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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.135 of 1987

Date of Decision 15.7.1992

Gandharba Behera

Applicant

Versus

Union of India & Others

Respondents

For the applicant

Mr. Biswanath Rath,
Advocate

For the respondents

Mr. Ganeswar Rath,
Standing Counsel
(Central Government)

...

C O R A M

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN)

...

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? **ND**
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section, 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to treat him as ^aregular employee in the post of Small Industries Promotion Officer from 10.5.1979, i.e. the date of reversion till 5.6.1985, i.e. the date of regular promotion to the post of Small Industries Promotion Officer (Mechanical) with all financial benefits for these years.

2. Shortly stated the case of the petitioner is that he was initially appointed as an Welder on 31.1.1961 in the Small Industries Service Institute (for short S.I.S.I.) at Cuttack and subsequently selected and promoted as Investigator (Mechanical) on 31.3.1969. Thereafter the petitioner was promoted to the post of Small Industries Promotion Officer (for short SIPO) (Mechanical) on adhoc basis with effect from 6.7.1973. While continuing as S.I.P.O. (Mech), Opposite Party No.2 by his order dated 24.4.1979 reverted the petitioner with effect from 10.5.1979 to the post of Investigator (Mech) on the ground that such posts of S.I.P.O. (Mech) have to be filled up by direct recruits having diploma/degree in qualification. But after reversion, the petitioner having been adjusted against the post of S.I.P.O. (Mech) at SISI, Cuttack, continued as such till he was given regular promotion to the post of S.I.P.O. (Mech) with effect from 5.6.1985. Grievance of the petitioner is that instead of being reverted he should have been regularised and he should have ^{been} given the usual pay scale prescribed for S.I.P.O. from 10.5.1979 to 5.6.1985 as he was discharging the duties of a S.I.P.O.. Hence this application has been filed with the aforesaid prayer.

Vh

3. In their counter the opposite parties maintain that the petitioner was appointed purely on adhoc basis against the post of S.I.P.O. by an order dated 6.7.1973 wherein it was specifically mentioned that all the promotions were purely on adhoc basis and it was temporary arrangement till the direct recruits join as per the recommendations of the U.P.S.C. As a result of reversion the petitioner was posted at Kolahapur to act as an Investigator. The petitioner did not join at Kolahapur and represented for cancellation of his posting at Kolahapur on personal grounds. This representation was allowed and the petitioner was posted as an Investigator in the S.I.S.I., Cuttack and accordingly the petitioner joined the post of Investigator from 12.9.1979. During the period in question the petitioner did not perform the duty of S.I.P.O. but discharged the duties of an Investigator and was accordingly paid his salary. Further more it is maintained by the opposite parties that not only the case is grossly barred by limitation but the order of reversion being perfectly justified and legal, the case is devoid of merit and is liable to be dismissed.

4. We have heard Mr.B.N.Rath, learned counsel for the petitioner and Mr.G. Rath, learned Standing Counsel for the Central Government on the merits of the case. The admitted case of the parties is that the petitioner was given adhoc promotion to the post of S.I.P.O.(Mech) and he was reverted with effect from 10.5.1979. After reversion petitioner's posting at Kolahapur as an Investigator was cancelled and he was posted in S.I.S.I., Cuttack. The

petitioner has been regularly promoted to the post of S.I.P.O. with effect from 5.6.1985. Keeping in view the admitted case of the parties, it ^{only} ~~may~~ now remain to be considered as to whether the order of reversion was illegal, unjust and improper. The post to which several incumbents were promoted as S.I.P.O. (Mech) was purely on adhoc basis and after going through the relevant rules, we are satisfied that those posts were meant for direct recruits coming through the U.P.S.C. and therefore it was ~~likely~~ mentioned in the order contained in Annexure-2 that the promotees will continue till 31.12.1973 or till the posts of S.I.P.Os are filled up by the U.P.S.C. nominees, whichever is earlier. In view of the aforesaid order there was no other option left ^{for} ~~to~~ the competent authority but to revert the petitioner.

5. The learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court reported in 1989-II Labour Law Journal-228 (Dr.) (Mrs) Sumati P. Shere vs. Union of India & Others). It was contended that the termination of the services of Dr. Shere was set aside by the Supreme Court because she had served for many years as an adhoc appointee. According to the learned counsel for the petitioner the principles laid down by Their Lordships in the above mentioned judgment apply in full force to the facts of the present case and therefore the order of reversion passed in the present case should be set aside.

6. We have carefully gone through the judgment. Facts are clearly distinguishable. No doubt the petitioner Dr. Shere

was appointed on adhoc basis and the stipulation contained in the appointment letter was that her services will be terminated with effect from 15.2.1985 or ^{when} the U.P.S.C. nominee is available, whichever is earlier. By letter dated 12.1.1985, her services were terminated. The Tribunal in course of hearing perused the confidential file relating to the petitioner and therein it was stated that her performance was not satisfactory and since it was not ^a the penalty, the order of removal was upheld by the Tribunal. The Hon'ble Supreme Court set aside the order of removal not on the ground of continuous service rendered by the petitioner as an adhoc appointee but while upholding contention of the respondents in the said case that Article 311, Clause-2 of the constitution was not attracted, Their Lordships at paragraph-7 of the judgment observed as follows :

" There cannot be any dispute about this proposition. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not up to the mark ".

Since the petitioner Dr. Shere was never informed about her bad performance and she was taken ^{by} off ~~surprisedly~~ by passing an order of termination of her services, the appeal was allowed thereby setting aside the order of termination. The appeal was allowed completely on different grounds. The question of bad performance of work on the part of present petitioner does not arise. The petitioner

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was reverted purely on the ground of availability of U.P.S.C. nominees as direct recruits. Therefore we are of opinion that the principles laid down by Their Lordships in the above mentioned judgment have no application to the facts of the present case. Reliance was next placed on a judgment of the Calcutta Bench reported in 1986 (3) SLJ 358 (Upendranath Ojha vs. Union of India & Others) in which one of us (Acharya J) was a party to the judgment. The facts of the said case is also clearly distinguishable. Upendra Nath Ojha was reverted and in his place one Gobinda Prasad Dutta was appointed on compassionate ground. Hence the Bench observed as follows:

" At the risk of ~~repetition~~, we may again reiterate that not having found that Shri Ojha was ~~unsuitable~~ or his work ~~was unsatisfactory~~, the concerned authorities should have meticulously followed the advice of the Ministry passed on the dictum laid down by Their Lordships of the Supreme Court relating to the provisions contained under Article 311(2) of the Constitution and if the authorities wanted to take a compassionate view in regard to the case of Gobind Prasad Dutta then such compassionate view should not have been taken at the cost of the bread and butter of another employee whose work ~~was~~ quite satisfactory and all and above the authority should have taken serious consideration of the fact that the applicant Shri Ojha had worked in the post of Grade-II for a long period of seven years ".

From the matters quoted above, it is clear that the facts of both the cases are clearly distinguishable. Hence the judgment of the Calcutta Bench has no application to the peculiar facts and circumstances of this case. Since the rules contemplate that the post in question ~~is~~ meant for direct recruits, the petitioner has no right to continue in the post even though he has served for some

years. Therefore we find no illegality in the order of reversion having been ~~passed~~ by the opposite parties.

7. As regards the claim of the petitioner for ~~payment of salary~~ to him as prescribed for the post of S.I.P.O.(Mech) from 10.5.1979 to 5.6.1989, it would be pertinent to note that after reversion vide annexure-3, he was posted at Kolahapur. The fact that the petitioner had made a representation for his posting at Cuttack was not disputed before us. Therefore on the representation filed by the petitioner vide Annexure-5 dated 21.8.1979, it was ordered that on reversion as an Investigator (Mech) the petitioner shall be posted at S.I.S.I., Cuttack instead of E.C., Kolahapur. Nowhere in the order it is found that the petitioner has been posted as S.I.P.O. or though posted as an Investigator, he would ~~discharge~~ the duties of S.I.P.O.(Mech). In our opinion rightly it has been urged by Mr. Ganeswar Rath, learned Standing Counsel that the petitioner has never discharged the duties of S.I.P.O.(Mech) while posted at Cuttack (after reversion) and therefore we are of opinion that the petitioner is not entitled to the pay scale of S.I.P.O., especially when burden of proof lying on the petitioner to prove satisfactorily that he was discharging the duties of S.I.P.O. has not ~~at all~~ been ~~proved~~. Therefore, we are of opinion that the claim of the petitioner on this account is also mis-conceived and cannot be allowed.

8. Lastly ~~we will~~ now propose to take up the question of limitation. Admittedly the petitioner was reverted on 10.5.1979. The Administrative Tribunals Act, 1985 came into

force on 1.11.1985. Section 21 of the said Act specifically creates a bar for the Tribunal to take cognizance of any cause of action which is said to have accrued prior to 1.11.1982. This application was filed on 4.5.1987. Reversion of the petitioner pertains to 10.5.1979 which is much prior to 1.11.1982. Reliance was placed on Annexure-7 in which reference has been made to the letter of the Director, SISI dated 10.1.1986. Therefore it is presumed that short time before 10.1.1986, representation must have been filed by the petitioner (copy of which has not been annexed) and by that time limitation has already run against the petitioner and the settled position of law, is that, once limitation runs against a particular party it cannot be saved by any subsequent representation. This settled position of law was rightly and fairly not disputed at the Bar. In view of the aforesaid facts and circumstances of the case, we find no merit in this application which stands dismissed leaving the parties to bear their own costs.

H. Lowans.
MEMBER (ADMINISTRATIVE)

K. S. Sahoo
15/7/92
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack

E. K. Sahoo

