

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 362
P.A. No.

1989

DATE OF DECISION 10.8.90

Mutnuri Radha Krishna Murthy Applicant (s)

K. S. Rajamony Advocate for the Applicant (s)

Versus

GOI M/O I&B, New Delhi & others Respondent (s)

Mr. N N Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, 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. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant challenges in this application filed under section 19 of the Administrative Tribunals Act Annexure A-5 reversion order dated 27.3.1989. The impugned order reads as follows:

"Govt. of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, vide their Office Memo No. 28036/8/87-Estt (D) dated the 30th March, 1988 had laid down that all ad hoc appointments should be reviewed and those appointments should not be continued beyond one year from the date of their Office Memorandum i.e. 30.3.1988. This decision has recently been reiterated by the Ministry of I & B vide their telex No. A-42020/15/89-FA dated 7.3.1989.

2. In view of the instructions cited above, the cases of ad hoc appointments existing in the Films Division have been reviewed. As a result of the review, the competent authority has

decided that Shri M. Radhakrishna Murthy, Offg. Branch Manager on ad hoc basis in Distribution Branch Office at Trivandrum is reverted to his substantive post of Salesman w.e.f. the afternoon of 29.3.1989 and posted in the same office."

2. The applicant was appointed as Junior Booker in the Films Division on 13.8.1965. By Annexure A-2 order he was promoted as Senior Booker w.e.f. 16.3.1970. He was again promoted as Salesman in the scale of 425-700 as per Annexure A-3 dated 29.5.1978 and transferred to the branch office Films Division, Ministry of Information and Broadcasting, Trivandrum. The further promotion as Branch Manager in the same office on a scale of 650-960 was given to the applicant as per Annexure A-4 dated 26.8.1986. This order shows that his appointment is purely on an ad hoc basis and it does not confer on him any right for regular appointment to the post.

3. While working as Salesman, disciplinary proceedings were initiated against him pursuant to Annexure A-6 charge memo dated 26.2.1979. After the disciplinary enquiry, Annexure A-7 order of punishment of reduction to the lower post of Senior Booker until he is found fit for a period of four years was imposed on him. But the punishment was set aside in appeal by the appellate authority as per Annexure A-8 order dated 20.9.1984 and he was restored to his original post of Salesman. Later, he was promoted as Branch Manager on ad hoc basis and he submitted representation Annexure A-9 for maintaining his seniority which was answered as per

Annexure A-10 informing him that on two occasions in the recent past the DPC has not cleared him for regular promotion to the post. Again when he submitted representation for the same relief directly, he was warned against submitting representation direct to the higher authority in future by the issuance of Annexure A-11 order. However, the applicant was further informed through Annexure A-12 that the DPC did not find him fit for promotion to the post of Branch Manager and hence he could not be promoted. Unsatisfied with Annexure A-12 he again submitted Annexure A-13 dated 2.1.1989 to the Minister of State.. This was rejected as per Annexure A-14 dated 18.3.1989.

4. It is under these circumstances that the impugned order of reversion was issued by the respondents. The applicant is challenging the same on the ground that it is illegal and arbitrary. It is also submitted that the DPC proceedings are illegal because the DPC appears to have been influenced by the xxxxx charge memo against him which was found to be false and he was completely exonerated from the same. He further submitted that the DPC had superseded him and promoted respondents 4 & 5 who are persons junior to him, because of extraneous consideration, presumably on account of the fact that Shri N. N. Sharma, the Administrative Officer who was the disciplinary authority and whose decision was set aside by the appellate authority, was one of the members of the DPC. Therefore the decision of the DPC is vitiated.

5. The respondents 1 to 3 have filed a detailed counter affidavit denying all the allegations in the application. They have supported the reversion of the applicant by placing reliance on Annexure R-1 O.M. dated 30.3.88 in which the Government have taken a policy decision that all ad hoc appointments including ad hoc promotions shall be reviewed on the basis of the guidelines contained in the same. However, the Government restricted the continuance of ad hoc appointments including ad hoc promotions to one year from the date of issue of the said instruction unless there is exceptional circumstances to continue the same in the light of the prescribed guidelines. They have also produced Annexure R-2 judgment of the Central Administrative Tribunal, Calcutta Bench in O.A. 362/89 wherein the Tribunal has upheld the order of reversion passed by way of implementation of the policy decision referred to above. Accordingly, the respondents had no option but to revert the applicant to the substantive post of Salesman w.e.f. 29.3.89. Later when the DPC found him fit for promotion it was proposed to appoint him to the post of Branch Manager on the basis of the recommendation of the DPC in the Trivandrum Branch itself where the post of Branch Manager is still lying vacant.

6. As per our orders dated 5.3.1990, we directed the respondents to produce the DPC proceedings referred to

by the applicant for verification. Accordingly when the case was taken up for hearing on 10.7.1990, the DPC proceedings were placed before us for perusal. We have gone through the minutes of the DPC proceedings held on 9.7.1985 and 29.3.1988. In both these proceedings the applicant was not cleared. From the perusal of the DPC proceedings we could not find any ^{sort of} extraneous consideration so far as the applicant is concerned except the fact that Shri N. N. Sharma was a member of the DPC which ~~xxx~~ met in 1985. But since ~~xxxx~~ neither the DPC nor Shri Sharma is a party in this application, it may not be proper for us to go into the allegation of bias raised by the applicant against the constitution of the DPC especially when the allegation raised by the applicant against the DPC is denied in the counter affidavit. The respondents have stated that the DPC members are solely guided by the service records of the officials for an objective assessment and grading. The Chairman of the DPC for the post of Branch Manager is a Joint Chief Producer who is a senior level officer much superior in rank to the Administrative Officer and there is hardly any scope for any extraneous consideration as alleged by the applicant.

7. The challenge of the reversion order cannot be sustained in the light of the policy decision contained in the O.M. Annexure R-1. The respondents 1 to 3 have

by


no choice but to revert the applicant in the light of the clear guidelines contained in Annexure R-1. The applicant has neither challenged Annexure R-1 nor the orders at Annexures 12 and 14. So much so, his complaint against reversion cannot be accepted.

8. The only further aspect which can be considered on a compassionate consideration of the matter is that his request for a transfer to his native place namely Andhra Pradesh in view of the fact that he is to retire on superannuation at the age of 58 in December, 1990. On the facts and circumstances of the case, we feel that this is a legitimate request which deserves consideration especially on account of the fact that the applicant was working at Trivandrum for a long period and his desire to a posting at his native place before his retirement was not considered by the respondents 1 to 3 giving due regard to his right to work at his native place at least for a short spell before his retirement.

9. Even though on the facts and circumstances of the case the application is only to be dismissed as devoid of any substance, we do so with the observation that the present proposal to promote the applicant as Branch Manager may be implemented by the respondents considering his request to a posting at his native place in the promoted post on compassionate ground.

3

10. The application dismissed but without any order as to costs.


10.8.90

(N. Dharmadan)
Judicial Member


10/8

(N. V. Krishnan)
Administrative Member

knn