

(18)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT PANAJI.

Original Application No.48/87.

Shri H.N.Pauskar.

... Applicant.

V/s.

Development Commissioner,
Govt. of Goa & four others.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shfi G.Sreedharan Nair,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Applicant by Mr.C.U.Singh,
Respondents by Mr.M.I.Sethna.

JUDGMENT:-

[Per Shri M.Y.Priolkar, Member(A)] Dated: 13.7.1990.

The applicant in this case was a Junior Engineer (Electrical) in the Electricity Department of Government of Goa, Daman and Diu, who was promoted as Assistant Engineer (Electrical) on ad hoc basis by Government of Goa, Daman and Diu, Industries and Labour Department's order dated 19.4.1983. The grievance of the applicant is that although he has worked continuously on ad hoc basis for more than three years in a regular vacancy, he was not regularised and has, in fact, been reverted to the post of Junior Engineer (Electrical) by order dated 5.1.1987 of Government of Goa, Daman and Diu.

2. The respondents have stated in their written replies that the D.P.C. which had considered the applicant's case for promotion along with others in September, 1986, had communicated its recommendation relating to the applicant in a sealed cover as the DPC had been informed

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that a vigilance enquiry was in progress against the applicant. The disciplinary authority is stated to have decided to initiate regular departmental action for major penalty against the applicant and, at the time of the DPC meeting in September, 1986, the matter had been referred to the Central Vigilance Commission for their concurrence for initiating disciplinary action. A charge sheet was subsequently served on the applicant on 9.3.1987.

3. This application contains a number of grounds on which the reversion order dated 5.1.1987 is challenged. The learned Counsel for the applicant, however, stated that since all these contentions have been rejected by this Tribunal (New Bombay Bench) while dismissing on 27.9.1989 another application (O.A. No.G-47/87) filed by one Shri Badigannavar, his only argument now would be that reverting the applicant solely because of a pending vigilance enquiry is not only against any principle of law but is further contrary to the administrative instructions issued by Government of India in O.M. dated 24.12.1986. In this Office Memorandum, it has been directed that the following procedure should be followed in all cases where disciplinary proceedings are initiated against a Government servant who is officiating in a higher post on an ad hoc basis:

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(ii) Where the appointment was required to be made on ad hoc basis purely for

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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".

4. The respondents have contended that this is not a case where simply because of initiation of disciplinary proceedings, the employee has been reverted, but the reversion is due to the fact that the applicant does not find a place in the list of persons selected for regular appointment.

5. The only issue that arises for determination in this case is whether the Department was justified in following the sealed cover procedure even before the issue of a charge sheet. This question has been decided in a Full Bench Judgment dated 2.3.1987 of this Tribunal in which it has been held that the sealed cover procedure can be resorted to only after a charge memo has been served on the concerned official or the charge sheet is filed before the Criminal Court and not before (K.Ch. Venkata Reddy and others v. Union of India and others - reported at p.158 of Full Bench Judgments of CAT-1986-89- published by Bahri Brothers, Delhi). The Supreme Court also in a recent judgment dated 5.10.1989 in the case of C.O. Argumugam and others v. The State of Tamilnadu and others (ICLR 1990 SC 17) has observed that "to avoid arbitrariness, it would be better to follow certain uniform principles" and "the promotion of persons against whom charge has been framed in the disciplinary proceedings or charge sheet has been filed in criminal case may


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be deferred till the proceedings are completed".


6. Admittedly, the charge memo was issued to the applicant only on 9.3.1987 whereas the DPC had considered the applicant's case for promotion in September, 1986. The decision of the Department to follow the sealed cover procedure in his case and his subsequent reversion is thus bad in law in terms of the Full Bench decision, the Supreme Court's observations as also the departmental instructions referred to above and is thus liable to be set aside.

7. We direct, accordingly, that the sealed cover should be opened and the applicant promoted on regular basis, if the sealed cover contains DPC's recommendation that he is suitable for promotion. On such promotion, the seniority of the applicant should be fixed in accordance with his position in the select list. The promotion will be with effect from the date the official immediately below him in the select list has been promoted, with all monetary and other consequential benefits from that date.

8. The application is disposed of as above, with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)

13-7-90


(G. SREEDHARAN NAIR)
VICE-CHAIRMAN.

13.7-1990