

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 833
T.A. No.

1987

DATE OF DECISION 22.1.1990

Shri M.N. Sharma Applicant (s)

Mrs. Avnish Ahlawat Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Ms. Reena George Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Judicial Member

The Hon'ble Mr. I.K. Rasgotra, 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
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(of the bench delivered by Hon'ble Mr. I.K. Rasgotra,
Administrative Member)

The applicant has filed this application against the order of reversion dated 16th June, 1987 from the post of Programme Assistant to that of Lower Division Clerk in the Directorate of Inspection (RS & PR), Mayur Bhavan, Connaught Circus, New Delhi. He has prayed for reliefs that the Tribunal may cancel the impugned order as it does not assign any reason for reversion and to declare the applicant as regular holder of the post of Programme Assistant from 29.12.1986. He has further prayed that the respondents may be ordered to give him all consequential benefits.

[Signature]

2. While admitting the application on 24.6.1987, the Tribunal had granted an interim stay from the operation of the impugned order dated 6.6.1987 which was modified on 10.7.1987 restraining the respondents from filling up the post of the Programme Assistant till further orders, in view of the fact that the impugned order of reversion dated 16.6.1987 had already been implemented before the stay order dated 6.6.1987 ^{was} communicated.

3.1 The facts of the case are that the applicant was appointed as a Lower Division Clerk in the Directorate of Inspection (RS & PR) on 30th May, 1978. He is a Commerce Graduate with Statistics ^{and} ~~and~~ ^{the} later qualified in the programming courses in COBOL and Basic. The respondents had a post of Programme Assistant lying vacant since 1981, as no suitably qualified person was available to fill up the slot. The applicant therefore applied for appointment as Programme Assistant on 25.7.1989 to the Respondent. His request, however, was not considered as according to the Recruitment Rules, he was not in the feeder category. The respondent therefore addressed the Secretary, Central Board of Direct Taxes on 10.9.1985 ^{for} requesting ~~the~~ the approval of the Board for filling up the post of Programme Assistant by promoting the applicant "purely on ad hoc basis for a short period." It was stated that even though he does not belong to the feeder category, the applicant possesses the requisite qualification and requirements for adhoc promotion.

In the meantime, the respondent promoted the applicant as Programme Assistant in the scale of Rs. 425-700 purely on adhoc basis on 29.1.1986, apparently in anticipation of the approval of the Central Board of Direct Taxes.

3.2 The Central Board of Direct Taxes vide their letter dated 25th July, 1986 advised that "under the existing Rules, it is not possible to promote Shri M.N. Sharma as Programme Assistant on ad hoc basis as he doesnot belong to the feeder cadre. However, if Shri Sharma satisfies the educational qualification and other qualifications prescribed in Recruitment Rules for direct recruitment, he may be considered for ad hoc appointment as Programme Assistant as a direct recruit for a short period till the vacancy is filled on regular basis."

3.3 The case of the applicant was further processed by the respondent in the Departmental Promotion Committee held on 29th December, 1986. The relevant extract from the Minutes of the proceedings of the Departmental Promotion Committee held on 29th December, 1986 is reproduced hereunder:-

"8. PROGRAMME ASSISTANT

(Rs. 1400-2300 - Revised Scale) - Selection Post

It has been reported to the Committee that there exists one post of 'Programme Assistant'. According to Communal Composition roster, the vacancy is unreserved and shall be filled in from general category.

It has also been reported to the Committee that Shri M.N. Sharma, who possesses the requisite qualification, has been working as 'Programme Asstt.' w.e.f. 29-1-1986 on ad hoc and as direct recruit since 29.8.1986, for which the approval was sought from the Board vide their letter No.A-32011/11/85- Ad.VII dated 25.7.1986."

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"Members of the DPC desired that certificate to the effect that it was not essential to call for candidates from the SSC, be placed on the record. Hence the certificate hasbeen given as under:

'It hasbeen certified by the Admn. that it was not necessary to request SSC to sponsor the names of the candidates for the post, because the post was for a very short period.'

On the basis of the above certificate and also the approval given by the Board vide their letter No. A-32011/11/85-Ad.VII dated 25.7.1986. D.P.C. approved the name of Shri M.N. Sharma for regularisation as 'Programme Assistant'."

4. It is observed that in pursuance of CBDT's letter dated 25.7.1989 to regularise the appointment of the applicant as Programme Assistant as a direct recruit for a short period the respondents chose the medium of Departmental Promotion Committee. The certificate placed before the DPC affirms that it was not necessary to obtain the names of the candidates for the post from the Staff Selection Commission because the post was for a very short period. In accordance with the proceedings of the DPC the respondents issued an office order dated 1.1.1987 appointing the applicant 'on regular basis as Programme Assistant w.e.f. 1.1.1987 for a short period and until further orders.' The applicant was later, vide Office order dated 16th June, 1987, reverted as LSC. The main plea of the applicant is that the respondents should not have reverted him as he had been regularly appointed to the post of Programme Assistant after obtaining the approval of Departmental Promotion Committee. It has further been

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contended by him that his work was considered satisfactory when he worked as Programme Assistant from 29.1.1986 to 26.6.1987.

4. The Ld. Counsel for the applicant has referred to a number of judicial pronouncements * to buttress the arguments that:

- (a) Once an adhoc promotion hasbeen made, reversion cannot be ordered without following the principles of natural justice.
- (b) When a "regular promotion until further orders" is made, the expression 'until further orders' becomes irrelevant as it is inconsistent with the appointment on regular basis.
- (c) Vested right of the applicant is established by the Doctrine of Estoppel as the applicant is fully qualified and has been appointed on regular basis with the approval of the Departmental Promotion Committee.

5. The Ld. Counsel for the respondents in her arguments contended that the applicant was initially promoted on an ad hoc basis for a short period and later regularised by DPC for appointment as a direct recruit for a short period. She however, contended that the DPC had no authority to regularise the ad hoc appointment of the applicant as a direct recruit for a short period as direct recruitment is outside the province of the DPC. The processing of the case through the DPC was in itself therefore in contravention of the Statutory Rule, and therefore void.

*1. SLR 1979(1) 818 - V. Natarajan Vs. Principal Dt. Judge, Madurai.

2. SLR 1978(2) 836 - Ram Sarup Vs. State of Haryana & others.
3. SLJ 1986(3) 338 - A. Marimuthu Vs. Collector of Customs & Excise, Madurai.

The Lt. Counsel also referred to the Supreme Court judgement 1989 (3) SCC - Marathwada University Vs. Sheshrao Balwantrao Chavan holding that "Statutory authority cannot travel beyond the power conferred and any action without power has no legal validity." The other cases referred to in this connection are listed below the margin at the end of the page. It was also contended by the respondents that Government has inherent right to rectify the mistake committed ab initio, and that the Doctrine of Estoppel is not applicable to the State "where it is necessary to prevent fraud or manifest injustice."

6. After having heard the leard counsel of both the parties and having gone through the records very carefully, We find that the applicant was promoted purely on an ad hoc basis for a short time as a Programme Assistant, keeping in view his qualifications and immediate availability. The Central Board of Direct Taxes vide their letter dated 25th July, 1986 had advised the respondents that "under the existing rules it is not possible to promote Shri M.N. Sharma as Programme Assistant on adhoc basis as he does not belong to the feeder category. However, if Shri Sharma satisfies educational and other qualifications prescribed in recruitment rules of direct recruits he may be considered for adhoc appointment as Programme Assistant as a direct recruit for a short period, till the vacancy is filled on regular basis." The CBDT's orders thus clearly authorised the applicant to be considered for an adhoc appointment as a direct recruit for a short period only till the vacancy is filled on regular

1. SLR 1979(2) 693 - D.K. Bhatnagar & Others Vs. State of Himachal Pradesh.
2. AIR 1972 SC 1967 - R.N. Nanjundappa Vs. T. Thimmaiah & Others.
3. SLR 1989 (1) 491 - Bhagat Singh Vs. UOI & Others
4. AIR 1958 SC 37 - Purushotamlal Dhingra Vs. UOI.

basis. It is to be remembered that the applicant could not be treated as a candidate from the feeder cadre and considered for adhoc appointment as he did not belong to the feeder cadre. It was only in this contingency that this adhoc arrangement was to be considered against the direct recruitment. Since no direct recruitment as such was made by obtaining candidates from the Staff Selection Commission, the appointment of the applicant on adhoc basis, for a purely short period, as direct recruit cannot be confused with the direct recruitment as such. In pursuance of the CBDT's instructions, the respondents placed the case of the applicant before the DPC for appointing him on adhoc basis as a direct recruit. The DPC had no jurisdiction in this case as DPC only deals with cases of promotion in accordance with the recruitment rules. The certificate of the administration placed before the DPC that it was not necessary to request SSC to sponsor names of the candidates for the post, because the post was for a very short period seems to have misled the DPC. The DPC's regularisation of the applicant as Programme Assistant is to be seen in this context. We, therefore, feel that proceedings of the DPC did not confer any legal right on the applicant to continue to hold the post to which he was appointed purely on adhoc basis for a very short period. Since the DPC had no jurisdiction in the matter its proceedings cannot vest any right in the applicant. The stay order dated 10.7.1987 granted by the Tribunal is therefore hereby vacated. The respondents are at liberty to fill up the post of Programme Assistant, in accordance with the recruitment rules.

The application is disposed of as above with no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

T.S. Oberoi
(T.S. Oberoi)
Member (J)