

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 441 of 1993 decided on 27.7.98

(9)

Name of Applicant: Sh. A. K. Goel

By advocate: Sh. Sant Lal

Versus

Name of Respondents: UOI thro' Secy., Min. of Communications

By advocate: Motie

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Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr. A. Vedavalli, M(C)

1. To be referred to the Reporter or not? No

2. Whether to be circulated to other Benches of the Tribunal? No

Narasimhaiah

(N. Sahu)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O. A. No. 441/93

New Delhi, this the ^{27th}

 day of July, 1998

(10)

HON'BLE SHRI N. SAHU, MEMBER(A)
HON'BLE DR. A. VEDAVALLI, MEMBER(J)

Sh. A. K. Goel son of Sh. Mukteshwar Goel,
employed as Junior Accounts Officer in the
O/o General Manager(South), MTNL, Nehru Place,
New Delhi, r/o Delhi, Address for service of notices
Shri Sant Lal, Advocate, C-21(B),
New Multan Nagar, Delhi-110056. Applicant

(By Advocate Shri Sant Lal)

Versus

1. The Union of India,
through the Secretary,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan, New Delhi-110001.
2. The Chief General Manager(NTR),
Department of Telecommunications,
Kidwai Bhawan, New Delhi-110050. Respondents

(By Advocate : None)

O R D E R

BY SHRI N. SAHU, MEMBER(A)

The applicant is aggrieved against his reversion to the post of LDC from the post of Junior Accounts Officer. The applicant appeared in the departmental examination of Junior Accounts Officer. He cleared Part-I in January, 1980 and Part-II on 2.6.92. He was imparted the prescribed training of 12 weeks from 27.7.92 to 16.11.92. He was thereafter appointed as J.A.O. (Group 'C') in the pay-scale of Rs. 1640-2900 with effect from 19.10.92. He reliably understood that on 19.2.93, the respondents issued orders of his reversion to the post of LDC on the ground that while working as UDC, the applicant was reverted as LDC on the basis of a departmental inquiry. It was only after he assumed charge and functioned as JAO they realised their mistake. As the applicant was functioning as LDC,

the result of departmental examination for the post of Jr. Accounts Officer could not have been given effect to in his case. According to the respondents, by a mistake the applicant was promoted and the impugned order of reversion sought to correct that mistake.

2. This action is challenged on the ground that no opportunity of hearing or a show-cause notice was given to the applicant before reducing his rank. Reduction in rank is a major penalty which can be imposed only after following the procedure prescribed in CCS (CCA) Rules, 1965 and after providing adequate opportunity of defence under Article 311 (2) of the Constitution of India.

3. It is further submitted that under Rule 5 of the P&T Junior Accounts Officers, (Telecom Wing), Group 'C' Recruitment Rules, 1977, the persons appointed to the service on or after the notification of the rules, shall be members of the service and further the appointing authority of J.A.O. is a Member of the Telecom Board (P&T Manual - Vol.III). As such, the applicant questioned the jurisdiction of CGM(NTR), New Delhi or any subordinate authority to pass reversion order. It is further urged that neither a disciplinary case is pending against him nor he is undergoing any punishment like stoppage of increment. The learned counsel for the applicant made the point that irrespective of the present rank, any official who cleared the exams (Parts 1 & 2) and successfully underwent the training is entitled to be appointed as J.A.O. (Gr. 'C').



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4. We have carefully considered the submissions of the learned counsel for applicant. As none was present on behalf of respondents on an earlier date of hearing, namely, 2.6.98. and as this is a 1993 matter and there was no request for an adjournment on behalf of respondents, we have perused the reply filed on behalf of respondents and dispose of the O.A. as under.

5. The impugned order is dated 4.2.93. By this order, the applicant has been reverted from the post of Junior Accounts Officer working under G.M.(South), MTNL, New Delhi to the post of Lower Division Clerk. As mentioned above, the applicant was posted as J.A.O. by an order dated 19.10.92. The order was passed by a duly constituted authority. He worked in that post for a period of four months. It is no doubt true that on conclusion of separate disciplinary proceedings by an order dated 30.1.89 a penalty of reduction to the lower post of LDC was ordered and this was also confirmed by an appellate order dated 20.11.92. Even so, the applicant was promoted because he fulfilled the condition of qualifying in the examination. Once he was promoted by a valid order and assumed charge, he could not be reverted to a lower post without following the procedure established in law. We are surprised that he was not even served with a show-cause notice nor was a hearing given to him before imposing on him a drastic punishment of reducing his rank from J.A.O. to L.D.C. It is a clear case where the principles of natural justice have been violated. As an ex-parte administrative decision had been taken resulting in evil consequences to the

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applicant, the order has become bad in law and for this purpose we rely on the following authorities of the Supreme Court in support of our decision:

1) JT 1988 (4) S.C. 464 - H.L.Trehan Vs. Union of India

2) JT 1994 (5) S.C. 253 - Bhagwan Shukla Vs. Union of India

6. The procedure outlined in the Disciplinary and Appeal Rules read with Article 311 of the Constitution of India has not been complied with. A promotion order, even if it is given by mistake, is nonetheless a valid order and the applicant having assumed charge and functioned for some time, cannot be suddenly divested of the rank and post by an administrative dictate, merits apart. We are of the view that the impugned order deserves to be set aside on this important ground also. We order accordingly. As the order of reversion was stayed by an interim order dated 23.2.93 and continued till date, the applicant was saved from adverse consequences like financial loss.

7. We, however, give opportunity to the respondents to re-initiate proceedings in accordance with law, if they are so advised and thereafter any action, in accordance with law, should be taken.

8. The O.A. is accordingly allowed. No costs.

9. Interim order by which the applicant has been continuing as a Junior Accounts Officer is hereby made absolute.

A. Vedavalli
(DR. A. VEDAVALI)
MEMBER(J)

N. Sahu
(N. SAHU) 27.7.98
MEMBER(A)