

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
DELHI.

Application No. T-34^{PA} of 1985.

Capt. Lachhman Singh

.....

In person.

VERSUS

Secretary,
Ministry of Personnel and Training,
Administrative Reforms and Public
Grievances and Pension,
Government of India,
New Delhi.

.....

Through Shri N.S. Mehta,
Sr. Standing Counsel.

CORAM:

Shri Justice K. Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

1. Whether Reporters of local papers
may be allowed to see the judgment?
2. Whether to be referred to the
Reporter?
3. Whether to be circulated to all
Benches?
4. Whether fair copy to be typed for
perusal?

Yes

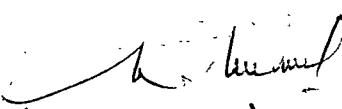
Yes

Yes

No


(K. Madhava Reddy)
Chairman

28.2.1986.


(Kaushal Kumar)
Member

28.2.1986.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Recon. No. T-34/85.

28th February, 1986.

Capt. Lachhman Singh

....

Petitioner.

Versus

Secretary,
Ministry of Personnel and Training,
Administrative Reforms and Public
Grievances and Pension,
Government of India,
New Delhi.

....

Respondent.

CORAM

Shri Justice K. Madhava Reddy, Chairman.

Shri Kaushal Kumar, Member.

Petitioner

....

In person.

Respondent

....

Through Shri N.S. Mehta,
Sr. Standing Counsel.

(Judgment of the Bench delivered by
Shri Justice K. Madhava Reddy, Chairman)

The petitioner prays for quashing the order No.A.20011/L-45/
80-E.II, dated the 8th August, 1984 made by the Ministry of Commerce,
Government of India and for a direction from this Tribunal to appoint
him as a Section Officer on the basis of Section Officers Grade Limited
Departmental Competitive Examination, 1979 and grant him the seniority
which he would have got had his nomination not been cancelled by the
Department of Personnel.

The petitioner was a Grade 'C' Stenographer of CSSS, but
was officiating as Grade 'B' Stenographer when he made his application
for appearing for the Section Officers Grade Limited Departmental
Competitive Examination held by the UPSC in the year 1979. His
application was forwarded by his Department and he appeared for the
Examination. He was finally selected on 10.12.1980. As per the final
Select List, he secured 13th position. On the strength of his rank in
the Select List, he was nominated to the Ministry of Commerce on
8.1.1981. Subsequently, the Department of Personnel cancelled his
nomination on the ground that he was confirmed in Grade 'B' of CSSS
with effect from 31.12.1979, that is, from a date anterior to the

...../2.

[Signature]

[Signature]

date of his nomination, by an order of the Ministry of Industry issued on 30.12.1980. The petitioner submitted a representation on 22.4.1981 that the orders of the Department of Personnel revoking his nomination may be reviewed and he may be posted as Section Officer in the Ministry of Commerce from the date his juniors were posted. His representation was forwarded to the Union Public Service Commission and the UPSC, vide its letter dated 22nd April, 1981 advised that if the petitioner is given an opportunity to forgo his lien in Grade 'B' of CSSS by getting the retrospective orders of his confirmation cancelled, there should be no difficulty in appointing him as Section Officer on the results of the Examination. Pursuant to the said advice, the petitioner was informed by Memorandum dated 5th September, 1981 of the Ministry of Commerce that unless he is deconfirmed in Grade 'B' of the CSSS, he cannot be appointed to C.S.S. and was requested to convey to the Ministry of Commerce whether "he would like to be de-confirmed in Grade B of C.S.S.S." On 22.3.1982, the petitioner unequivocally conveyed his option that he may be deconfirmed in the post of Grade 'B' of CSSS, so that he may be appointed as Section Officer. Notwithstanding the above, the petitioner was informed under Memorandum dated 23.4.1982 that in accordance with the provisions of the Department of Personnel & A.R. O.M. No. 12/2/67-Estt.(D), dated 21.3.1968, it was not permissible to deconfirm him in Grade 'B' of the CSSS and as such, he cannot be appointed as Section Officer. The Ministry of Law also by its letter dated 27.3.1981 opined that the applicant cannot be debarred from getting the fruits of hard labour of passing the examination unless there was a mandatory provision of law to the contrary. His further representation did not meet any success. He was informed under O.M. dated 8th August, 1984 that his request for appointment as Section Officer cannot be acceded to.

The facts averred by the petitioner are not in dispute. The only plea taken in defence is once an officer is confirmed in a particular position, he cannot be deconfirmed and since he was confirmed as Grade 'B' Stenographer from a date anterior to his nomination, to the

...../3.



Ministry of Commerce, he was not eligible to be appointed as a Section Officer. Reliance for this contention is placed on the Ministry of Home Affairs Office Memorandum No.12/2/67-Estt(D), dated 21st March, 1968; that O.M. lays down the procedure for cancellation of confirmation. Before we consider how far the contention based on this Memorandum is correct, we may note that on the day when the petitioner's application was forwarded, he was a Grade 'C' Stenographer and he was eligible to compete at the Examination held in 1979 by the UPSC for appointment of Section Officers. On the day when results of the said Examination were declared, he was still a Grade 'C' Stenographer. He was not confirmed as Grade 'B' of CSSS even on the day when he was nominated to the Ministry of Commerce. He was confirmed as Grade 'B' Stenographer by order dated 30th December, 1980 retrospectively w.e.f. 31.12.1979. It is common ground that but for this confirmation, he was a Grade 'C' Stenographer on all the relevant dates and was eligible to appear for the said Examination and also for being appointed as Section Officer. The petitioner who was thus eligible to be appointed as Section Officer cannot be made ineligible by confirming him retrospectively as Grade 'B' of CSSS. The right which the petitioner had secured by virtue of his rank at the competitive examination and by virtue of his nomination to the Ministry of Commerce cannot be taken away under an administrative order made behind his back.

What is contended on the basis of the O.M., referred to above, is that once confirmation is ordered, confirmation cannot be cancelled except in terms of Office Memorandum dated 21st March, 1968, referred to above. That Memorandum states that confirmation can be cancelled only

- (1) If the order of confirmation was clearly contrary to the statutory Rules, and there is no power or discretion to relax the Rules.
- (2) If the order of confirmation was made when there was no substantive vacancy and the confirming authority had no power to create the post in which the officer was confirmed.
- (3) If the order of confirmation was made in error, e.g., naming wrong person - mistake in identity.

The aforesaid Memorandum empowers cancellation in specified circumstances on the premises that confirmation confers a benefit on the employee and lays down that that benefit cannot be taken away except in the three circumstances mentioned therein. That Memorandum, by itself, does not empower retrospective confirmation, nor does it provide for cancellation of a confirmation which deprives an employee of a right vested in him. It can be gainsaid that an order of confirmation in a post is always to confer a benefit on the public servant and not to deprive him of a benefit already accrued to him. The petitioner was confirmed without notice to him. In fact, after consulting the Ministry of Law and the Union Public Service Commission, the petitioner was called upon to exercise his option and the Ministry was prepared to cancel the confirmation if he exercised his option for cancellation of his confirmation. After he had exercised the option, the respondents, on the assumption that this Memorandum left no discretion with the competent authority to cancel the confirmation except on the grounds mentioned therein, refused to cancel the confirmation even though the petitioner agreed to the cancellation and accordingly held him disqualified for appointment as Section Officer. This, in our view, is not a correct reading of the Memorandum relied upon by the respondents. That Memorandum does not restrict the powers of the competent authority to cancel the confirmation where the confirmation itself has been made with retrospective effect and without notice to the employee concerned. A reading of the Office Memorandum also confirms the view that it was intended to benefit the employee and not to adversely affect him for it says that "any cancellation of confirmation "would amount to reduction in rank without any fault on the part of the officer confirmed". In other words, this Memorandum only ensures that cancellation of confirmation should not adversely affect the employee except in the three circumstances mentioned therein. That Memorandum is not intended to apply in a situation where the employee himself requests for cancellation of confirmation as he was earlier eligible to compete for a higher post and had secured a better

- 5 -

position by virtue of his rank at the competitive examination. We find nothing in the Office Memorandum which debars the respondents from cancelling the confirmation made with retrospective effect at the request of the employee himself. Nor does that Memorandum deal with an order of confirmation which is prejudicial to the interests of the employee concerned. Further that Memorandum does not cover a case of confirmation which the employee himself never requested and is prepared to forego.

The respondents also relied upon Rule 12 of the Rules for the Limited Departmental Examination held by the Union Public Service Commission in 1979, which reads as follows:

"12. A candidate who after applying for admission to the examination or after appearing at it, resigns his appointment or otherwise quits the service or severs his connection with it or whose services are terminated by his Department or who is appointed to an ex-cadre post or to another Service on 'transfer' and does not have a lien in the Assistants' Grade of the Central Secretariat Service/Railway Board Secretariat Service/Intelligence Bureau or Stenographer Grade 'C' of the Central Secretariat Stenographers' Service/Railway Board Secretariat Stenographers' Service/Armed Forces Headquarters Stenographers' Service/Grade II of the I.B. Stenographers' Service or any post in the Indian Foreign Service Branch 'B' will not be eligible for appointment on the results of this examination."

A close reading of this Rule shows that it applies to a case where an employee (a) resigns his appointment, or (b) otherwise quits the service, or (c) severs his connection with it, or (d) whose services are terminated by his Department or (e) who is appointed to an ex-cadre post or to another Service on 'transfer' and does not have a lien in the Assistants' Grade of the Central Secretariat Service.....or Stenographer Grade 'C' of the Central Secretariat Stenographers' Service.

All these contingencies covered by the rule arise out of the volition of the employee himself and not where the employee


...../6.

ceases to be a Stenographer 'C' on account of his retrospective confirmation in Grade 'B' of CSSS without his consent and without any notice to him. On the facts of the case, Rule 12 has no application. None of the contingencies envisaged by Rule 12 has occurred in the case of the petitioner. But for the retrospective confirmation, the petitioner was a Grade 'C' Stenographer eligible for appointment as Section Officer on all the relevant dates. Confirmation in a post cannot be thrust on a public servant so as to rob him of the right to be appointed to a higher post. By an unilateral action of the respondents, confirming him retrospectively as Grade 'B' of CSSS without notice to the petitioner, he cannot be denied the appointment he had secured even before the order of confirmation. No rule has been brought to our notice which prevents a public servant from refusing confirmation which is detrimental to his interest. That apart the respondents are estopped from refusing him the post of Section Officer when they had forwarded his application for appearing for the Examination and also nominated him to Ministry of Commerce as Section Officer and the petitioner is willing to join as Section Officer. Refusing to appoint him as Section Officer would be against all canons of justice.

The impugned orders are, therefore, quashed and the respondents are directed to give effect to the nomination of the petitioner as Section Officer in the Ministry of Commerce with effect from the date he was nominated and also to give him all consequential benefits of seniority and emoluments. There will be no order as to costs.


(K. Madhava Reddy)
CHAIRMAN

28.2.1986.


(Kaushal Kumar)
MEMBER

28.2.1986.