

Central Administrative Tribunal
Principal Bench

17

O.A. 2569/92

New Delhi this the 31st day of December, 1997.

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Lakhmi Chand, Lascar
S/o Shri Tulli Ram,
Pass No. 56 ASP/361, No. 56 ASP,
Air Force,
Faridabad. Applicant.

By Advocate Shri A.K. Bhardwaj.

Versus

1. Union of India through
The Secretary,
Ministry of Defence, Vayu Bhawan,
New Delhi.
2. The Chief of the Air Staff,
Vayu Bhawan,
New Delhi.
3. The Air Officer Commanding-in-Chief,
HQ, Maintenance Command,
Indian Air Force,
Nagpur-440007.
4. The Group Captain (Commanding Officer),
No. 56 ASP, Air Force,
Faridabad.
5. Jagan Nath, Lascar,
No. 56 ASP, Air Force,
Faridabad. ... Respondents.

By Advocate Shri V.S.R. Krishna with Shri R.K. Shukla.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was working as Assistant Store Keeper (ASK) is aggrieved by the order passed by the respondents dated 18.2.1991 revoking his appointment to that post which was made earlier on 12.7.1990 and reverting him to the post of Lascar (Group'D'), with immediate effect.

JS

18

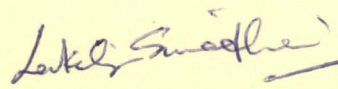
2.

The applicant along with two other persons had appeared in a selection test held by the respondents for appointment to the post of ASK. He was declared passed and promoted to that post by order dated 12.7.1990 and was placed on probation for a period of 2 years with effect from that date. Thereafter, the respondents state that they found that he had been promoted by mistake as the departmental examination was a qualifying examination and not a competitive one and selection was to be made on the basis of seniority from amongst the persons who qualify in the examination. The applicant was, however, given the promotion as he had scored the highest marks even though he was junior to the other two candidates. The respondents have submitted that the Board of Officers have committed a mistake that it was a competitive examination and not a qualifying examination and they had thus selected the candidate who had obtained the highest marks. They, therefore, claim that they had a right to rectify the mistake when they became aware of it as the applicant had been erroneously appointed. Shri A.K. Bhardwaj, learned counsel for the applicant, on the other hand, has submitted that the impugned order of reversion is bad in law as even if it is held that his promotion was erroneous, the same cannot be corrected and the applicant reverted to the lower post without issuing a show cause notice. He relies on (1) *Km. Neelima Misra Vs. Dr. Harinder Kaur Paintal and Others* (1990 Lab. I.C. 1229); (2) *S. Mohamed Rafiq and Others Vs. Union of India & Ors.* (ATJ 1991(10) 666; and (3) *Sukhdeo Sah & Ors. Vs. Union of India & Ors.* (SLJ 1991(2)(CAT) 534).


18.

3. In this case, the respondents have issued the impugned order which involves civil consequences without affording an opportunity to the applicant to present his case. It is settled law that such an order cannot be passed without complying with the audi alteram partem rule and the party should be given an opportunity to meet his case before an adverse decision is taken. Therefore, in the facts of this case, on this ground alone, the impugned order dated 18.2.1991 is liable to be set aside. The Tribunal by interim order dated 1.10.1992 had directed the respondents not to act upon the order dated 27.8.1992, by which the senior most person securing qualifying marks and above is to be selected for appointment to the post of ASK, and not purely on merit.

4. In the facts and circumstances of the case, therefore, this application succeeds and is allowed. The impugned order dated 18.2.1991 reverting the applicant to the lower post of Lascar from his appointment as Assistant Store Keeper is quashed and set aside leaving it open to the respondents to take action in accordance with law. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"


(S.R. Adige)
Vice Chairman (A)