

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 938/90 with  
M.P. & A. No. 2144/90

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DATE OF DECISION 5.10.1990.

Shri Chaman Singh	<del>Petitioner</del> Applicant
Shri K.L. Bhatia	Advocate for the <del>Petitioner(s)</del> Applicant
and Shri D.P. <del>Versus</del> Khokha	in OA-938/90
Union of India & Others	for Applicant in MP-2144/90
	Respondent
Shri Y.K. Jain	Advocate for the Respondent(s) in
	OA-938/90

### CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */ No*
4. Whether it needs to be circulated to other Benches of the Tribunal? */ No*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Assistant Communication Officer in the Directorate General of Civil Aviation, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) That the impugned order dated 2.5.1990 issued by the Respondent No.3 in rejecting the option of the Applicant for not becoming a regular employee of the National Airport Authority may be set aside.
- (ii) That the Applicant may be allowed to continue as a Government Servant under the Director General of Civil Aviation, New Delhi by virtue of his substantive appointment in the said office and hold <sup>ing</sup> a lien therein.

- (iii) That the Applicant may be allowed to continue to work as Assistant Communication Officer under Respondent No.2 w.e.f. March, 1983 and as Communication Officer under the D.G.C.A. at New Delhi w.e.f. 1986 since when he is eligible for promotion to the post of Communication Officer.
- (iv) That the order of cancellation of Government accommodation may be withdrawn.
- (v) That the applicant may be treated as on duty as if no such order of his transfer to Varanasi has been issued and may be paid pay and allowances at New Delhi.

2. The Union of India, through the Secretary, Ministry of Civil Aviation, and the Director General of Civil Aviation, have been impleaded as respondents 1 and 2 respectively. The Chairman, National Airport Authority, has been impleaded as the third respondent. Respondent No.3 has filed counter-affidavit, wherein it has been contended that the applicant is an employee of the National Airport Authority and that this Tribunal does not have the jurisdiction to entertain the present application. The other two respondents have neither entered appearance nor filed their counter-affidavits.

3. The present application was filed in the Tribunal on 16.5.1990. When it came up for admission and interim relief on 18.5.1990, the Tribunal passed an ex parte interim order to the effect that the respondents are directed to maintain status quo as regards the continuance of the applicant at Delhi in the post of Assistant Communication Officer, and that he shall not be dispossessed of

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Government quarter. The interim order had been continued till the case was heard on merit on 17.7.1990 and the judgement reserved.

4. The application has not been admitted. We feel that it could be disposed of at the admission stage itself and we proceed to do so. The applicant had filed another application (OA-952/87) in this Tribunal which was disposed of by judgement dated 9.8.1989. In the said application, he had prayed for the following reliefs:-

- (i) that he be deemed to have been appointed on regular basis with effect from 20th March, 1983 when he completed 5 years' service as Communication Assistant;
- (ii) that the Director of Communication Memo. dated 1/4-10-1985 may be quashed so far it relates to him;
- (iii) that the letter dated 27.5.1987 issued by the National Airport Authority (hereinafter referred to as the Authority) may be declared null and void, so far as it relates to him; and
- (iv) that he be given consequential benefits of seniority and promotion to the higher posts of Communication Officer from 17.1.1986 when his juniors were promoted to this post.

5. In the operative part of the judgement dated 9.8.1989, the Tribunal directed that the respondents No. 1 and 2 shall consider the case of the applicant for promotion on regular basis with effect from 20th March, 1983 when he

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completed 5 years of service as Communication Assistant under the provisions of Column 11(iv) of the Recruitment Rules, treating as if he was holding the post of Communication Assistant on the date of promulgation of the Rules. In case he is found suitable for promotion, they shall promote him as Assistant Communication Officer on regular basis. He would also be entitled to all consequential benefits. Respondents 1 and 2 shall comply with the above directions within a period of three months from the date of communication of this order.

6. Respondent No.3 has stated in his counter-affidavit that in compliance with the judgement of the Tribunal dated 9.8.1989, the Departmental Promotion Committee was convened, but its findings have been kept in a sealed cover as it was brought to its notice that the applicant has not yet been completely exonerated from the Vigilance angle. They have stated that this has been done in accordance with the prescribed procedure. Thus, it is their stand that the order of this Tribunal was implemented.

7. The case of the applicant is that he joined Government service under the Directorate General of Civil Aviation in the Ministry of Civil Aviation in 1962. He was on deputation with the National Airport Authority since 1.6.1986 under the terms and conditions laid down in the National Airport Authority Act, 1985. He was promoted on an ad hoc basis to the post of Assistant Communication Officer on 30.4.1982 and he has worked as such for over five years. According to him, the respondents did not comply with the Tribunal's judgement dated 9.8.1989.

8. On 15.9.1989, respondent No.3 issued a circular asking the option of the Government employees, including the applicant, for absorption in the National Airport Authority, or their intention of not becoming regular employees of the said Authority. The option was to be exercised by 2nd October, 1989. It was stated in the circular that any employee who does not exercise the option for absorption, or does not intimate his intention of not becoming a regular employee of the Authority, will be deemed to have been absorbed in the National Airport Authority w.e.f. 2nd October, 1989. It has been stated in the said circular that the respondent No.3 proposes to absorb the applicant in the post of Communication Assistant held by him on regular basis in the Central Government.

9. The applicant submitted a representation on 22.9.1989, wherein he stated that his promotion case had since been decided by this Tribunal by judgement dated 9.8.1989, <sup>an</sup> and ~~the~~ the respondents have been directed to consider his promotion on regular basis in the Cadre of Assistant Communication Officer w.e.f. 20.3.1983. Since the said judgement had not been implemented by the concerned authorities, he stated that he was not supposed to exercise his option at that crucial stage. He, therefore, requested that his option as called for, may be postponed till the Tribunal's order is implemented by the concerned authorities, and that he may be permitted to exercise his option later.

10. With reference to the aforesaid representation, the respondents have stated that the employees who were holding the posts on ad hoc basis at the time of

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absorption w.e.f. 2.10.1989, have been absorbed in the posts which they were holding on regular basis. The applicant was holding only the post of Communication Assistant on regular basis at that point of time.

11. The applicant wrote to the Director General of Civil Aviation in this regard. The Director General informed him that his case was being looked into and that they will do whatever was legally possible (vide letter dated 7.2.1990 at Annexure V, p.21 of the paper-book).

12. On 16.2.1990, respondent No.2 issued a list of officers of the Directorate General of Civil Aviation who were absorbed in the National Airport Authority and who were deemed to have retired from Government service w.e.f. 2.10.1989. The name of the applicant did not figure in the said list.

13. On 9.3.1990, the applicant informed respondent No.3 to the effect that he does not intend to become a regular employee of the National Airport Authority, and that he has opted to remain with respondent No.2.

14. The respondents informed him by their Memorandum which was received by the applicant on 2.5.1990 stating that as he did not exercise his option within the stipulated period, he is deemed to have opted for absorption in the National Airport Authority and as such, his request for not becoming a regular employee of the said Authority could not be agreed to.

15. On 23.3.1989, the respondents issued the impugned memorandum, whereby he was transferred from Delhi to Varanasi and was directed to report for duty at the new

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station. The respondents passed another order on 22.3.1990 informing him that consequent upon his transfer to Varanasi, the allotment of Government accommodation stood cancelled w.e.f. 12.5.1990.

16. The applicant has contended that he has been appointed on regular basis as Assistant Communication Officer under the Director General of Civil Aviation w.e.f. 20.3.1983, that he holds a lien as a Government servant under the Director General of Civil Aviation which cannot be taken away from him, and that the impugned order of absorption of the applicant in the National Airport Authority is discriminatory. In this context, he has referred to the names of certain officers who indicated their intention that they did not want to be the regular employees of the National Airport Authority, as a result of which, their transfer orders were cancelled. He has also mentioned the names of the officers who gave their options late, or have not exercised their option but were still continued on deputation with the National Airport Authority without absorbing them. The respondents have stated that the transfer orders have been given only to those who have opted for absorption in the National Airport Authority. Some persons against whom vigilance cases are pending, have not been absorbed in the Authority. They will be considered for absorption only after their cases are cleared by the Vigilance.

17. We have gone through the records of the case and have considered the rival contentions.

18. Before filing the present application, <sup>2</sup>the applicant had filed a writ petition in the Delhi High Court (CWP-1676/89- Chaman Singh Vs. Union of India & Others) challenging his

transfer from Delhi to Varanasi by order dated 30th May, 1989. After hearing the counsel for both the parties, the Delhi High Court saw no reason to interfere with the case relating to his transfer from Delhi to Varanasi and dismissed the writ petition by order dated 12.3.1990. Respondent No.3 relied heavily upon the order passed by the Delhi High Court in support of their contention that the applicant had become an employee of the National Airport Authority. They have also produced a copy of the aforesaid order passed by the Delhi High Court **at** Annexure R-2 to their counter-affidavit at pages 46-47 of the paper-book.

19. The applicant did not exercise his option to be absorbed in the National Airport Authority within the stipulated period. Consequently, the decision of the said Authority deeming the applicant to have opted for absorption in the Authority, cannot be faulted. Similarly, his transfer from Delhi to Varanasi w.e.f. 12.3.1990, cannot also be gone into in the present proceedings as respondent No.3 who has issued the order of transfer, is not amenable to the jurisdiction of the Tribunal.

20. There is, however, another aspect of the matter which relates to the plea raised by the respondents that the D.P.C. which considered the case of the applicant for promotion, has kept its findings in a sealed cover on account of the pending vigilance case against him.

21. The question arises whether on account of the pendency of a vigilance case, the promotion of an



officer could be deferred, as was done in the instant case. In our opinion, this cannot be done in view of the recent decisions of the Supreme Court in C.O. Arumugam & Others Vs. the State of Tamil Nadu, 1989(2) SCALE 1041, and the State of M.P. Vs. Bani Singh, 1990 (1) SCALE, 675.

22. In Arumugam's case, the Supreme Court observed that the consideration of promotion could be postponed only on reasonable grounds. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. In the case of respondent No.4 before the Supreme Court, his name was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. The Supreme Court observed that "it is, therefore, not proper to have overlooked his case for promotion". The Supreme Court, therefore, directed that his case be considered for promotion on the date on which his junior was promoted and if he was found suitable for promotion he must be promoted with all consequential benefits.

23. In the same vein, the Supreme Court observed in Bani Singh's case that "normally, pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right being considered. If departmental enquiry had reached the stage of framing of charges after a prima facie case has been made out, the normal procedure

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followed as mentioned by the Tribunal was 'sealed cover' procedure but if the disciplinary proceedings had not reached the stage of framing the charge after prima facie case is established, the consideration for promotion to a higher or selection grade cannot be withheld merely on the ground of pendency of disciplinary proceedings".

24. In the light of the aforesaid rulings of the Supreme Court, we are of the opinion that the non-consideration of the case of the applicant for promotion as Assistant Communication Officer by the D.P.C., is legally untenable. The mere pendency of a vigilance case should not stand in the way of the applicant being considered for promotion.

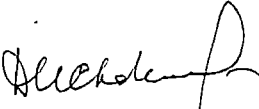
Accordingly, we direct that the meeting of the D.P.C. should be re-convened as expeditiously as possible but in no event, later than 31.12.1990 to consider the case of the applicant for promotion in accordance with the Tribunal's judgement dated 9.8.1989. The D.P.C. shall not take into account the vigilance case pending against the applicant. In case the D.P.C. finds him suitable for promotion, he should be promoted as Assistant Communication Officer w.e.f. the due date. In that event, the respondents shall give him an opportunity to exercise an option afresh within a reasonable period, as to whether he would like to remain in his parent cadre or not. The application is partly allowed on the above lines.


25. In MP-2144/90 filed by the applicant, he has prayed that the respondents should be directed to release his salary for the period commencing from March, 1990 to-date. As we have already come to the conclusion that the applicant

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must be deemed to have been absorbed in the National Airport Authority w.e.f. 2.5.1990, no direction can be issued to the Directorate General of Civil Aviation to release to him the salary from that date. MP-2144/90 is also disposed of accordingly. The interim order passed on 18.5.1990, is hereby vacated.

There will be no order as to costs.

  
(D.K. Chakravorty)  
Administrative Member  
5/5/1990

  
(P.K. Kartha)  
Vice-Chairman (Judl.)  
5/10/90