

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No.2511/90

DATE OF DECISION 16.7.1991

SHRI S.K.BHARGAVA

-- APPLICANT

VS

UNION OF INDIA & ORS.

-- RESPONDENTS

CORAM

HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)

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

FOR THE APPLICANT

SHRI O.N.MOOLRI, COUNSEL

FOR THE RESPONDENTS

Ms. SUNITA RAO, COUNSEL

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

JUDGMENT

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

The applicant Welfare Inspector Kota Division filed this application under Sec.19 of Administrative Tribunals Act, 1985 aggrieved by the order dated 27-11-1990 passed by Divisional Manager Kota Division in pursuance of the order dated 13-11-1990 issued by the respondent No.1 Zonal Manager, Western Railway by which the applicant was ordered to be reverted with immediate effect. However, it is stated that the order has not been served. The applicant has claimed relief as under:-

"That the Hon'ble Court be pleased to quash the order dated 13-11-1990 issued by the General Manager,

Western Railway and the subsequent order dated 26-11-1990 issued by the Divisional Railway Manager, Kota reverting the applicant or deleting the name of the applicant from the Panel of Welfare Inspector and declare them a nullity"

2. The facts are that the applicant was working as Pharmacist in the grade of Rs.1350-2200 at Gangapur city of Kota Division. He applied for the post of Welfare Inspector (Annexure A-1) which was forwarded by the Divisional Personnel Officer. The applicant qualified in the written test and Vivo voce and was placed in the Panel dated 23-4-1990 (Annexure A-3). After medical examination the applicant was appointed as Welfare Inspector and joined that post on 30-4-1990 and has been working since then on the same post. By the impugned order the applicant has been reverted to his parent department as Pharmacist deleting the name of the applicant from the Panel dated 23-4-1990 (Annexure A-4).

3. In the reply filed by the respondents they have not disputed these facts. However they have stated that the application for the post of Welfare Inspector was not forwarded by the Medical Superintendent, Gangapur City nor any such application was received in this office. The application (Annexure R-1) which was received in the office was unated and was not forwarded by the Medical Superintendent. It is stated that since there was some procedural lacuna in the above selection regarding incorporation of the name of applicant in the supplementary written test held on

7-4-1990, the name of the applicant has been deleted from the Panel after obtaining the approval of the competent authority. Under these circumstances the application is said to be devoid on merit.

4. The application has been heard at the admission stage itself as the short point was involved is whether a person can be reverted by an order without following the procedure prescribed under the rules, whether such an order is tantamount to reversion as a measure of punishment. In the case M/s. Murari Woollen Mills Vs. State of Punjab and another 1990 (1) SLR P.698 it has been held by Punjab and Haryana High Court that if termination is by way of punishment than the employer has to take all disciplinary proceedings for the alleged mis-conduct. In the present case the reversion of the applicant has not been reverted because the post on which the applicant was working has been abolished but on account of the fact that the applicant is alleged to have committed fraud in manipulating his application. According to the respondents, he filed his undated application in the office without getting it forwarded by the Medical Superintendent. It is contended by the learned counsel that the applicant got his selection by fraudulent means and so his empanelment has been cancelled by the competent authority. This is not a case of simple reversion but it is a case where a stigma has been attached to the applicant i.e. it is alleged that the applicant has committed fraud in filing the application for selection to the post of Welfare Inspector in the office of the respondent. As such the proceedings were necessary be drawn under D.A. Rules, 1968 as otherwise the order itself will be hit by the provisions of Art.311 of the Constitution of India.

5. It is a fact that at the time he applied for the post of Welfare Inspector the applicant was working as Pharmacist and subsequently he was appointed under respondent No.2 as Welfare Inspector but that does not matter because if termination of appointment amounts to punishment, the person has to be given an opportunity to show cause against the alleged misconduct or fraud on account of which he is being reverted unceremoniously. Since the order of reversion has been passed on allegation of misconduct or fraud, the provisions of Art. 311(2) should have been followed. This is a case where the applicant is stated to have misrepresented the facts regarding the presentation of the application and also it is a case where there are allegation of forgery as there is a material difference between the photocopy of the application filed by respondent (Annexure R-1) and that photocopy of the application filed by the applicant (Annexure A-1).

6. It has been held in a number of judicial dicta that if the order of termination amounts to an order of punishment then it is mandatory on the part of employer to proceed under the disciplinary rules against the delinquent person.

7. In view of the above discussion we find that the order of reversion dated 17-11-1990/27-11-1990 is violative of Art.311(2) of the Constitution of India and being arbitrary is quashed and set aside. We further direct that the applicant shall continue as Welfare Inspector on which post he is already working by virtue of the interim order granted to the applicant on 4-12-1990.

The application is allowed with the above observation leaving the parties to bear their own costs. However the respondents shall be free to proceed against the applicant if so advised under D.A.Rules for the alleged fraud and misrepresentation stated to have been committed by the applicant for obtaining the selection to the post of Welfare Inspector in Western Railway.

Sharma
(J.P. SHARMA) 26.7.91

MEMBER (J)

S. Ray
(I.K. RASGOTRA) 26.7.91
MEMBER (A)