

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 16.5.2002

OA 74/2002

Jai Ram Khatik, D.E.T. Sumerpur, District Pali.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager Telecom, Rajasthan Circle, Jaipur.
3. General Manager Telecom District BSNL Pali Marwar.
4. Divisional Engineer (OP) BSNL Pali Marwar.

... Respondents

CORAM:

HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.Kamal Dave

For the Respondents

... Mr.B.L.Bishnoi, brief holder for
Mr.Vijay Bishnoi

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

The applicant, while working as SDE Pali, was promoted on purely temporary ad hoc basis to the cadre of STS of ITS Group-A for a period of 180 days or till regular incumbent joins vide letter dated 3.4.98 (Ann.A/4). He continued to work on this post with intermittent breaks when the last order having been issued on 1.12.2000, vide Ann.A/5, for officiating as DET Sumerpur. He was ordered to be reverted vide letter dated 3.4.2001 (Ann.A/6). He moved this Tribunal by filing an OA No.142/2001 challenging his reversion on the ground that his juniors were permitted to continue, though on ad hoc basis, but he has been reverted. This OA was allowed vide judgement dated 14.12.2001 (Ann.A/7). In pursuance of the orders of this Tribunal, the applicant was again promoted to STS of ITS Group-A w.e.f. 1.6.2001 and was posted as DET Sumerpur vide order dated 14.2.2002. On the same date i.e. 14.2.2002 another order was issued reverting the applicant w.e.f. 27.11.2001. By yet another order issued on the same date i.e. 14.2.2002 he was once again ordered to be promoted for not more than 180 days w.e.f. 4.12.2001 and posted as DET Sumerpur. All such orders of promotion for a period of 180 days stated that he will automatically stand reverted on completion of 180 days or on joining of regular incumbent, whichever is earlier. By impugned order dated



13.3.2002 (Ann.A/1) he has been reverted with effect from the forenoon of 13.3.2002 and transferred as TES Group-B in Sirohi TD. Further, it was stated in the same order that one Shri Hari Kishan Sharma will take over the charge of DET Sumerpur till further orders. Aggrieved with this, the applicant has filed this OA with a prayer that the respondents be directed not to revert him from his present post till his juniors continue to hold the posts in STS of ITS Group-A.

2. Vide order dated 4.4.2002 we had directed the respondents to maintain status-quo with regard to the post the applicant was holding as on that date.

3. Heard the learned counsel for the parties and perused the entire records.

4. It is not in dispute that when the applicant is proposed to be reverted by the impugned order, his juniors are continuing to hold the post in the cadre of STS of ITS Group-A, though on a purely locally ad hoc arrangement. The grounds for reverting the applicant have been stated in para 4.5 of the reply filed by the respondents. A reading of this para indicates that the respondents are proposing to initiate a major penalty case against the applicant. In view of such contemplated action the impugned orders have been issued. The learned counsel for the respondents drew our attention to the policy in this respect filed as Ann.R/2. He submitted that action of the respondents in reverting the applicant was legal and in conformity with Rule-11(4) of the CCS (CCA) Rules, which covers such cases. This stand of the learned counsel for the respondents was strongly rebutted by the learned counsel for the applicant, who stated that the respondents have no authority to revert a senior when the juniors have been continuing and when on the date the impugned order has been issued, no charge-sheet had been issued against the applicant. Any contemplated action cannot take away the right of the applicant in holding the post in the cadre of STS of ITS Group-A when his juniors have been enjoying the benefit. The learned counsel for the applicant termed the action of the respondents as coloured with mala fide in law. IN support of this contention he referred to the reported cases of P.Damodaran v. State of Kerala, 1982 (1) SLR 563, Dr.(Sm.) Pushpika Chatterjee v. State of West Bengal & Ors, 1972 SLR 910, N.N.Singh & Ors. v. General Manager, Chittaranjan Locomotive Works & Ors., 1973 (1) SLR 1153, and Smt. S.R.Venkataraman v. Union of India & Anr., AIR 1979 SC 49.

5. We have perused the rule on which the action of the respondents is based. Para 4(ii) of Rule-11 of the CCS (CCA) Rules reads as under:

"(ii) Where the appointment was required to be made on ad hoc basis purely for administrative reasons (other than against a short-term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him."

The above rule clearly provides that if a government servant has held the appointment made on ad hoc basis for more than one year, he cannot be reverted on the ground that a disciplinary proceeding has been initiated against him. In the instant case, the facts clearly reveal that the applicant has officiated in the STS of ITS Group-A for much longer than a period of one year. The intermittent breaks are all artificial breaks and cannot be given cognizance for the purpose of this rule and to determine whether the applicant has held the post for a period of more than one year or not. Artificial breaks are being resorted to by the department, as per their own admission in para 4.4 of their reply. This being done on the plea that authorisation to promote on ad hoc basis is only for a period of 180 days. Merely by putting an artificial break, the functionaries are exercising powers which would not have been available to them if the promotion was continued. But the fact remains that these arrangements are against long term vacancies and the applicant and others are being made to hold this post on purely local ad hoc arrangement from time to time. The intermittent breaks artificially put in by the department to overcome of their own disabilities cannot be used against the persons who continued to hold the post over years with such artificial breaks and these breaks have necessarily to be ignored. The rule clearly provides that if any government servant has held the post for more than one year on ad hoc basis, he cannot be reverted merely for the reason that disciplinary proceedings is initiated against him. In the case before us, the action is still under contemplation and has not yet been initiated. Be that as it may, even issue of a charge-sheet shall not come in the way of ad hoc promotion of the applicant because of the clear provision in para 4(ii) of Rule-11 above. It, therefore, clearly establishes that the impugned order is totally illegal and is

not sustainable.

6. We, therefore, allow this OA and quash and set aside the impugned order dated 13.3.2002 (Ann.A/1). The applicant shall continue to be promoted on ad hoc basis to the cadre of STS of ITS Group-A so long as his juniors enjoy this benefit. Of course, this order shall not come in the way of any disciplinary proceeding initiated against the applicant which shall be conducted as per rules and law. Under the circumstances, no order as to costs.

anup
(A.P.NAGRATH)
MEMBER (A)

o
(JUSTICE O.P.GARG)
VICE CHAIRMAN

Received copy

BRC
13/12/2015

Part II and III destroyed
in my presence on 13/12/2015
under the supervision of
Section Officer () as per
order dated 14/12/2015
Section Officer (Record)

Deepti