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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A. 834/87. Date of Decision: 20.10.1992.

Dr. Fareed Ali Shamsi.

...Petitioner.

Versus

Union of India & Others.

...Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the petitioner.

...Petitioner in person.

For the Respondents.

...Shri A.K. Behra, proxy for
Shri P.H. Ramchandani, Sr. Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner started his career as an Adhoc Research Assistant w.e.f. 30.12.1972. In due course, he was duly selected by the Union Public Service Commission and secured regular appointment as per Annexure A-3 dated 8.12.1977. Thereafter, he was appointed in a substantive capacity to the post of Research Assistant w.e.f. 5.6.1981 vide Order dated 14.12.1981 (Annexure A4). The petitioner was further promoted as Research Officer on 5.11.1982. He came to be reverted vide Order dated 7.5.1986 with effect from 1.1.1986. The petitioner immediately made representations against his reversion as per Annexures A-9, A-10 and A-11. The petitioner did not get any relief so far as his reversion is concerned. It is in this background that the petitioner has approached the Tribunal for appropriate relief.

2. The first contention of the petitioner, who argued his case in person, is that the authorities could not have reverted the petitioner with retrospective effect. The order of reversion is dated 7th May, 1986 whereas the reversion has been ordered to take place w.e.f. 1.1.1986. It is not disputed that the petitioner continued to serve as Research Officer till 7.5.1986. The authorities could not have made retrospective reversion in these circumstances. The learned counsel for the respondents, however, submitted that it is only a technical reversion w.e.f. 1.1.1986 as, according to him, he has instructions to say that the petitioner was paid salary of the post of Research Officer till 7.5.1986. This fact is stoutly denied by the petitioner. It is, therefore, enough to say that if the petitioner has not been paid salary till 7.5.1986 of the post of Research Officer, the same should be paid within a reasonable period.

3. Another grievance of the petitioner is about his being reverted from the post of Research Officer while continuing his immediate Junior, Dr. Mohd Yaqub, in the promotional post. It was submitted on behalf of the respondents that Dr. Mohd Yaqub, who was next to the petitioner, was promoted as Research Officer (Production) w.e.f. 24.5.1985 vide Order dated 17th July, 1985. He was continued while the petitioner was reverted by the Order dated 7.5.1986. It was further

Submitted that Dr. Mohd. Yaqub has been subsequently reverted on 16.7.1986. It does not need any argument to convince us that it was not right on the part of the authorities to revert the senior while maintaining the junior in the higher position. Learned counsel for the Respondents, however, submitted that as the reversion of the petitioner was, in fact, given effect to within a very short time, it was considered not necessary to revert Mohd. Yaqub. Be that as it may, the infraction of the right cannot be ignored. It is, therefore, obvious that the reversion of the petitioner while maintaining his junior in the higher position cannot be sustained.

4. It was lastly submitted by the petitioner that he having been promoted on ad hoc basis as Research Officer after selection by the D.P.C., there was no justification to revert him particularly when the post of Research Officer was existing. Learned counsel for the respondents submitted that there are only three posts of Research Officer out of which two posts are held by Shri S.A.S. Razvi and Shri N.K. Agarwal. It was pointed out that the third post is meant to be filled up from amongst SC/ST candidate. As the candidate belonging to that category is not available, it was stated that a move has been made to decategorise the same. It is only after the decategorisation of the vacancy, the same would also be filled up and the case of the petitioner for promotion be considered in accordance with the rules. So far as the reversion of the petitioner when the vacancy still existed is concerned, the stand taken by the respondents is that having regard to the fact that the petitioner was continued beyond a period of one year, it was thought

necessary to take concurrence of the U.P.S.C. The permission of the U.P.S.C. was sought in this behalf for continuing the petitioner beyond a period of one year. The statement of the respondents in the reply is that the U.P.S.C. did not give its concurrence for such continuation and, therefore, it was necessary for the authorities to revert the petitioner from his ad hoc appointment even though the vacancy was there. Learned counsel for the respondents, however, placed before us for our perusal the communication^{sent} by the U.P.S.C. in this behalf. On a perusal, we find that the understanding of the communication by the respondents was not right. What has been conveyed by the U.P.S.C. is that the regulations do not contemplate the UPSC to give concurrence or permission for continuing ad hoc appointment beyond a period of one year. What is required by the concerned department is only to inform the U.P.S.C. of instances where ad-hoc appointments are continued to enable it to collect such information and place the same before the Parliament. Hence, it is clear that there was no opposition by the U.P.S.C. to the continuation of the petitioner on ad-hoc basis. Be that as it may, as there is only one regular vacancy which is required to be filled up by SC/ST candidate, the same cannot be filled up by a general merit candidate unless decategorisation takes place. It is, therefore, proper to make it clear that the authorities can fill up the vacancy on ad-hoc basis pending final decision in regard to decategorisation. Having regard to the facts and circumstances, we consider it just and proper

3

that the respondents should be directed to consider the filling up of the vacancy of Research Officer on ad-hoc basis.


5. For the reasons stated above, this petition is partly allowed and the following directions are issued:

(i) The retrospective reversion of the petitioner vide Order dated 7.5.1986 with effect from 1.1.1986 is hereby quashed. The reversion will take place w.e.f. 7.5.1986. If the petitioner has not been paid the emoluments of the post of Research Officer, the same shall be paid to the petitioner.

(ii) The reversion of the petitioner while continuing Mohd. Yaqub till 16.7.1986 is not legal and proper. Hence, we direct the respondents to pay the emoluments of the post of Research Officer on ad hoc basis from 7.5.1986 to 16.7.1986.

(iii) The respondents shall fill up the vacancy of Research Officer which is reserved for SC/ST candidate on ad hoc basis in accordance with the rules pending decision to be taken in regard to decategorisation of the said post. The case of the petitioner shall be considered in accordance with the law in a fair and objective manner for ad-hoc appointment to the post of Research Officer.

6. The aforesaid directions shall be carried out within a period of 4 months from the date of communication of the judgement. No costs.


(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN