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Central Administrative Tribunal, Allahabad

Registration O.A.No.81 of 1988 (L)

Iqbal Singh Bhatia

..... Applicant

Vs.

Union of India
and 6 others

... Respondents.

Hon'ble G.S.Sharma, JM
Hon'ble K.J.Raman, AM

(By Hon'ble G.S.Sharma, JM)

In this original application (hereinafter referred to as the petition) u/s.19 of the Administrative Tribunals Act XIII of 1985, the Applicant has prayed that the orders dated 29.1.1987 and 4.2.1987 (annexures 9 and 10) transferring and reverting the Applicant from the post of Draftsman Grade I to Draftsman (for short D.M.) Grade II be quashed and he should be deemed to be continuing as D.M. Grade I.

2. The case of the Applicant is that he was initially appointed as D.M. Grade 'B' in 1965 in the Central Public Works Department (for short CPWD) and was promoted as D.M. Grade II in March 1979. By letter dated 11.6.1982 the Ministry of Works and Housing Works Division, New Delhi upgraded 61 posts of D.M. Grade II to D.M. Grade I. Out of the said 61 posts, 25 posts were meant for Civil Division of the CPWD. The Director General of Works- respondent no.2 withdrew 55 posts of D.M. Grade I from Strengthened Division and 12 posts from Electric Division for utilisation in the Ordinary Division of the CPWD w.e.f. 1.9.1982. The Applicant was then working in the Civil Division of the CPWD and posted as D.M. Grade II in the Food Storage Division, CPWD Kanpur.

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In his Division, a post of D.M. Grade I was lying vacant though the Applicant was discharging all the functions of D.M. Grade I from 1.9.1982. On his application for his appointment as D.M. Grade I on adhoc basis till the joining of any D.M. Grade I on regular promotion, the Applicant was promoted by Respondent no.4 -the Superintending Engineer, Food Storage Circle, C.P.W.D. Faridabad vide order dated 16.4.1984 on adhoc and purely temporary basis w.e.f. 1.9.1982 till a regular D.M. Grade I ~~was~~ posted or till further orders, whichever may be earlier. It is alleged by the Applicant that according to para 5 of Section 7 of the C.P.W.D. Manual, an adhoc appointment ^{is} to be made for a maximum period of one year and as the Applicant continued to work as D.M. Grade I after expiry of the maximum period of one year, he became quasi permanent on that post.

3. The Superintending Engineer Delhi Central Division IX(Coordination), New Delhi-Respondent no.9 issued order no.68 of 1986 transferring one H.M.L. Dawar (since deceased) D.M. Grade I from Gwalior Central Division to Food Storage Division Kanpur vice the Applicant and the Applicant was directed to join as D.M. Grade II in the CPWD Agra. The Applicant represented against his transfer and in his application dated 26.5.1986 he prayed for his retention at Kanpur. The transfer of Sri Dawar was then cancelled vide order dated 27.5.1986 and he was diverted to Central Division, Lucknow and copy of the said order was endorsed to the Applicant. The interpretation of the Applicant is that the copy of the modified transfer order of Sri Dawar was endorsed to him

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to signify that his own transfer order dated 21.3.1986 to Agra stood cancelled. The Applicant was, however, relieved of his post at Kanpur as D.M. Grade II by the Executive Engineer- Respondent no.6 on 29.1.1987 in compliance with the order dated 21.3.1986 without obtaining any prior approval from the competent authority. His allegation is that he could not be relieved for taking over charge at Agra under a non-existent order dated 21.3.1986. The Superintending Engineer-Respondent no.3 vide his order dated 4.2.1987 in modification of the earlier transfer order dated 21.3.1986 transferred the Applicant to Lucknow as D.M. Grade II. The grievance of the Applicant is that his reversion as D.M. Grade II from the post of D.M. Grade I under the transfer order dated 21.3.1986 is illegal and as the two conditions required for his reversion did not exist, he continues to hold the post of D.M. Grade I. It is also alleged that as he had officiated on the post of D.M. Grade I for more than 18 months he could not be reverted thereafter as is applicable in the case of railway employees vide Railway Board's circular letter dated 9.6.1985 and his reversion having been made without affording any opportunity of hearing is also hit by Art.311 of the Constitution.

4. The case has been contested on behalf of the Respondents and in the reply filed on behalf of Respondent no.7- Executive Engineer, Lucknow Central Division, CPWD, it has been stated that the Applicant was promoted on purely temporary and adhoc basis under Para 25 and ~~and~~ para 5 of Section 7 of the CPWD Manual, copy annexure 5 and no maximum period of one year or any other term has been specified therein for adhoc appointment. On the posting of regular DM grade I the adhoc promotion of the Applicant automatically stood terminated. The Applicant was informed about the cancellation of the transfer of his successor Dawar merely with reference

to his application dated 26.5.1987 and it is wrong to contend that with the cancellation of the transfer of Dawar, the reversion and transfer of the Applicant also stood cancelled. The Applicant was, thereafter transferr-
ed to Lucknow Division and he also joined there on 12.2.87 and the Respondent no.7 was ~~well~~ ^{well} ~~within~~ ^{its} competence to revert and relieve the Applicant as DM Gr.II on the availability of regular DM grade I and there is no merit in the petition of the Applicant.

5. In his rejoinder the Applicant has reiterated the pleas taken by him in his Original Application and stated that his promotion was made under Para 5 and not para 25 of Section 7 of the CPWD Manual and he could not be reverted without fulfilling the two conditions and as the posting of Dawar to Kanpur in his place was cancelled, his reversion also stood cancelled and he is entitled to the relief claimed.

6. It is not in dispute in this case that the Applicant while working as DM Grade II at Kanpur had himself applied to the Superintendent Engineer-Respondent no.4 to promote him in Gr.I on adhoc basis till any DM Grade I on regular promotion was available in the Division vide copy of his application dated 30.12.82, annexure 3 to his petition. The Respondent no.4 vide his order dated 16.4.1984, copy annexure 5, had thereafter promoted the Applicant as DM Gr.I with retrospective effect from 1.9.1982, the date from which the post of DM Gr.I was vacant and this promotion was made purely on temporary and adhoc basis till regular DM Gr.I was appointed or till further orders. It is apparent from this order that even in the absence of appointment of any regular DM grade I the Applicant could be reverted by administration and his promotion was ^{also} ~~only~~ till further orders. It is wrong to contend on his behalf that he could not

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be reverted till a regular DM Grade I was appointed in his place and as Dawar who was appointed in his place as DM Gr.I was diverted to Lucknow, he could not stand reverted by his initial order of posting.

7. Annexure 6 is the copy of order dated 21.3.1986 issued by the Superintending Engineer CPWD New Delhi Respondent no.3 whereby HML Dawar was transferred from Gwalior to Kanpur in place of the Applicant as DM Gr.I and the Applicant was transferred to Agra on his reversion as DM Grade II. Against his transfer to Agra (and not against his reversion), the Applicant had represented to the Respondent no.3 on 26.5.1986, copy annexure 7 on compassionate ground of death of his father-in-law, brother-in-law, sister-in-law and mother in Novr.1985 riots and the old age of his own father. In this representation the Applicant had described himself as DM Gr. II and not DM grade I which shows that he accepted his reversion on the posting of Dawar in his place and he did not say anything against his reversion in this representation. The administration took a sympathetic view in his case and vide order dated 27.5.1986, the Respondent no.3 diverted Dawar to Lucknow and cancelled the transfer of the Applicant to Agra. The copy of this order was endorsed to the Applicant. The contention of the Respondents is that by this order, merely the transfer of the Applicant to Agra was cancelled but his reversion was not cancelled and in view of the conditions of the order of promotion, annexure 5, stated above, the Applicant stood reverted as DM Gr.II. The description of the Applicant as DM Gr.II in the representation dated 26.5.1986 (annexure 7) is sufficient to show that the Applicant too had accepted his reversion and his contention to the contrary is not correct. In any case, the Applicant continued to serve at Kanpur till he was relieved on 29.1.1987 vide order copy annexure 9 by the Respondent no.7 for taking over charge

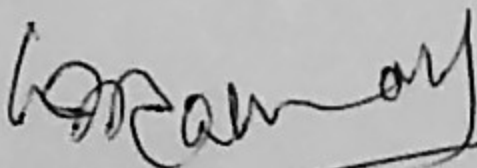
at Agra but before the Applicant could proceed to Agra, he too was diverted to Lucknow vide order dated 4.2.1987 passed by the Respondent no.2, copy annexure 10 and he also resumed his charge there on 12.2.1987, copy annexure C-3 to the Counter Affidavit of the Respondent no.7.

8. The only question now arising for consideration is whether the reversion of the Applicant from the post of DM Gr.I to the post of DM Gr.II was not in order as complained by the Applicant and he having served on the higher post for a period of about 3 years could not be reverted without any disciplinary proceedings. So far as the period from 21.3.86 to 29.1.87 is concerned the Applicant had worked at Kanpur after the cancellation of the order of his transfer and on his own showing vide annexure 7 the Applicant stood reverted as DM Grade II and had also worked in that capacity after the order dated 31.3.1986. However, ⁴¹the record shows otherwise and it is found that the Applicant had actually worked as DM Gr.I even after this order till he was relieved from Kanpur on 29.1.1987, the observations made in this order ^{above} will not affect his position to his disadvantage so as to deprive him of any benefit which he might have received as DM Gr.I. However, regarding the future position, we are of the view that the promotion of the Applicant as DM Gr.I was purely on temporary and adhoc basis till further orders or till the appointment of a regular DM Gr.I and he stood reverted by the order dated 21.3.86 and his serving on adhoc basis for any period did not confer any right on him so as to save his reservation.

9. The Respondents have filed a copy of Para 5 of S. 27 of the CPWD Manual providing for adhoc promotion in short term vacancies and clearly states that such promotions shall be purely on temporary basis without conferring any claim or right whatsoever to the promotees for regular promotion. The promotion order of the Applicant, annexure 5, also contains this condition and states

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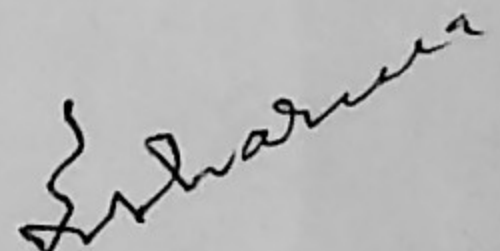
that on account of his adhoc promotion the Applicant will not claim any right of promotion or seniority in future. The claim put forward by the Applicant to the contrary before us against the terms of his promotion as well as against the rules of the department and the reliance placed by the Applicant on Railway Board's letter dated 9.6.1985 dealing with the adhoc appointment is misplaced and the said letter has no application to the CPWD employees. The O.M. dated 30.3.1988 copy annexure R-3 to the rejoinder has also no application to the case of the Applicant as the same was issued much after his reversion and even otherwise, it is not applicable to him. In our opinion, the promotion of the Applicant as DM Gr.I for certain period purely on temporary and adhoc basis did not confer any right on the Applicant to continue on that post and as such, his reversion cannot amount to punishment and no formality was required before his reversion. The Applicant has, therefore, no case and his petition merits dismissal 10. The petition is accordingly dismissed without any order as to costs.



MEMBER (A)

Dated: Aug. 8, 1989

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MEMBER (J)