

CENTRAL ASSESSMENT TRIBUNAL
ALLAHABAD BENCH

C.A. No./T.A. No. 941/90 19

Date of hearing 14.8.96

V. S. Nigam

APPLICANT (S)

CA Sri N. K. Nair

Advocate for the
APPLICANT (S)

QUESTION

Union of Andhra & others RESPONDENT(S)

CA Sri Ashok Mehta Advocate for the
RESPONDENT(S)

QUESTION

The Hon'ble Mr. Dr. R. K. Sengupta Vice Chairman
Member (S)

The Hon'ble Mr. A. S. Dey Member (A)

whether Reporters of local newspapers may be
allowed to see the judgment?

1. to be referred to the reporter or not?

2. whether their law offices may be allowed to see the fair
copy of the judgment?

3. whether to be circulated to all other Bench?

I. Dey
(Signature)

... etc / -

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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

APR 6 1996

Original Application No. 241 of 1990

Allahabad this the 14th day of Aug. 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. S. Dayal, Member (Admn.)

Virendra Swaroop Nigam, A/a 28 years, S/o Shri R.D.P. - Nigam, P/o 26 M.I.G. Barra Part-I, Hemant Vihar, Kanpur, presently employed as Supervisor 'B' (Non Technical) Factory Health Organisation (Hygiene Cell), Ordnance Factory, Kanpur.

APPLICANT.

By Advocate Sri N.K. Nair.

Versus

1. Union of India, through the Secretary, Ministry of Defence Production, Government of India, New Delhi.
2. The Chairman, Ordnance Factory Board/ Director General of Ordnance Factories (DGOF), 10-A, Auckland Road, Calcutta.
3. The General Manager, Ordnance Factory, Kalpi Road, Kanpur.

RESPONDENTS.

By Advocate Sri Ashok Mohiley.

QUESTION

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has approached the Tribunal challenging the orders annexure A-1 dated 09.5.90 and Annexure A-2 dated 10.5.90.

2. The facts of the case are that the applicant was initially appointed as Supervisor Grade 'B' (Non-technical), Factory Health Organisation in the pay scale of Rs.330-560 (presently Rs.1200-2040) against

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the clear vacancy of a Medical Group 'C' post in the Ordnance Factory, Kanpur. The order of appointment was dated 25.4.86. In the Establishment of the Ordnance Factory, Kanpur, there was one post of Supervisor 'A' (Non-technical) in the Factory Health Organisation, Hygiene Cell. The applicant fulfilled the requisite qualification. His name was considered for the said post and was appointed as Supervisor 'A' (Non-technical) on probation of two years. The said appointment letter is annexure A-3. He completed the period of probation satisfactorily as was disclosed in Annexure A-4. Even after completion of 2 years probation period, the applicant could not be appointed substantively on the post till 15.10.89 (annexure A-5). Thus, the applicant was given the appointment on the post of Supervisor 'A' (non-technical) vide order (annexure A-5) dated 15.10.89.

3. It is said that the respondents subsequently in the year 1990 issued impugned orders annexure A-1 and A-2 whereby the select list was cancelled and was also cancelled the appointment of the applicant on the post of Supervisor 'A'. The orders have been challenged on the ground that the applicant hold the post substantively and therefore his appointment as Supervisor 'A' could not be cancelled without affording an opportunity to hear him. Hence, this O.A.

4. The respondents contested the case and filed the counter-affidavit of Sri B.P. Misra. It is admitted

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on behalf of the respondents that the applicant was appointed as Supervisor 'B', Factory Health Organisation with effect from 15/4/86. It is, however, contended that the applicant was promoted to the post of Supervisor 'A', Factory Health Organisation with effect from 15.10.89 erroneously because there was no post of Supervisor 'A', Factory Health Organisation in the Ordnance Factory Organisation. Since the promotion of the applicant was done on the nonexistent post, the mistake was rectified by cancelling the said appointment. It is further averred that the applicant, though not legally required to be informed, was informed vide annexure A-1 dated 09.5.90 that his promotion order was going to be cancelled and it was then cancelled. It is, therefore, pleaded that since the cancellation of appointment was not by way of penalty, there was no necessity of affording any opportunity to the applicant. It is also averred that the requisite qualifications for the post of Supervisor 'A' (non-technical) were revised and the applicant did not possess the requisite experience.

5. The applicant filed rejoinder-affidavit, in which it has been subsequently mentioned that there was one post of Supervisor 'A' in Ordnance Factory and supported this averment by filing annexure R.A.-1. It is then contended that since the post of Supervisor 'A' was in existence as early as on 28.11.1987, the ground taken that there was no post, was not justified. The rejoinder also touched other points which were already mentioned in the O.A.

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6. We have heard the learned counsel for the parties and have perused the record.

7. There is no dispute that the applicant who was initially appointed as Supervisor 'B', F.H.O., was subsequently promoted on probation of 2 years to the post of Supervisor 'A', F.H.O. There is also no dispute that the select list as well as the promotion of the applicant, were cancelled. The reason advanced on behalf of the respondents is that there was no post available and the promotion of the applicant was made on non-existent post. It is argued that when this mistake was detected, the remedial step of cancellation of promotion order, was taken.

8. The learned counsel for the applicant argues that the applicant was appointed as Supervisor 'B' on 15.4.86 and he had completed the probation period of the said post on 14.4.88. He drew our attention towards annexure A-4 which is the letter of Deputy General Manager showing the post on which 3 persons including the applicant whose name was given therein, were working, and when they had completed the period of probation. It appears from the perusal of the letter that the applicant had completed the period of probation on 14.4.88 but, no order of confirmation of the applicant has been shown to us. Thus, it is not clear as to when the applicant was substantively posted as Supervisor 'A'. We may observe that the completion of the period of probation does not make the appointee as confirmed or substantively posted unless the specific order

is passed in that direction.

9. It has also been pointed out that the applicant was promoted to officiate as Supervisor 'A' Factory Health Organisation vide annexure A-5 dated 15.10.1989. The dispute arose here because according to the respondents there was no post and, therefore, the plea taken by them is that no promotion could be made of the applicant. The applicant did not say anything in the O.A. if there was any post of Supervisor 'A' existing or not. When the existence was denied by the respondents, the applicant came with the plea in the rejoinder, that the post of Supervisor 'A' was in existence on 28.11.1987 as is disclosed in Annexure R.A.-1. As a matter of fact, this annexure R.A.-1 is reply to the Telex ^{message} which was send from the office of the Director General Ordnance Factories. The Principal Medical Officer had accordingly shown in annexure R.A.-1 one post of Supervisor 'A' in O.F.C. We do not know what for this O.F.C. stands. Besides, this is not the letter written by the Establishment. The real position of the existence or non-existence of the post can be known only to the Establishment and not to other functionaries. The possibility that a post which was in existence in 1987, may not continue in the year 1989. Thus, it is not possible for us to rely on annexure R.A.-1. The averment of the respondents that no post of Supervisor 'A' was in existence on 15.10.89 and thus the promotion of the applicant could not be made on the said post, stands unrebuted. It is, thus,

clear that the applicant was promoted as against the non-existing post. The similar situation had arisen in the case 'State of Punjab Vs. Jagdeep Singh and Others A.I.R. 1964 S.C. 521' in which their Lordships had held that if supernumerary posts were created to provide liens for confirmed Tehsildars, in the erstwhile State and ~~have~~ the merger of the said State of P.E, P.S.U. with Punjab and cancellation of the previous orders of confirmation on Supernumerary posts, Article 311(2) was not attracted. It emerges that if there was no post and some person was appointed against the non-existing post, the order of posting was wholly void. The second point which comes out is that in such a situation, Article 311(2) is not attracted. Thus, the order of cancellation of the promotion, cannot be faulted.

10. There is one more aspect in this case, the service conditions for the post of Supervisor 'A' were changed by S.R.O.14(E) which was published in the official Gazette on May 4, 1989. The requisite period of experience was now made of 5 years. The applicant who was appointed on 15.4.86 did not complete 5 years on 15.10.89 and thus, he was not eligible for promotion to the post of Supervisor 'A'. In view of this situation arisen out from the statutory rules, the applicant does not acquire any right. We do not find any illegality in the impugned orders.

11. Having considered the factual and legal matrix of the case, we come to the conclusion that there is no merit in the O.A. and same is dismissed. No order as to costs.

/M.M./
Member (A)

1. *Amritpal Singh*
Member (J)