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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 263 of 1986
T.A. No.

DATE OF DECISION 26.11.'86

SHRI B. L. VAGHELA Petitioner

SHRI N. J. MEHTA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent

SHRI J. D. AJMERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI ... Vice Chairman

The Hon'ble Mr. P. M. JOSHI ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

O.A No. 263/86

Per: Hon'ble Shri P.H.Trivedi, Vice Chairman

JUDGMENT

The applicant, Shri B.L.Vaghela, Licensing Assistant, was given adhoc promotion by orders dated 4th September, '84, with a clear stipulation that it was purely temporary and would not confer a right on him to claim seniority in the respective grades, and it would be subject to the approval of the cadre authority. On 15.11.'85, he was reverted and his junior Mrs. R.K.Amlani was posted as Section Head. That Mrs. Amlani is junior to him is admitted by both parties. The applicant denies that the order dated 15.11.'85, reverting him has been served on him. The respondent denies that even adhoc promotion has come about because the relevant orders had stipulated that the promotion was subject to the cadre controlling authority which has reverted the applicant from 14.11.'85. The respondent has taken the stand that as disciplinary proceedings were pending against the applicant, he could not be considered for promotion at all. The respondent has also stated that due to collusion, the applicant has contrived to continue to receive pay of the promotion post which is now being recovered from him and the applicant has already made payment of some instalments. The respondent has also disputed that the applicant has worked in the post of Section Head after 14.11.'85 because Mrs. Amlani has been posted as Section Head then, and therefore the applicant could not have worked in that post and he could not be paid for it if he had not worked in it. The applicant has controverted that he was reverted. His stand is that he was eligible for

promotion, ^{and} was actually promoted, even though this was on adhoc basis and is therefore entitled to receive the emoluments of the promotion post. The respondent has stated that subsequently Mrs. Amlani has also been reverted and a person senior to the applicant has been posted as Section Head.

2. The applicant has cited the following cases in support of his contentions:

- (1) K. Somiah vs. Zonal Manager, FCI & another (1978 SLJ pg. No. 295)-Andhra Pradesh High Court judgment.
- (2) A.P.Naidu vs. General Manager, South Central Rly. & Ors. - Andhra Pradesh High Court judgment.
- (3) V.Jagadishwara Rao vs. The Postmaster General, Andhra Circle & Ors. (1978 SLJ 201)
- (4) Bachhittar Singh vs. State of Punjab (AIR 1963 SC 395)
- (5) Sudhindra Chandra Mallik vs. State of Bihar & Ors. - Punjab High Court judgment

3. It is admitted by both the parties that by orders dated 30th August, '84, the applicant was promoted as Section Head, and that this promotion was adhoc. The respondent has conceded that until 14th November, '85, he has a claim for this post as he was reverted only on that date. The respondents contention therefore, that because disciplinary proceedings were pending against him, he should not have been promoted at all and that since the orders dated 30th August, '84 carry a stipulation that they are subject to the approval of the cadre controlling authority, they are in contradiction to the respondent's action of passing an order only on 14.11.'85, reverting the applicant, ~~and~~ until then the respondent has admitted the claim of the applicant to the pay of the pro-

4. motion post.//We do not need to go into the merits of the rival contentions whether the orders of 30th August, '84 should have been passed or not because it is admitted by the respondents that they have been

acted upon and the only way in which the cadre controlling authority could then act for reverting them was not by taking the position as if they had not been promoted at all, but by issuing an order of reversion which did not set aside these orders of 30th August, '84, but had an effect only prospectively from 14.11.'85. The question before us is not whether the applicant should have been promoted or ~~not have been promoted~~, but whether he should ~~xxxxxx~~ ^{summarily.} have been reverted. However, we would like to observe that even during the pendency of disciplinary proceedings, the claim of the applicant for promotion cannot be ignored. For regular promotions the instructions require that his case should have been considered by the authorities and an assessment of suitability should have been made and the findings should have been placed in a sealed cover pending completion of the disciplinary proceedings. These instructions govern regular promotion. There is no bar against adhoc promotions being made during the pendency of the disciplinary proceedings. Whether the competent authority should decide in favour of the officer proceeded against for adhoc promotions or not is, however a different matter which we are not called upon to decide for the purpose of this case.

5. Although adhoc promotions do not carry a right of continuing in the post and such holders of the promotion post can be reverted, the ground taken by the respondent that because there was a pendency of the disciplinary proceedings, the applicant cannot be allowed to continue in the promotion post, does not have any weight at all. Having promoted him, for that reason alone, the applicant cannot be reverted. It was contended by the learned advocate for the respondent that the

applicant should not be regarded as promoted at all due to the pendency of the disciplinary proceedings. It was asked whether the applicant could have refused to carry out orders of working in the promotion post as Section Head. Had he done so, it would clearly have been contrary to discipline. The respondent cannot have it both ways. He and the applicant having acted upon the order of 30th August, '84, the applicant has a right to hold the promotion post until he is reverted on account of person senior to him being appointed to such a post. The appointment of Mrs. Amlani who is junior, from 15th November, '85, is therefore, not in order and the order of reversion of the applicant and of the appointment of Mrs. Amlani cannot be sustained. ~~As xxx xxx~~ Subsequently, the respondent has reverted Mrs. Amlani ~~and posted a person senior to the applicant to the post of Section Head and this case arose on~~ 27th June, '86. We therefore, hold that the applicant has a right to the post of Section Head until that date and ought to be paid the emoluments of the post until then.

6. The respondent has alleged that due to collusion, the applicant continued to receive the pay even after the orders of his reversion and against this the applicant has stated that he has never been served with the orders of reversion. In the light of our conclusion that the applicant has a claim to the post of promotion post of Section Head, until 30th June '86, we do not feel called upon to deal with this matter, for the purpose of this case. The respondents are free to make full inquiries regarding any circumstance or allegation about collusion on the part of the applicant and take such steps as are called for and justified in accordance with the rules and we do not seek to hinder

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them in any respect by any orders in this case.

7. The application has merit and we direct that the impugned orders be quashed and set aside and the applicant is continued in the post of Section Head until the date of the posting of his senior in the post of Section Head and that he is entitled to receive the emoluments of the post of Section Head. Such recoveries that have been effected should be refunded. No order as to costs.

P. H. Trivedi
(P. H. TRIVEDI)
Vice Chairman

P. M. Joshi
(P. M. JOSHI)
Judicial Member