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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.NO. 1338 of 1990.

New Delhi: February 20th, 1995

HON'BLE MR. S.R.ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri Arvind Nath Gupta,
s/o Shri Balkishan Dass,
r/o 204, West Guru Angad Nagar,
Laxmi Nagar, Delhi. -110092.

.....Applicant.

By Advocate Shri Jog Singh

Versus

1. Union of India,
through its Secretary,
Ministry of Human Resources Development,
Government of India,
Shastri Bhawan,
New Delhi.

2. The Director,
National Gallery of Modern Art,
Jaipur House,
New Delhi.

.....Respondents.

By Advocate Shri C.Hari Shanker, proxy
for Shri Madhav Panikar.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A).

The applicant Shri A.N.Gupta has impugned the order dated 10.5.90 (Annexure-A) reverting him from the post of UDC to that of IDC in the Office of the National Gallery of Modern Art, New Delhi.

2. The applicant's case is that he was appointed as IDC on 28.11.73 in the N.G.M.A. and being the seniormost, was promoted as Accountant on adhoc basis w.e.f. 31.12.83. He was further appointed as UDC on adhoc basis w.e.f. 1.3.87, and claims to have been regularised as UDC w.e.f. 30.4.88 in accordance with the DPC's recommendations dated 22.2.88. He states that after serving in the scale of Rs.1200-2040 (which is admissible for both Accountant and UDCs) for more than six years, he is being illegally

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reverted as IDC vide impugned order dated 10.5.90.

3. The respondents in their reply have challenged the O.A. They state that consequent to the deputation of Shri K.N.Gupta who admittedly was senior to the applicant and who was holding the post of Accountant, Shri J.C.Sharma, who was also senior to the applicant, was promoted as Accountant. Upon Shri Gupta's return from deputation to his substantive post as Accountant, Shri Sharma had to be shifted as UDC which necessitated the applicant's reversion to his substantive post as IDC.

4. We have heard Shri Jog Singh for the applicant and Shri Hari Shanker for the respondents. Shri Hari Shanker has relied upon the rulings in 'State of Mysore Vs. S.V.Narainappa-1967 SIR 117; Hortwell B. Singh Vs. U.P. Govt.-AIR 1957 SC 886; S.T.Venkataiyyah Vs. State-AIR 1969 Mysore 186 and Nyadar Singh Vs.UOI 1988 (4) SIR 271 to draw a distinction between regularisation and permanency (confirmation). He states that even if the applicant has been regularised as UDC as claimed by him, the respondents still have the right to revert him from that post, as he does not hold a lien on that post, and to appoint him to the substantive post to which he holds a lien.

5. Shri Jog Singh has relied upon the ruling in S.B.Patwardhan & others Vs. State of Maharashtra & others -1979 AISLJ (SC) 421, wherein it has been observed that confirmation is one of the inglorious uncertainties of Govt. service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies, but that observation was made in the particular facts and circumstances of

that case and in an entirely different context and do not help the applicant in this case.

6. It would appear that the applicant was regularised as UDC after obtaining DPC's recommendations instead of being confirmed as UDC on adhoc basis because Shri Sharma's deputation was for a sufficiently long period. That, however, does not mean that the applicant acquired a lien or a substantive right to hold that post of UDC. The applicant can succeed in this O.A. only if he can establish that he was appointed substantively to the post of UDC and has a lien on that post. Mere regularisation as UDC, without being made substantive as UDC and being granted lien on that post does not give the applicant an enforceable right not to be reverted particularly to make way for a person who has a lien on that post.

7. In the result, we see no reason to interfere with the impugned order. Before parting with this case, however, one point may be briefly referred to. The applicant has also averred that there is another post of UDC in NGMA which is lying vacant, against which he could be adjusted without having to be reverted. The respondents state that this post cannot be considered vacant as it is reserved for a S.T. candidate, as per Roster Point, and a S.T. candidate is available. As the legal issue before us is whether the applicant has an enforceable right not to be reverted, we do not propose to enter into the controversy whether or not there is any other post of UDC with the respondents against which the applicant could be adjusted. We would only observe that in case

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either side can identify any such post of UDC, the respondents should consider adjusting/promoting the applicant to that post strictly in accordance with the extant rules and instructions on the subject, after giving him credit for the number of years of service already put in by him as UDC, if not already done.

8. No costs in

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

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