

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(X)

Regn No. O.A. No. 129 of 1992

Date of decision: 27 2 98

Shri V.N. Sabharwal Applicant(s)

(By Advocate Shri R.P. Aggarwal)

Versus

Lt. Governor & Others Respondent(s)


(By Advocate Shri Rajinder Pandita)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter yes
or not?
2. Whether to be circulated to the other no
Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 129 of 1992

New Delhi this the 27th day of ~~March~~ ^{February}, 1998.

(X²)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri V.N. Sabarwal
R/o M-80, Vikas Puri,
New Delhi.

....Applicant

By Advocate Shri R.P. Aggarwal.

Versus

1. Lt. Governor of Delhi,
Raj Niwas,
Delhi-110 052.
2. Chief Secretary,
Delhi Administration,
5. Shammath Marg,
Delhi.
3. Inspector General of Prisons,
Central Jail,
Tihar,
Delhi.
4. Dy. Inspector General of Prisons,
Central Jail, Tihar,
Delhi.

...Respondents

By Advocate Shri Rajinder Pandita.

ORDER

Hon ble Mr. K. Muthukumar, Member (A)

Applicant while working as an Upper Division Clerk (UDC) in the Central Jail, Tihar, was selected along with 23 other persons for the post of Assistant Superintendent, Jail on the basis of the ACR dossiers and interview and the appointments were said to have been approved by the Chief Secretary. It was made clear in the appointment order at Annexure-A dated 19.6.1986, that these officials would hold the post till appointments were made from the regular incumbents. It was also made clear that these selected persons would not be entitled to any seniority and benefits attached to the post. By the

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impugned order dated 31.12.1991, the applicant along with 11 others were repatriated to the Delhi Administration and were directed to report for duty to the Secretary (Planning) in the Delhi Administration. The applicant's grievance is that having been selected for the post of Assistant Superintendent (Jail) with the approval of the Chief Secretary on the basis of his ACR dossier and interview, and after having worked for almost 5 years in the said post of Assistant Superintendent (Jail), the respondents have unilaterally and arbitrarily repatriated him to the Delhi Administration. He has also complained of the discrimination inasmuch as few other officers who were selected along with him have been, however, absorbed in the regular post and, therefore, his repatriation is mala fide and the respondents have resorted to by this way of pick and choose policy. The other grievance of the applicant is that while the Assistant Superintendent (Jail) is in the pre-revised scale of Rs.1400-2600, he is repatriated to a lower post carrying scale of Rs.1400-2300.

2. One of the grounds taken by the applicant is that Inspector General (Prisons) is not the competent authority to order his reversion to the Delhi Administration as he was duly selected with the approval of the Chief Secretary and was posted as Assistant Superintendent (Jail) against newly created post. Secondly, the order of repatriation is also a non-speaking order inasmuch as the respondents have not given any valid reasons for such an order particularly when he had served the department to the full satisfaction of all concerned

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for almost a period of 5 years. He also alleges that while his appointment is valid till the regular appointment takes place for these posts, he has been repatriated when the respondents have not made any regular appointment to the said post so far. By the impugned order, the respondents have also posted him to a lower post which amounted to a reduction in rank and reduction in pay scale which is in violation of the service conditions.

3. The respondents in their counter-reply have stated that these appointments including that of the applicant as Assistant Superintendent (Jail) were made on ad hoc and emergent basis against newly created posts in the interest of Jail Administration. The applicant was never asked to resign from his post in Delhi Administration nor was he told that he was regularly appointed under the Recruitment Rules for this post. In fact, the said appointment was made on an emergent basis, as stated above, without completing the necessary formalities as per the Recruitment Rules and the Jail Manual and, therefore, the applicant had no right to claim for regular appointment to this post. It has also been stated that the Inspector General of Prisons to whom he was initially asked to report at the time of his appointment, the competent authority to pass the impugned order reverting or repatriating him to the Delhi Administration in the parent cadre. In regard to the allegation that some of the officials recruited along with

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the applicant were absorbed in the Jail Administration as Assistant Superintendents, the respondents point out that on the basis of the assessment it was found that the work and conduct of those persons had been quite satisfactory and they were also granted necessary exemption in respect of physical fitness and qualification by the competent authority of the Delhi Administration. The respondents also aver that just because the applicant has been given ad hoc appointment along with certain others, it does not mean that every official on such deputation can be absorbed. The work and conduct of the officials before such absorption was to be taken into consideration and those officials who were absorbed were found fit to be absorbed. There was absolutely no mala fide intention in the absorption of those officials and their absorption could never give rise to allegation of discrimination. It has been averred that the work and conduct of applicant was not found to be satisfactory. It is also pointed out by the respondents that at the time when the applicant along with others were taken on deputation, there were large number of unfilled vacancies and the process of filling them up on regular basis has also been continuing from time to time. The applicant does not have a right for the said post and repatriation to his parent cadre which is that of UDC in the Delhi Administration which was in the pre-revised scale of Rs.1200-2300, does not amount to any reduction in rank.

4. We have heard the learned counsel for the parties and have perused the material on record.

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5. It is an admitted position that the applicant belongs to the Delhi Administration and was working as UDC before being appointed as Assistant Superintendent. It is seen from the orders of appointment that it was made clear to the officials who are selected to the post of Assistant Superintendents (Jail) that they would hold this post till regular appointments were made and that they would not be entitled to any seniority and other benefits. The orders repatriating applicant along with 11 others is an order without any stigma. From the order of appointment it appears to us that this is in the nature of an appointment to an ex-cadre post and, therefore, the applicant does not acquire any right in such a post. The order is also not punitive in nature. His repatriation to his permanent post in a lower scale, does not amount to reversion as a measure of penalty.

6. The applicant has not shown how he has any vested right to the higher post of Assistant Superintendent (Jail) although he might have been appointed with the approval of Chief Secretary after assessment and selection. Just because a few other officials appointed along with him have been absorbed in the respective post on a regular basis, it cannot be said that the applicant had been discriminated. The legal position in regard to permanent absorption on a deputation post is well decided by the Apex Court in Ratilal B. Soni Vs. State of Gujarat, 1990 Supp. SCC 243, according to which person who is on deputation can be reverted to his parent cadre at any time and he does not get any right to

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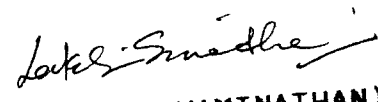


be absorbed on a deputation post. The above ratio will be equally applicable to any appointment to ex-cadre post. It is seen that the respondents have repatriated the applicant as the work and conduct was not found satisfactory. The applicant's contention that he had worked for 5 years in the said post, does not give him the right of regular appointment. It is for the respondents to assess the work and conduct of the officials who are taken on ad hoc/deputation basis against these regular posts and if according to their assessment, the applicant does not fulfil the requisite standard, it is always open to the respondents to repatriate him to his parent cadre. This, by itself, does not amount to any discrimination or bias. The counsel for the applicant relied on Om Prakash Goel Vs. Himachal Pradesh Tourism Development Corporation Ltd., Shimla and Another, (1991) 3 SCC 291. We find that the decision in the above case has no application here as this case was one of termination of service while the juniors were retained. The other case of Jarnail Singh and others Vs. State of Punjab and Others, 1986 (3) SCC 277, is also a case of termination of appointment, which has no relevance here. As regards the contention that the Inspector General of Prisons is not the competent authority, we find that as Head of Department, he is fully competent to place the services of the applicant at the disposal of his parent department in the normal course, and in the case of the applicant, as stated earlier, the order is neither arbitrary nor punitive.

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7. In the light of the above, we do not find any merit in this application. The application is accordingly dismissed but without any order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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