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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX XXXX XXXX~~

O.A. No. 24
T.A. No.

1988

DATE OF DECISION 3.5.1991

Shri P.B.Jasani

Petitioner

Mr.B.K.Damani

Advocate for the Petitioner(s)

Versus

The Director of Postal Services & Anr Respondent

Mr.Jayant Patel

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Tri vedi : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

O.A. No. 24 of 1988

Shri P.B. Jasani,
Vadvachora,
K.K. Street,
Dhirubhai Kothari's House,
BHAVNAGAR

... Applicant

(Advocate : Mr. B.K. Damani.)

versus

1. The Director of Postal Services,
Rajkot Region,
RAJKOT - 360 001.

2. Postmaster General,
Gujarat Circle,
AHMEDABAD - 380 009.

... Respondents

(Advocate : Shri Jayant Patel)

JUDGEMENT

Date : 3.5.1991

Per : Hon'ble Mr. R.C. Bhatt

... Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act 1985, is filed by the applicant, an employee of the Post and Telegraph Department, challenging the order of reversion dated 23rd November, 1987 passed by the Deputy Director, Postal Services, Rajkot Region, Rajkot, by which the applicant who was working as Supervisor, SBCO, Bhavnagar, was reverted to Upper Division Clerk, SBCO, Bhuj, H.O. It is the case of the applicant that he was promoted to Supervisor, SBCO Cadre on adhoc basis with effect from 16th October, 1980. The applicant continued to officiate in that Cadre on adhoc basis in temporary resultant vacancy. The applicant was transferred and posted as Supervisor, SBCO, Bhavnagar Head Office, from 30th January, 1986. It is alleged by the applicant that he was given one memo by the Accounts

Officer, ICO (SB) c/o., Post Master General, Gujarat Circle, Ahmedabad on 23rd April, 1987 under Rule 16 of CCS (CCA) Rules, 1965, that the applicant gave reply to it on 4th May, 1987, and ultimately the Disciplinary authorities passed an order dated 14th August 1987, against the applicant by which the increment of the applicant was withheld for a period of six months without cumulative effect. The applicant being dissatisfied by the said order of punishment dated 14th August 1987, by the disciplinary authorities, preferred appeal challenging the order of the Disciplinary authorities which was pending at the time of filing this application on 11th January, 1988. The grievance of the applicant is that ~~as~~ the appeal preferred by him was pending before the Director of Postal Services, Rajkot Region, Rajkot on 28th September 1987, the Director of Postal Services passed the impugned order dated 23rd November, 1987 produced at Annexure A/1, by which the applicant was reverted from the post of Supervisor (SBCO) to the post of Upper Division Clerk (SBCO) at Bhuj (H.O.). That no reason was given by the authorities as to why this order of reversion was passed, but the said order was received by the applicant on 27th November 1987, and he was informed from the Bhavnagar office that he is given reversion and was transferred at Bhuj (H.O.). It is alleged by the applicant that the said order at Annexure A/1 is against the law and it violates Article 14 and 19 of the Constitution of India, and that the respondents had no right to pass such an order.

2. The respondents have contended in the written statement, *inter alia*, that the applicant having preferred an appeal dated 28th September, 1987 against the punishment order dated 14th August, 1987 of the accounts officer, ICO (SB), and the said appeal is yet to be decided by the D.P.S. and therefore this application is not maintainable in view of Section 20 of the Administrative Tribunals Act 1985.

3. It is contended by the respondents that as the applicant was punished as per order dated 14th August 1987, it was thought that it would not be proper to allow the applicant to work on adhoc basis on the promotion post and, therefore, he was reverted. It is further contended that the applicant was not appointed on permanent basis, but was only promoted on adhoc basis and, therefore, there was no reversion as such, from the said post to the post of Upper Division Clerk.

4. The contention of the respondents that this application is not maintainable under Section 20 of the Administrative Tribunals Act, 1985, has no legal basis, because the present application is not preferred against the order of punishment dated 14th August, 1987 of the Accounts Officer, but, it is against the order of reversion dated 23rd November, 1987, Annexure A-1, ^{as} therefore, though the appeal preferred by the applicant on 28th September, 1987 against the order of punishment dated 14th August, 1987 was pending before the

appellate forum at the time of filing this application, there was no bar for the applicant to file this application under section 19 of the Administrative Tribunals Act against the order of reversion. Therefore, the contention taken by the respondents about the maintainability of the application is rejected. Moreover, it is not in dispute that the appeal preferred by the applicant is also decided by the appellate forum viz., Director of Postal Services, Rajkot Region, Rajkot, on 9th July, 1988, the copy of which is produced by the applicant with his miscellaneous application in this matter.

5. The learned advocate for the applicant submits that the order of reversion, Annexure A-1, should be set aside on two grounds viz., that the said order Annexure A-1, does not disclose any ground as to why the applicant was reverted, and secondly the appellate forum viz., The Director of Postal Service, Rajkot Region, Rajkot, has passed the appellate order on July 9th 1988 modifying Disciplinary authoritie's order of stoppage of increment for six months to that of censure only. The learned advocate for the respondents on the other hand submitted that, as the applicant was not promoted on permanent basis and as his promotion to Supervisor (SBCO) Cadre was purely on adhoc basis with effect from 16th October, 1980 in purely temporary resultant vacancy, the applicant was not /

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to continue on that post as a matter of right and secondly as the applicant was punished by the disciplinary authority, the respondents thought that it would not be proper to allow the applicant to work on adhoc basis on the promotion post, and therefore, he was reverted. The

6 The appellate order dated July 19th, 1988 passed by the Director of Postal Services, Rajkot Region, Rajkot, i.e., by respondent No. 1, shows that the punishment of stoppage of increment for six months given by the Disciplinary Authority was modified to that of "Censure". It is not in dispute that even 'Censure' punishment is not sufficient to withhold any promotion of a Government Servant, much less it would come in the way of the applicant in his continuation of the post of Supervisor on adhoc basis. The applicant was reverted from the post of Supervisor to the post of Upper Division Clerk as per the impugned order, Annexure A-1, dated 23rd November, 1987. This order does not show any reason for reversion. It is only in the written statement for the first time that the respondents have come with the defence, that, due to the punishment order by the disciplinary authority, ^{that} the respondents thought it would not be proper to allow the applicant to work on adhoc basis on a promotion post and therefore he was reverted. The learned advocate for the applicant submits that the applicant could not be reverted in the manner in which the order was passed by the respondents. In our opinion, as there was nothing in order of reversion

showing that the respondents reverted the applicant due to the order of punishment passed by the Disciplinary Authority, nor is there anything to show that the applicant has been reverted because in the order of seniority, some senior eligible incumbent had come, the said order of reversion is illegal and cannot be sustained. It is not the case of the respondents that the applicant is not fit or not suitable for the post of Supervisor. Moreover, now that the appellate forum has passed an order of 'Censure' only against the applicant, it would be idle to contend that the applicant should be reverted as Upper Division Clerk on the ground of punishment passed by the Disciplinary Authority, and therefore, also the impugned order of reversion has lost its contents and is not valid. It is not in dispute that the applicant was holding the post of Supervisor on adhoc basis since 1980 till the impugned order made in November, 1987, and therefore without showing any reason in the impugned order the applicant's reversion, which was unfavourable to him, was against the principle of Natural Justice, and is liable to be set aside.

7. While it is true that the promotion of the applicant being on adhoc basis it did not confer any right to him to that post, but at the same time, in absence of any reason mentioned in reversion order, the said impugned order

could not be sustained. The impugned order also does not show that the applicant was unsuitable or that his work was not satisfactory. As observed earlier, the only ground taken in the written statement by the respondents is that as there was an order of punishment passed by the disciplinary authority, the respondents did not think it proper to continue the applicant on the promotion post on adhoc basis. And as observed above, even that contention has lost its merit as the said order of disciplinary authority is modified by the appellate forum.

Having considered the rival contentions, we agree with the submissions made by the learned advocate for the applicant, and the applicant succeeds on both the grounds made out before us, with the result that the impugned order Annexure A-1, dated 23rd November, 1987 shall have to be set aside being illegal and against the principle of Natural Justice. The applicant ~~who was~~ reverted by the impugned order which is being implemented by the respondents, the respondents are directed to treat the applicant as Supervisor on adhoc basis. The applicant has not claimed any backwages in his application from the date of reversion, and hence no question of payment of past ~~period~~ ^{arrears} arises.

The result is, that the application is allowed and the order of the respondents Annexure A-1, dated 23rd November 1987 is quashed and set aside and the respondents are directed

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to treat the applicant as Supervisor (SBCO) and to pay the applicant accordingly from the date of this application with all increment or benefit which he is eligible or entitled according to the Rules. Having regard to the facts of this case, we pass no orders as to costs. The application is disposed of.

R.C.Bhatt
(R.C. BHATT)
Judicial Member

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