eligible to be promoted in accordance with the rules.

12. In Mohd. Zamalullah Vs. Registrar, General Census Operation, India, 1978(2) SLR 623, the Andhra Pradesh High Court has observed that the making of rules under Article 309 of the Constitution is not a condition precedent to the making of appointments and promotions and that in the absence of rules, appointments and promotions may be made in the exercise of the executive powers of the State.

13. There are several ^{judicial} pronouncements to the effect that even in the case of ad hoc appointments, termination of the appointment of a person appointed earlier in point of time while retaining the juniors who were appointed subsequently would be illegal. In this context, reference may be made to ^{the decision of the} Supreme Court in Ramaswamy Vs. I.G. of Police, AIR 1966 SC 175. In that case the Supreme Court observed that "when reversion takes place on account of exigencies of public service, the usual principle is that the junior-most person among those officiating in clear or long term vacancies are generally reverted to make room for the

senior officers coming back from deputation or from leave etc. Further, ordinarily as promotions on officiating basis is generally according to seniority, subject to fitness for promotion, the junior-most person reverted is usually the person promoted last."

14. In the subsequent decision of the Supreme Court in State of Uttar Pradesh and Others Vs. Sughar Singh, 1974 (1) SLR 435, it was held that reversion of an employee from officiating post while retaining his juniors in service is discriminatory and illegal.

15. Reference may also be made to the decision of this Tribunal in Shree Ramali, Vs. Andaman and Nicobar Administration and others, A.T.R. 1986(2) C.A.T.34 and in Upendra Nath Ojha Vs. Union of India & others, 1986(3)SLJ, C.A.T.358.

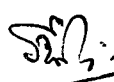
16. In the instant case, the reversion of the applicant from Group 'A' post to Group 'B' post cannot be justified as several of his juniors have been allowed to continue in Group 'A' post. Besides it cannot be overlooked that he has been officiating in a higher post for more than five years. To our mind, the fact that the disciplinary proceedings have been initiated against the applicant will not by itself warrant reversion from the higher post to the lower post. Until the disciplinary proceedings are concluded and the charges are held to be proved, the question of inflicting any punishment on the applicant does not arise. The impugned order of reversion coupled with the initiation of disciplinary proceedings gives rise to an inference that the reversion was made because of the pendency of the enquiry into charges which are still pending; and it might amount to inflicting the punishment even before the charges are held proved. This procedure will be contrary to law and also violative of the provisions of Article 311 of the Constitution and the principles of

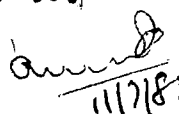
natural justice. The applicant has pointed out that other persons against whom disciplinary proceedings have been initiated have been given ad hoc promotion. The Government themselves seem to have accepted this position for long term ad hoc appointees in their O.M.No.11012/9/86-Estt.A of 24.12.1986 the relevant extracts of which read as follows: -

- ii) "Where the appointment was required to be made on ad-hoc basis purely for administrative reasons (other than against a short-term vacancy or a leave vacancy) and the Govt. servant has held the appointment for more than one year, if any disciplinary proceedings is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceedings has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case."

17. In the light of the above, we order and direct that the impugned order dated August, 1986, issued by the respondent No.2 whereby the applicant has been reverted from a Group A post to Group B post be quashed. The applicant shall be continued in the Group 'A' post which he had been holding on 30.6.1986 on an ad hoc basis so long as his juniors are allowed to continue in the said post. The applicant will also be entitled to consequential benefits regarding arrears of pay and allowances. The disciplinary proceedings against the applicant as also the case of the applicant for regular promotion to Group 'A' post should be finalised by the respondents in accordance with the relevant rules within a period of six months from the date of communication of this order. There will be no order as to costs.


(S.P. Mukerji)
Administrative Member


(P.K. Kartha)
Vice Chairman