

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2572/90

New Delhi, this the 18th day of January, 1995.

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)
Hon'ble Dr. A.Vedavalli, Member (J)

Gurbachan Singh (Inspector)
No. D.1646, Crime Branch, Delhi
s/o Shri Pyara Singh
r/o Qr. No. 77, F.S.Civil Lines, Delhi ..Applicant.
(By Advocate Shri AK Aggarwal)

Versus

1. Commissioner of Police,
Police H.Qrs., I.P. Estate,
New Delhi.
2. The Administrator,
through Home Secretary,
Delhi Administration,
Old Secretariat, Delhi. ..Respondents
(By Advocate Shri B.S.Gupta)

ORDER (ORAL)

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)

The applicant is aggrieved by the An.F-4 order dated 23-11-90 issued by the Commissioner of Police reverting him to his substantive rank of Sub Inspector.

2. The brief facts are that the applicant was a Sub Inspector of Police from 29-6-78. He was given an ad hoc promotion under rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 by the order dated 8-9-89 alongwith two others, which reads as follows:-

Dated 8-9-89

"No.34941/CB-VI PROMOTION:- The following Sub-Inspr. and Consts. (Ex.) have been promoted to officiate as Inspr. and Hd. Consts. (Ex.) with effect from 2-9-89 on purely temporary and ad hoc basis under rule 19(ii) of Delhi Police (Promotion & Confirmation) Rules, 1980. They will have no claim for seniority etc. and are liable for

reversion at any time without assigning any reason. Their ad hoc promotion will be dependent on their continued good work and conduct during the period of such promotion:-

1. S.I. Gurbachan Singh, No.D/1546
2. Const. Ashok Kumar, No.151/Crime
3. Const. Jai Pal Singh, No.214/Crime

Sd/-
(H.K.Seth)
Dy. Commissioner of Police: HQ(I)
Delhi."

3. While so working as Inspector, the applicant was reverted by the impugned annexure P-4 order which reads as follows:-

"PHQ 5358-600/CPI dated 23-11-90
issued by Commissioner of Police.

The following Inspectors (Executive) who were promoted to officiate as Inspectors on purely temporary and ad hoc basis under rule 19(ii) of the Delhi Police (Promotion and Confirmation) Rules 1980 vide this PHQ notification No.39067/CBI dated 22-9-90 and 34941 CB-VI dated 8-9-89 respectively are reverted to their substantive rank of Sub-Inspectors (Executive w.e.f. 22-11-90) as they could not maintain good work and conduct during period of ad hoc promotion.

1. Inspector Babu Singh.
2. Inspector Gurbachan Singh.

Sd/-
(G.R.Gupta)
DCP/HQ.I)
for Commissioner of Police
Delhi
Dated: 23-11-1990"

4. Aggrieved, this C.A. has been filed seeking the following reliefs:-

- (i) This Hon'ble Tribunal may be pleased to quash the reversion order dated Annexure P.H.Q/5358-600/CPI dated 23-11-90 issued by the Commissioner of Police i.e. respondent No.1 threatening to revert the applicant from the present rank of Inspector to the substantive post of Sub Inspector;

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(ii) to direct the respondents to place the name of the applicant at the bottom of seniority list 'F' (Ex) in terms of Rule 19(ii) of the Delhi Police (Promotion & Confirmation) Rules, 1980 drawn up for the year 1989-90.

5. The reversion has been challenged on the ground, among others, that it is a reduction in rank in violation of Article 311 of the Constitution.

6. The respondents have filed a reply in which they have stated that after his promotion as Inspector, there was a complaint against him which was investigated and it transpired that, in the course of investigation ^{of} a criminal case, the applicant extorted Rs.15,000/- from a travel agent. Accordingly, a departmental enquiry was ordered to be held against the applicant on 16-11-90. It is in this background that the impugned annexure P-4 order was issued on 23-11-90 reverting him as Sub Inspector as he "could not maintain good work and conduct" during the period of the adhoc promotion. In other words, the quality of his work, for which he was rewarded by ad hoc promotion, could not be maintained and it deteriorated. Therefore he was reverted.

7. The applicant has filed an additional affidavit on 19-12-94 stating that in the departmental enquiry held on the above charge, he has been exonerated and the departmental proceedings have been dropped.

8. When the matter came up before us for

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hearing today the learned counsel for the applicant contended that in the circumstances, when ultimately the departmental proceedings have been dropped, it is clear that there was no ground, whatsoever, for having passed the order of his reversion.

9. A number of other issues, particularly relating to interpretation of rule 19(ii), the nature of the appointment thereunder, the right of such an appointee to regularization etc., were sought to be argued. As we felt that the matter could be approached from another angle, considering the ground raised by the applicant, we wanted to know from the learned counsel of the respondents as to whether the impugned annexure F-4 order should be construed to be an order of reversion simpliciter or whether it should be found to be an order which imposed a penalty by way of reversion on the ground that it also casts a stigma on the applicant by stating that he could not maintain good work and conduct during the period of ad hoc promotion.

10. The learned counsel for the respondent contends that under no circumstances, an ad hoc promotee can get the protection of Article 311 of the Constitution. He, however, conceded that the F-4 order does cast a stigma on the applicant and therefore the principles of natural justice required that he was given a hearing before that order was passed.

11. In our view, as the impugned An.F-4 order casts a stigma on the applicant, as admitted by the learned counsel for the respondents, this is not an order of reversion simpliciter. It is an order imposing reversion as a penalty.

12. It is not correct to say that ad hoc ~~ees~~ promotions do not get the protection of Art.311 of the Constitution. The decision of the Apex Court in PL Dhingra Vs. UOI (AIR 1958 SC 36) widened the scope of Art.311 by including within its purview not only permanent servants but temporary servants and servants holding officiating posts also" (Meti Ram Vs. N.E. Frontier Railway- AIR 1964 SC 600- page 39). It was held in Dhingra's case as follows:-

"xx In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so art.311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art.311 must be complied with."

In a later decision Jagdish Mitter Vs. UOI (AIR 1964 SC 449) it was observed as follows:-

"No doubt the order purports to be one of discharge and, as such, can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in Government services, it expressly casts a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge."

13. We therefore hold that the application ^{ant} ~~reverted~~ has been pushed by way of penalty without following ^{in view of the} the proper procedure. In this matter, we are of the view that the D.A. could be disposed of without

going into any further questions.

14. In the circumstances, we quash the annexure P.4 order. When this application was heard on 7-12-90 an interim direction was given that the applicant shall not be reverted from the post of Inspector (Executive) in pursuance of the impugned order. The applicant is continuing as Inspector by virtue of that interim order. Therefore he was not reverted and hence there is no need to restore his promotion.

15. We notice that he has already been exonerated in the disciplinary proceedings and the proceedings have been dropped. Therefore, the question of the applicant's regularisation or confirmation, shall now be taken up by the respondents in accordance with law and the applicant is entitled to all further benefits in accordance with law.

16. The O.A. is disposed of with the above directions.

A. Vedavalli

(Dr. A. VEDAVALLI)
Member (J)

N.V. Krishnan
18.1.85

(N.V. KRISHNAN)
Vice Chairman (A)

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