

V

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

O.A. NO. 1122/87

Date of decision 22.8.1988.

Shri Madan Vir Singh Petitioner(s)

Vs.

Union of India & Others Respondent(s)

Shri B.B. Rawal Advocate for the
Petitioner(s)

Shri M.L. Verma Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. S.P. MUKERJI, ADMINISTRATIVE MEMBER

(The judgment of the Bench delivered by
Hon'ble Shri S.P. Mukerji, Administrative
Member)

The applicant, who has been working as an
Assistant in the ministerial cadre of the Bureau of
Police Research and Development (BPRD) under the
Ministry of Home Affairs has moved this application
dated 7th August, 1987 under Section 19 of the
Administrative Tribunals Act praying that the order
of reversion dated 18.3.1987 from the rank of Assistant
to that of a U.D.C. and the order of transfer dated
30.3.1987 transferring him from Delhi to Chandigarh

should be set aside.

2. The brief facts of the case are as follows. The applicant was appointed as a Lower Divison Clerk (LDC) on 7.8.1973 and promoted as UDC on 5.4.1980 and regularised as UDC on 1.11.1981. He was promoted as an Assistant on an ad hoc basis with effect from 31.12.85 along with three other UDCs. While he was on leave, he was reverted by the impugned order dated 18th March, 1987 to the grade of UDC at Annexure-III to the application. He represented against the order on 26.3.87, but soon thereafter on 30.3.87, he was transferred to Chandigarh while still on leave, by the impugned order at Annexure-V. He represented against the order of transfer also without any effect. According to the applicant, he along with others were promoted as an Assistant on an ad hoc basis and not regularised so far because of litigation between the direct recruits and the promotees on the question of seniority, pending before the Supreme Court of India. The applicant averred that the order of reversion was passed as a matter of punishment as his juniors has been retained as Assistants. No reason whatsoever has been given for picking him out for reversion while he was on leave followed by transfer while he had not yet rejoined duty. As if that was not enough, he was served with a charge-sheet dated 3.6.87. According, to the applicant by reverting him first and then charge-sheeting him, the

respondents have clearly pre-judged the issue of his guilt and all this is due to the malafide and revengeful attitude of respondent No.3 Shri Sahay, the Deputy Director. According to the applicant in 1985 when the applicant was looking after the stores as UDC, he did not accede to the unjust demand of respondent No.3 in respect of supply of stores and was asked by him to get out from his office. The applicant had brought this to the notice of DG, BPRD. He has also indicated that respondent No.4 is not competent to issue the reversion order. According to the respondents, the applicant had been absenting himself from duty unauthorisedly since 17.3.1987 and had not been sanctioned leave. The order of transfer also was sent to his residential address and the transfer was done on administrative grounds and in public interest. His representation against the transfer was rejected on 6th August, 1987. The respondents have clarified that the ad hoc promotions were being made in exigency of service and regularised depending upon ^{of the candidate} the suitability and availability of vacancies. The applicant's reversion was done on the basis of a review with reference to his suitability. The respondents have further stated that the applicant on 2.4.87 applied for leave commencing from 19.3.87 on Medical Certificates and again on 15.4.87 applied for further extension. The first Medical Certificate was from the Medical Officer of Safdarjang Hospital and the second was from Sr. Resident

Dr. Ram Manohar Lohia Hospital, which was received on 28.4.87. Thereafter he continued to be absenting himself on the ground of his father's illness and sent an application 6/7.5.87 received on 12.5.87. He wanted to join ~~the~~ duty also and sent the fitness certificate on 8.10.87. The respondents have clarified that the chargeesheet and reversion are on different matters. They have also denied the allegation of malafides on the part of respondent No.3 " for want of knowledge". In the rejoinder, the applicant has stated that the respondents have not denied the fact of his promotion as an Assistant. ~~for this post-~~ He has further stated that the Appointing Authority of an Assistant which is a Class II post, is the Head of the Department and the reversion could not have been effected by the order of an Assistant Director, who has signed the impugned order. The order is also non speaking. The applicant has also denied that he was absent from 17.3.87 ~~for~~ and stated that he had applied ~~leave~~ leave on medical grounds along with Medical Certificates, but the respondents have ~~there was~~ not sanctioned the leave so far. He has stated that ~~no~~ urgency to fill up the vacancy at Chandigarh where he was transferred because other incumbents for the post were readily available in Delhi while he was on leave on Medical Certificates. He has argued that his reversion without any cause or reason and without giving any opportunity, is violative of Article 311(2) of the Constitution, while his juniors were continued as Assistants'. He has also

52

stated that in absence of any documentary evidence, the respondents' assertion that his ~~case~~ was reviewed for ~~s~~ ad hoc appointment is not convincing. The respondents have also not clarified as to why inspite of submission of Medical Certificates from authorised Medical Authorities, his leave was not sanctioned.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the respondents showed us the file in which the question of reversion of the applicant was considered. From the file it was clear that there was no review committee as such to consider the suitability of the applicant and other ad hoc Assistants to be continued as Assistants. On the other hand, the application for leave for four days ^{was} ~~was~~ filed by the applicant on 23.1.87. The Assistant Director put up a note to the Deputy Director(Administration) and it was recalled that the applicant did not hand over the charge of stores as ordered by the Director General in December, 1985. He also indicated that the applicant has been dodging the handing over on one pretext or the other. He further indicated that the applicant had ~~not~~ been behaving in a responsible manner as an Assistant and such a behaviour from an ad hoc promotee ^{was} ~~is~~ not desirable. It was reported that the applicant had been on leave on a number of occasions between April and September, 1986.

At the end of the typed note, the Assistant Director added in his own handwriting that the applicant was not fit to carry higher responsibility of an Assistant. The Deputy Director thereon wanted further particulars about the ad hoc promotion of the applicant and the connected file. Thereafter at the end of February, 1987, the office noted that the file had been handed over by the Deputy Director (Administration) a few days ago to discuss this matter informally with experts. The office noted further that they have been advised that before deciding the course of action against the applicant for not handing over the charge of the stores, obtaining a detailed and comprehensive explanation from the applicant would be desirable. The Deputy Director (Administration) wanted further discussion about the irregularities committed by the applicant before putting up the file to the higher officers. He on his own recalled that the audit party in the preceding year had pointed out irregularities in the maintenance of stores. The Assistant Director thereafter put up a detailed note discussing the explanation given by the applicant on the handing over the charge of the stores and repeating his earlier conclusion that the applicant as an Assistant was not behaving in a responsible manner and recommended suitable action against him. The Deputy Director (Admn.) directed the Assistant Director to suggest the action suitable under the rules and the Assistant Director suggested that the applicant could be demoted as a UDC.

with the approval of the Head of the Department without assigning any reason for the demotion. The Deputy Director thereon moved the Director and DG endorsing the action proposed by the Assistant Director regarding reversion and ordering a departmental inquiry.

The Deputy Director thereafter consulting the concerned officer of the Ministry recommended reversion of the applicant, to the higher officers. This was approved by the Director and Director General on 18.3.87. It will thus be clear that the impugned order dated 18.3.87 was passed solely on the ground of delay in the applicant's handing over charge of the stores and alleged irregularities. The reversion order is thus clearly punitive in nature and having been passed without going through the disciplinary proceedings, is bad in law.

4. It was revealed during the course of arguments that respondent No.3 against whom the applicant has levelled allegation of vindictiveness for not complying with his order in 1985 became Deputy Director in December, 1986. The order of reversion was issued on 18.3.87, that of transfer on 30.3.87 and the charge-sheet was issued on 3.6.87 in quick succession soon after respondent No.3 had taken over as Deputy Director. The respondent No.3 has not come out with any affidavit denying the charges of malafides. On the other hand the written statement filed by all the respondents collectively have denied the charges of malafides " for want of knowledge". This means that the charges of malafides have not been denied in toto.

The respondents have also not clarified why no action was taken on his leave applications which he had filed in March and April, 1987 along with Medical Certificates. On the other hand, he was reverted the day following the day he went on leave applied for and within less than 2 weeks thereafter, he was transferred to Chandigarh while his leave application on medical grounds was still pending. Exigencies of service is a poor excuse for transferring him to Chandigarh when he had applied for leave on medical grounds. If the vacancy had to be filled urgently, the respondents could have transferred some other UDC, who was working at Delhi. It is also surprising that a sick UDC was indispensable for filling up the vacancy at Chandigarh while a number of healthy UDCs were available in Delhi. Transfers of ministerial staff is generally not done unless there are strong administrative or other grounds which unfortunately are missing in the instant case.

The order of reversion while the applicant's juniors are working on an ad hoc basis without giving the applicant any opportunity to defend his promotion and without giving any reason whatsoever in the order itself are violative of Articles 311(2), 14 and 16 of the Constitution of India besides being against the principle of natural justice.

5. It is now established law that transfer made for collateral purposes other than public interest, cannot be sustained in law. In the instant case we are satisfied that the order of reversion and the order of

transfer are violative of the Constitutional provisions and marred by colourable exercise of power and have to be quashed. We are conscious of the fact that the allegations of malafides cannot be accepted as such and the applicant has a heavy burden of proof to be discharged. However, in the circumstances of the case discussed above, we have no doubt in our mind that the impugned order besides being per se unsustainable in law was not passed with complete detachment.

6. We, therefore, allow the application and set aside the impugned order of reversion dated 18.3.87 and of transfer dated 30th March, 1987 and direct that the applicant should be taken back to service at Delhi as an Assistant with effect from 18th March, 1987 and granted leave on Medical Certificate or otherwise as admissible under the rules for the period of absence. The respondents will, however, be at liberty to proceed with the disciplinary proceedings already instituted in accordance with law. There will be no order as to costs.

S.P. Mukerji
22/8/88

(S.P. MUKERJI)
ADMINISTRATIVE MEMBER

Partha
22/8/88
(P.K. KARTHA)
VICE CHAIRMAN(J)