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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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ORIGINAL APPLICATION No.300/1990

Decided on 13th March, 1991

Jogeswar Nahak .. Applicant

Versus

Union of India and Others.. Respondents

For the Applicant: .. M/s. Devananda Misra
Deepak Misra
Anil Deo; and
B.S. Tripathy and
P. Panda, Advocates

For the Respondents: .. Mr. Aswini Kumar Mishra,
Sr. Standing Counse, C.A.T.

C O R A M

THE HONOURABLE SHRI K.J. RAMAN, ADMINISTRATIVE MEMBER

and

THE HONOURABLE SHRI N. SENGUPTA, JUDICIAL MEMBER

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

WSR

JUDGMENT

K.J. RAMAN, MEMBER (A), In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for the quashing of the impugned order dated 17-8-1990 (Annexure-5), reverting the applicant from the cadre of HSG-I, with a further prayer for a direction to be issued

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to the respondents to consider the case of the applicant for the purpose of promotion to HSG-I on a regular basis with effect from the date his juniors were considered and given promotion.

2. A reply has been filed by the respondents contesting the claim made by the applicant. The case has been heard.

3. According to the applicant, he was promoted to the post of Assistant Superintendent of Post Offices (ASPO) by an order dated 10-2-1984.

Thereafter he was promoted to officiate as Post-
an
master (HSG-I) on/ad hoc basis, by an order dated 23-1-1989. The applicant was proceeded against under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (CCS (CCA) Rules) and his increment was withheld for six months without cumulative effect, by an order dated 20-4-1990. Thereafter, the impugned order dated 17-8-1990 was issued promoting three other persons on a regular basis as HSG-I, and at the same time reverting the applicant. The applicant claims that he is senior to the three persons who have been so promoted by the impugned order at Annexure-5.

4. The learned counsel for the applicant submitted that the applicant has been reverted without any notice. He also relied on the instructions dated 8-5-1987 issued by the Director General of Posts (DGP) (Annexure-4). The learned counsel submitted that, according to these instructions, if an ad hoc appointee continues in the ad hoc posting

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for more than one year, he need not be reverted only on the ground that a disciplinary proceeding has been initiated against him. The learned counsel argued that the applicant in this case had put in more than one year's service in the HSG-I grade and he ought not to have been reverted on the basis of the disciplinary proceeding and the penalty imposed therein. The further argument on behalf of the applicant is that the impugned order of reversion has given rise to double jeopardy in as much as his increment was also stopped in the disciplinary proceeding.

5. The learned counsel for the respondents pointed out to the averment in the reply filed on behalf of the respondents, to the effect that the applicant was promoted to the HSG-I Grade purely on an ad hoc basis. He was considered by a properly constituted Departmental Promotion Committee (DPC) for regular promotion to the grade of HSG-I and was not selected. He submitted that promotion to the grade of HSG-I is by selection.

6. We have very carefully considered the rival contentions in this case. The order dated 23-1-1989 (Annexure-2) promoting the applicant to the grade of HSG-I clearly specifies that the promotion is on an ad hoc basis, and that it will not confer on the applicant any right for his permanent absorption in the grade, and that the service rendered on ad hoc basis will not count for seniority in that grade. It is no doubt true that the order dated 20-4-1990 (Annexure-3) imposing a minor penalty was issued before the impugned order

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of reversion was passed on 17-8-1990. But there is no substantiation of the claim of the applicant that he was reverted by the impugned order wholly or solely on the basis of the disciplinary proceeding and the punishment imposed therein. We also do not find that the order of 8-5-1987 of the DGP referred to by the applicant is of any help to him in this case. All that the said instruction says
an ad hoc
is that Government servant against whom disciplinary proceeding has been initiated, need not necessarily be reverted only on the basis of such initiation of proceeding. In this case, the position is different. The applicant has not been reverted because of the initiation of the said disciplinary proceeding. It is clear that the applicant was reverted on the basis of the findings of the DPC.

7. The learned counsel for the respondents pointed out to Para 3(xi) of the reply filed, in which it is stated that the applicant had not been considered fit by the DPC and this is the cause of the reversion. He also referred to a copy of the special report submitted on the applicant, which is at Annexure R-2 to the reply. In this report, the assessment of the applicant is shown as average. There is also a comment that he was not mentally alert. There is also a reference to the punishment imposed on the applicant in the disciplinary proceeding.

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8. We reproduce below the following extract from the minutes of the DPC meeting held on 19-7-1990 (Annexure R3) :

"The SSPOs Puri Division who is the Controlling Officer of Shri Jogeswar Nahak at Serial No.2 of the list above has not recommended to consider his promotion on account of the fact that punishment order is current. The D.P.C. on scrutiny of his CR dossier observed that the overall performance in the past years was not satisfactory and he had also been awarded with punishments earlier. The nature of offences committed by him as indicated in the punishment orders are as below:

- a) Inspection of POs in perfunctory manner resulting in non-detection of frauds committed by ED SPM Rajpur EDSO.
- b) Non-submission of inspection reports in time.
- c) Non-performance of duties properly relating to election mails and ballot papers.
- d) Not acting as per the instructions of the higher authorities regarding discontinuance of engagement of short duty staff.
- e) Submission of false compliance reports in respect of visiting remarks of the CPMG."

9. From the above, it is clear that the applicant has been found unfit by the DPC, not on the basis of the disciplinary proceeding, or for the stoppage of increment, or for any other misconduct or any such reason. The DPC found him unfit for promotion on the basis of an assessment of the overall performance of the applicant in the past years. In these circum-

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stances, there is no question of any double jeopardy. The impugned order of reversion is a termination simpliciter. It is now well established, from a catena of decisions by the Apex and other Courts, that an order of reversion of an ad hoc ~~or temporary~~ employee from the higher post he is holding to the lower post, on the basis of an overall assessment of his suitability or performance, is not a reduction in rank within the scope of Article 311 (2) of the Constitution. Such a reversion cannot be considered as penal. In the present case there is nothing to show that the impugned order is penal in character.

10. In the result, we find that this application has no merit. Therefore, we dismiss the same without any order as to costs.

N. Sengupta
N. SENGUPTA
Member (J)

K.J. Ramamurthy
(K.J. RAMAN)
Member (A)

Central Administrative Tribunal
CUTTACK BENCH, CUTTACK.

The 13th March, 1991.

