

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A.No.973/87

DATE OF DECISION 3.4.91

SHRI R.S.VERMA

APPLICANT

VS

UNION OF INDIA & ORS.

RESPONDENTS

C O R A M

SHRI P.C.JAIN, HON'BLE MEMBER (A)

SHRI J.P.SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

SHRI S.K.BISARIA

FOR THE RESPONDENTS

MRS. AVINASH AHLAWAT

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*

J U D G E M E N T

(DELIVERED BY SHRI J.P.SHARMA, HON'BLE MEMBER (J))

The applicant, Special Officer (Nutrition), Directorat of Social Welfare, Delhi Administration, Delhi filed this application under Sec.19 of the Administrative Tribunals Act, 1985 challenging the order of suspension dated 29.7.86 and the order dated 17.2.87 revoking the suspension of the applicant with reversion retrospectively.

2. The applicant has prayed that the order of suspension dated 29.7.86 and that of the revocation of suspension on reversion dated 17.2.87 be declared as illegal, unconstitutional and be quashed.

3. During the course of arguments, however, the learned counsel for the applicant did not press the relief with respect to suspension order dated 29.7.86.

4. The brief facts of the case are that the applicant belongs to Scheduled Caste, joined the service of the respondents in November, 1973 as a Special Officer (Nutrition). The seniority list issued by the respondents on 1.6.76 shows the place of the applicant at Sl.No.2. After the retirement of Shri K.D.Khera the applicant became the seniormost in the cadre of Special Officer (Annexure A-1). Shri B.N.Bhatia Junior to the applicant has been promoted as Deputy Director superseding the applicant on which the applicant made representations (Annexure 2). The applicant was subsequently promoted as Deputy Director (Technical) Social Welfare on 26-6-86 on purely ad-hoc basis and joined on 3rd of July, 86. By the order dated 4-7-86, the respondents directed the applicant to continue to work in children home for boys, No.1 Alipur Road, Delhi. There were rumours on 24th July, 86 as well as a news in the newspapers that some of the boys from the children home had escaped. The respondents acting on the said rumours immediately placed the applicant under suspension by the order dated 29-7-86 (Annexure IV). On 17-2-87 the suspension order was revoked by the respondents but no order under F.R.54(b) Clause-1 i.e. to deal with the suspension period specifically and categorically, was passed. Further in the said order of revocation of suspension, it is also mentioned that the applicant has been reverted from the post of Deputy Director (Technical) to the post of Special Officer (Nutrition) with effect from 3-1-87. The applicant joined on reversion as a Special Officer (Nutrition) with

effect from 18-2-87 but represented the case against reversion. The respondents gave a reply by letter dated 17/19-6-87 that the reversion of the applicant was due to his overall performance. The applicant made further representation but to no avail; hence the present application was filed on 14-7-87.

5. It is stated in the application that the order of reversion on the ground of performance of the applicant is not based on substantial facts and is a farce in nature. It is further stated that the officers junior to the applicant namely, Shri B.N.Bhatia and Mrs.Usha Bahadur promoted on adhoc basis to the post of Deputy Director (Technical) are still working on that post. The applicant was never charge sheeted nor any enquiry was held against him. However, the charge sheet dated 21-12-89 has since been served on the applicant.

6. The respondents contested the application and stated in the reply that the applicant has concealed material facts in the application and the suspension of the applicant was not on account of some rumours or news items regarding the escaping of boys from the children home. After promotion as Deputy Director (Technical) the applicant was ordered to continue to work for children home No.1, Alipur, Delhi. There was an inspection done on 14-7-86 (the applicant having joined on 3-7-86) by the then Director Social Welfare and he noticed a number of shortcomings in the working of Children Home No.1 regarding cleanliness, functioning of classes etc. and it was found that staff members, including the applicant were absent and the lights and fans were on and there were no classes functioning upto 10-45 A.M. on that day. As a

result the children of the home were found to be roaming here and there and there was complete disorder. The surroundings of the home were totally unclean. The bathrooms were stinking. The stairs were smelling foul as if somebody had urinated there. The applicant was, therefore, put under suspension because of these irregularities and shortcomings. It is stated by the respondents that the revocation of suspension order is not illegal and is according to rules. As regards the reversion of the applicant from the back date, the applicant was appointed to the post of Deputy Director (Technical) purely on adhoc and emergent basis for a period of six months with effect from 26-6-86 by the order of the same date. The applicant joined duty on 3-7-86, The said period of 6 months expired on 2-1-87. The applicant was therefore reverted from the post of Deputy Director (Technical) to the post of Superintendent with effect from 3-1-87. Further extension of adhoc appointment was ^{not} granted in view of the applicant's performance after the expiry of six months period. It is further stated that the representation dated 25th June, 87, addressed to the President of India, is still under consideration. As regards the promotion of Mrs. Usha Bahadur, the respondents stated that she was promoted after the reversion of the applicant. It is further stated in the reply that charge sheet had already been sent on 16-4-87 to the Directorate of Vigilance, which is the competent disciplinary authority for issuing the charge sheet against the applicant. It is also stated that the applicant is not entitled to any relief.

7. We have heard the learned counsel of the parties at length and gone through the record of the case. The

department has placed the departmental files for perusal and also the preliminary enquiry report against the applicant dated June 26, 1986. A photostat copy of the charge sheet dated 21-12-89 issued by the Directorate of Vigilance, Delhi Administration, containing statement of articles of charges against Shri R.S.Verma has also been filed at the time of arguments.

8. The contention of the learned counsel of the applicant is that the applicant could not be reverted without holding an enquiry against him, in view of the fact that still juniors to the applicant have been working on adhoc basis on the promotional post. It is not disputed by the respondents that the applicant is the seniormost and Shri Bhatia and Kumari Usha Bahadur are junior to him who are still working as Deputy Director (Technical) in the Directorate of Social Welfare. The contention of the respondents is that the order of promotion dated 26-6-86 itself goes to show that the promotion was for a fixed period of six months or till the regular appointment is made whichever is earlier as stated by the applicant himself in para 6 of the application. The six months period stood completed on 2-7-87.

There was an inspection of the children home No.1 on 14.7.86 and on the basis of the inspection note of Director, Social Welfare, the applicant was put under suspension. The departmental file shows that Shri Virendar Singh, Director, Social Welfare inspected the children home No.1, Alipur Road, Delhi and there is an inspection note running in 3 pages finding the faults and shortcoming in supervision of the Home by staff posted there including the applicant already referred to in the earlier part of this judgement. The Lieutenant

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Governor had approved the action proposed by the Director Social Welfare of suspending the applicant with immediate effect. An oral enquiry was also ordered and Shri Banshi Dhar, Secretary, Delhi Agricultural Marketing Board, made the preliminary enquiry. The applicant has also since been served by the charge sheet dated 21-12-1989 regarding the same conduct. Thus there is a prima facie case of unsuitability made out against the applicant for the post of Deputy Director Social Welfare. The contention of the learned counsel of the applicant therefore has no force that the applicant is being discriminated and has been wrongly reverted.

9. If the employee is working in an officiating capacity, and not in a substantive capacity, on promotional post and if he is subsequently reverted to his substantive post then that would not amount to any reduction in rank. The penalty of reduction in rank of a Government servant initially recruited to a higher time scale/grade, service or post, to a lower time scale, grade, service or post eventually amounts to removal from higher post or substantive post against his recruitment to such lower post, affecting policy of recruitment itself. Reversion is not reduction in rank when a person is promoted from a lower post to a higher post on adhoc basis and subsequently because of deficient performance reverted to the substantive lower post. The Hon'ble Supreme Court retained the difference of reversion and reduction in rank in Nayadar Singh versus Union of India AIR 1988 SC P.1979 holding that reversions are not always reduction in rank. The Lordship in para 6

at page 1982 observed as follows:-

"6. The import of the expression 'Reduction in rank' has been examined in the context of the constitutional protection afforded to Government servants under Article 311(2) in relation to the three major penalties of 'dismissal' 'removal' and 'reduction in rank' and the constitutional safeguards to be satisfied before the imposition of these three major penalties. In Article 311(2) the penalty of 'reduction in rank' is classed along with 'dismissal' and 'removal' for the reason that the penalty of reduction in rank has the effect of removing a Government servant from a class or grade or category of post to a lesser class or grade or category. Though the Government servant is retained in service, however, as a result of the penalty he is removed from the post held by him either temporarily or permanently and retained in service in a lesser post. The expression 'rank', in 'reduction in rank' has, for purposes of Article 311(2), an obvious reference to the stratification of the posts or grades or categories in the official hierarchy. It does not refer to the mere seniority of the Government Servant in the same class or grade or category. Though reduction in rank, in one sense, might connote the idea of reversion from a higher post to a lower post, all reversions from a higher post are not necessarily reduction in rank.

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A person working in a higher post, not substantively but purely on an officiating basis may, for valid reasons, be reverted to his substantive post. That would not, by itself, be reduction in rank unless circumstances of the reversion disclose a punitive element.

The submission of the learned Additional Solicitor General in substance, is that while 'reversion' envisages that the lower post to which the Government servant is reverted should necessarily be amongst those earlier held by him and from which he had come up on promotion - the idea of reversion being a mere antonym of promotion - the importing of such a limitation into a case of "reduction in rank" imposed as a penalty would be doing violence to the express statutory language and an unwarranted fettering of the power of the disciplinary authority. The idea of reduction in rank, says the learned Additional Solicitor General, is much wider than the idea of reversion and there is no justification to whittle down the ambit of this expression consciously employed by the rule-making authority. Such a construction would create more difficulties than it might appear to solve and become counter-productive in the sense that even where the disciplinary authority desires to retain a Government servant in service, though not in the same post but in a lower one, the Authority would be rendered helpless by such a construction being placed on the Rule.

The argument in favour of this construction of the Rule is started by a learned single judge in Gopal Rao's case (1976(2) Mad LJ 508)(supra) thus:

"....In effect, what the learned counsel says is that there is no difference between the order of reversion and an order of reduction in rank, that it is well established that reversion can be only to a post which a person held earlier and that reduction also can only be to a post or class of service which the person occupied at any time before...."

".... In my view, the expression "reduction in rank" covers a wider field than reversion to a lower post. It is true, the word "reversion" always connotes "a return to the original post or place". But the word "reduction" has no such limitation and therefore, reduction in rank extends even to a rank which the officer concerned never held...."

Similar view has been taken by a learned Single Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India (1985)1 Serv LR 181 : (1984 Lab IC 1478):

".....The Central Civil Services (Classification, Control and Appeal) Rules provide for several penalties which can be

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imposed for good and sufficient reason. One of the major penalties contemplated by Rule 11 is "reduction to a lower grade, post or service.....", and I see no reason why this penalty cannot be imposed upon a person who, on the date of imposition of penalty, is continuing in the same post to which he was appointed by direct recruitment. This is not a case of reversion of a Government servant to his substantive post for want of vacancy or otherwise, but this is a case of reduction by way of punishment. I am unable to read any limitation upon the power of the disciplinary authority to impose this punishment on the petitioner, as suggested. No decision has also been brought to my notice supporting this contention....."

It must, however, be observed that in the above case the High Court upheld the challenge of the appellant that there was no misconduct at all. The other observation as to the scope of the Rule were, therefore, unnecessary for the decision of the case."

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10. In view of the above facts, it is explicit that there was an inspection of the Children Home No.1 where the applicant was posted on promotion on adhoc basis and on the basis of that inspection by Director Social Welfare the work and the performance of the applicant was found quite unsatisfactory. Further, it was subsequently found that the applicant was promoted only for a period of six months and that period expired on 2-1-87 so while revoking the suspension order, the applicant reverted to the substantive post from 3-1-1987. The applicant legally could not have any grudge on that account. Moreover, the applicant has already joined as Special Officer, Social Welfare in pursuance of the order dated 17-2-1987. The relief claimed by the applicant in this application is only to quash his reversion but in the circumstances of the present case and un rebutted evidence against the applicant, touching his performance on the promotional post it does not warrant any interference in the order of reversion. In fact, it is not a penalty because after a period of six months there would have been an extension/ revision of the order of promotion dated 26-6-1986 as to whether applicant is to be further kept on a promotional post or to be reverted to the substantive post as mentioned down in the said order. In the present case the circumstances are still worse, in-as-much as the applicant has been issued a charge sheet for the same period and the respondents are within their right not to give benefit of further promotion.

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11. We, therefore, find that the present application is devoid of merits and the same is accordingly dismissed leaving the parties to bear their own costs.

Jomair

(J.P. SHARMA) 3/4/91
MEMBER (J)

C. C.

(P.C. JAIN)
MEMBER (A)

3/4/1991