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CENTRAL ADMINISTRATIVE TRIBUNAL  
DELHI BENCH  
NEW DELHI

Application No. 11/85

Transfer Application No. \_\_\_\_\_

Date of decision 24.2.86

Manohar Khosla

Petitioner(s)  
Through **In person**

Versus

Union of India

Respondent(s)  
Through **Mr. K.C. Mittal, Advocate**

CORAM:

Shri S.P. Mukerji, Member

Shri H.P. Bagchi, Judicial Member

1. Whether Reporters of Local Papers  
may be allowed to see the judgment?

Yes

2. To be referred to the Reporter or not?

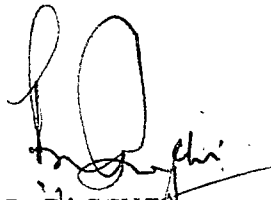
No

3. Whether to be circulated to all  
Benches?

No

4. Whether fair copy to be typed for  
perusal?

~~Yes~~ No

  
(H.P. BAGCHI)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL  
DELHI BENCH - I

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REGISTRATION NO.11/85

CORAM

Shri S.P. Mukerji, Member

Shri H.P. Bagchi, Judicial Member

Shri Manohar Khosla

....

Petitioner

Versus

Union of India through  
Secretary, Ministry of Petroleum &  
Secretary, Department of Personnel  
& Trg.

....

Respondents

For petitioner

Petitioner in person

For respondents

Shri K.C. Mittal

Advocate

The petitioner Shri Manohar Khosla has come up under Section 19 of the Administrative Tribunals Act challenging Office Memorandum No.6/2/82-CS.II dated 1st October 1982 issued by the Department of Personnel & Administrative Reforms re-allocating him to the Planning Commission and Office Order No. 21 of 1984 dated 15th February 1984 issued by the Ministry of Energy (Department of Petroleum) from their file No.A-12011/35/82-Estt directing him to report to the Planning Commission. He has also challenged Office Order No.32 of 1984 dated 23rd February 1984 issued by the Ministry of Energy (Department of Petroleum) promoting three Upper Division Clerks of the Department as Assistants on an ad-hoc basis.

2. The case in brief is that the petitioner as an L.D.C. appeared in the U.D. Grade Limited Departmental Competitive Examination in 1981 and having qualified was allocated by the Department of Personnel & Administrative Reforms through

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Shri. [Signature]

their Order No.6/2/82-CS-II dated 2nd September 1982 to the Department of Petroleum along with 11 other successful candidates. The Department of Petroleum through their Order No. A-12011/35/82-Estt dated 30th September 1982 on the basis of the aforesaid nomination by the Department of Personnel & Administrative Reforms appointed the petitioner along with another L.D.C. of the Department of Petroleum to the posts of U.D.C. in the latter Department. It transpires however that on 1.10.1982 i.e. on the day following the date of issue of order of appointment, the Department of Personnel & Administrative Reforms issued an O.M. No.6/2/82-CS-II re-allocating the petitioner and 11 other candidates who had been allocated to the Department of Petroleum to other Departments and Ministries, the petitioner being re-allocated to the Planning Commission. The Department of Petroleum however allowed the petitioner and the other official who was also promoted as U.D.C. by the same order to continue as U.D.C. in the Department of Petroleum and took up the matter with the Department of Personnel & Administrative Reforms for their retention in the Department. The Department of Personnel & Administrative Reforms did not agree to their being retained, as the Department of Petroleum had not notified any vacancy for being filled up by the Limited Departmental Competitive Examination of 1981. Ultimately the Department of Petroleum conceded the matter and by their impugned order of 15th February 1984 directed the petitioner to report to the Planning Commission. The petitioner joined the Planning Commission as U.D.C. on the 16th February 1984. The Department of Petroleum later promoted on an ad-hoc basis three U.D.Cs as Assistants with effect from 9th January 1984 by their impugned order of 23rd February 1984.

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3. The petitioner's case is mainly founded on the order of the Department of Personnel & Administrative Reforms dated 2nd September 1982 allocating the petitioner to the Department of Petroleum on the basis of which the latter promoted the petitioner as U.D.C. with effect from 30th September 1982 by their order of the same date. The petitioner's case is that the Department of Personnel being the authority allocating successful candidates to the various Departments, he was regularly promoted as U.D.C. on the 30th September 1982 and that the re-allocation order of 1st October 1982 issued by the Department of Personnel subsequent to his appointment cannot be held out against him. The petitioner has also urged that there were two vacancies of U.D.Cs in the Department of Petroleum which were to be filled up through Departmental Examination and if the Department of Petroleum omitted through their inadvertance to notify the vacancies to the Department of Personnel and Administrative Reforms for the Limited Competitive Examination of 1981, this lapse on the part of the Department of Petroleum should not be allowed to operate against him by his re-allocation to the Planning Commission by which he has been deprived of the promotion as Assistant which his juniors got after he left the Department of Petroleum.

4. We have heard the arguments of both sides in detail and gone through the various papers and documents produced before us. Regulation 3 in the Third Schedule to the Central Secretariat Clerical Service Rules 1962 reads as follows:

"(3) The rules of the limited departmental competitive examination referred to in clause (1) shall be as determined by the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs, and the allotment

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File  


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of candidates from the results of this examination to the various cadres shall be made by the said Department".

It is thus clear that the Department of Personnel & Administrative Reforms is the authority for allocating candidates to the various cadres and the allocation of the petitioner to the Department of Petroleum by the Department of Personnel & Administrative Reforms through their order of 2nd September 1982 cannot be faulted. However, the Department of Personnel & Administrative Reforms realised soon after the issue of the order that the allocation of 12 candidates made to the Department of Petroleum was erroneous as the latter Department had not notified any vacancy to the Department of Personnel & Administrative Reforms. If these 12 candidates were to be kept in the Department of Petroleum to that extent the 12 vacancies that had been notified by other Departments would have remained uncatered for. Having realised their mistake the Department of Personnel & Administrative Reforms rightly issued another letter on the 1st of October 1982 re-allocating the petitioner and the other candidates who had been allocated to the Department of Petroleum wrongly, to other cadres. There is no problem so far as 10 candidates who had not joined the Department of Petroleum are concerned. It appears that the petitioner and one more candidate who were working as L.D.C. in the Department of Petroleum had been appointed as U.D.C. in that Department on the 30th September 1982 and an issue can legitimately be joined to say why these two candidates who had already been promoted as U.D.Cs should be sent out merely because of the lapse on the part of the Department of Petroleum in not notifying the vacancies and another lapse on the part of the

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Department of Personnel & Administrative Reforms in allocating them wrongly to the Department of Petroleum. It can be argued with considerable cogency that the issue involved is not of promotion as the petitioner in any case got promotion in the Planning Commission, but of allocation to another Department on promotion. The petitioner is aggrieved 'ex post facto' only because if he had remained in the Department of Petroleum he would have got an ad-hoc promotion as Assistant which his juniors got in February 1984. This however is not very germane to the basic point at issue which is whether the re-allocation of the petitioner from the Department of Petroleum to the Planning Commission is just and equitable. We have tried to view the case of the petitioner with sympathy and understanding but because of certain facts which were brought to our notice through the perusal of the Department of Petroleum file No.A.12011/35/82-Estt, we cannot persuade ourselves to commiserate with the petitioner.

5. From the aforesaid file it became clear that on the 7th of October 1982 the concerned Section Officer put up the following note to the Under Secretary(A) who also endorsed the same on that very date. The noting of the Section Officer reads as follows:

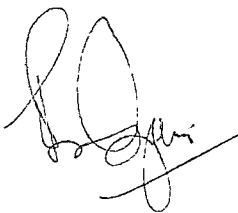

"This was discussed with US(A). We have two posts of Assistants vacant at present no UDC is eligible for promotion to Assistants Grade. Accordingly, we may utilise those two vacant posts and appoint S/Shri Anil Bindal and Manohar Khosla as UDCs. No reversion in the UDC grade will result as UDCs would be officiating against higher vacant posts of Assistants which is permissible under G.F.Rs. Accordingly fair O.M. is placed below for signatures pl."

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From the above it became evident that till the 7th of October 1982 the petitioner and the other L.D.C. Shri Bindal had not been promoted and appointed as U.D.C. After the Under Secretary approved the note on the 7th October 1982 the order of appointment No.12011/35/82-Estt dated 30th September 1982 was issued. The file does not have the draft order which was approved by the Under Secretary but at sl.no.4 on the correspondence portion of the file, the cyclostyled copy of the order is available. Copies of this order had been received by the various addressees whose acknowledgements through initials in ink are available on that sl.no. All the dated initials bear the date of 11th October 1982. The initial of the petitioner is also there but unfortunately it is not dated. From the perusal of the note of the Section Officer and the order of appointment it is clear that the order of appointment must have been issued after the 7th of October 1982 and received by various addressees after that date mostly by the 11th October 1982. Thus the date of 30th September 1982 was wrongly given to the order of appointment and seems to have been given to make it appear that the petitioner was promoted as U.D.C. before the order of re-allocation dated 1st October 1982 was issued by the Department of Personnel & Administrative Reforms.

6. We have a strong suspicion that in the concerned Division of the Department of Petroleum some unscrupulous elements were at work to distort the records to give undue benefit to the petitioner. We are not sure whether the petitioner had any hand in this but we have no hesitation in deducing that when the re-allocation order of 1.10.1982 was issued by the Department of Personnel & Administrative Reforms correcting the erroneous allocation of the petitioner, the petitioner had not been promoted as U.D.C. The Department could not have appointed the petitioner as U.D.C. in face of the contrary orders of 1st

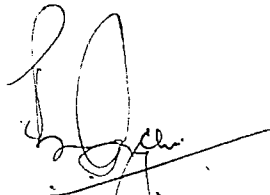
  


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October 1982 issued by the Department of Personnel & Administrative Reforms. Hence the need of ante-dating the order. The ante-dated order of 30th September 1982 to <sup>✓</sup> ~~my~~ mind cannot give any benefit to the Department or the petitioner as it is on the face of it, being ante-dated ~~and~~ <sup>is</sup> patently a tainted order. The petitioner cannot derive any claim or benefit by a tainted order even though he may have no hand in tainting it. To get any benefit from the sacred fountain of justice one must come with clean hands and clean records. The forum of justice cannot be made an instrument to effectuate orders and decisions which are proven to be of dubious character.

7. Since the erroneous allocation order of the Department of Personnel and Administrative Reforms of 2nd September 1982 had not obviously been given effect to till the corrected re-allocation order of 1st October 1982 was issued, the petitioner has to abide by the correct re-allocation order and has rightly been sent to the Planning Commission where he should belong. The prospects of future promotions in the Department of Petroleum viz-a-viz the Planning Commission is not at all relevant to the point at issue.

8. In view of the above discussions and for the foregoing reasons, we are clearly of the opinion that the application has no merit on facts as well as in law or equity and the same is accordingly dismissed. In the circumstances of the case there will be no order as to costs. A copy of this judgement may be sent along with the Departmental file No. 12011/35/82-Estt to the Secretary, Ministry of Energy (Department of Petroleum) by name for necessary action with reference to para 6 supra of this judgement.

  
(H.P. BAGCHI)  
MEMBER

  
(S.P. MUKERJI)  
MEMBER

24.2.86