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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 380/87 198
T.A. No.

DATE OF DECISION 18.10.1989

Smt. Lata S. Kamath Petitioner

Shri M.A. Mahalle
Advocate for the Petitioner(s)

Versus
Director of Sales & Others.
Respondent

Shri M.I. Sethna Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Shah, Vice-Chairman,

The Hon'ble Mr. P.S. Chaudhuri, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(29)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.380/87.

Smt. Lata S.Kamath

... Applicant.

V/s.

Director of Sales,

Central Sales Unit,

Commercial Broadcasting Service,

All India Radio,

Bombay - 400 020 & two others

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri P.S.Shah,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Mr.M.A.Mahalle, advocate for the
applicant and Mr.M.I.Sethna,
Counsel for the respondents.

JUDGMENT :-

(Per Shri P.S.Chaudhuri, Member(A))

Dated: 18.10.1989

This application was filed on 22.6.1987 under section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that the order dated 9.6.1987 by which she is reverted from the post of Statistical Assistant to her original post of Statistical Computer w.e.f. 9.6.1987 be quashed and set aside, that she be allowed consequential arrears of pay with interest and ^{that} she be allowed costs.

2. The facts may be briefly stated. On 11.9.1978 the applicant was appointed as Statistical Computer. On 23.8.1982 she was promoted as Statistical Assistant in a leave vacancy. By order dated 19.10.1982 she was appointed as Statistical Assistant in a purely temporary capacity. In this order it was indicated that she would be on probation for a period of 2 years w.e.f. 18.10.1982. By order dt. 4.1.1984 her probationary period was terminated w.e.f. 18.10.1984 and she was allowed to continue as

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Statistical Assistant until further orders. By the impugned order dt. 9.6.1987 she was reverted from the post of Statistical Assistant to her original post of Statistical Computer w.e.f. 9.6.1987 as her appointment as Statistical Assistant had been found erroneous. Being aggrieved with this order she filed the present application.

3. The respondents have opposed the application by filing their written reply. We have heard Mr.M.A.Mahalle learned advocate for the applicant and Mr.M.I.Sethna learned Counsel for the respondents.

4. Although Mr.Mahalle raised varied and various contentions before us, we are not concerned with any of these other than the simple contention that the applicant had been reduced in rank even though she had been promoted against a clear vacancy, had ~~continued~~ ^{completed} her probation period, had been allowed to continue in the post of Statistical Assistant until further orders and a post of Statistical Assistant continued to exist right upto the date that the impugned order reducing her in rank was passed. The respondents contention was that prior to the issue of the order dt. 19.10.1982 promoting the applicant to the post of Statistical Assistant, a regular Departmental Promotion Committee (for short, DPC) had been convened on 16.7.1982 for selecting appropriate candidates from amongst the common cadre of Statistical Computers throughout India. 23 such Statistical Computers were included in the eligibility list for consideration by the DPC and in this list the applicant was at Sl. No.19. As per the procedure in vogue at the relevant time, the department had obtained from eligible candidates their concurrence to being posted at Central Sales Unit at Bombay in the event of their

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selection by the DFC. All persons whose names appeared above that of the applicant in the eligibility list had declined to come to Bombay even on promotion as Statistical Assistant. The DFC selected the applicant for promotion to the post of Statistical Assistant. Subsequently, some time on or about 24.2.1983 one Shri R.C.Singh who was at Sl. No.11 in the eligibility list made a representation stating that he had not received any communication regarding his willingness to come to Bombay if selected by the DFC and that, therefore, though senior to the applicant he had been wrongly denied his promotional chances. On or about 29.6.1985 another vacancy of Statistical Assistant occurred and a DFC was convened on 26.7.1986 to fill this vacancy. This DFC selected Shri R.C.Singh. The applicant's name was not placed before the second DFC because at the relevant time, she was already working on regular basis as Statistical Assistant. It is the respondents' case that, thereafter, they re-examined the matter and came to the conclusion that both the DFC's held on 16.7.1982 and 26.7.1986 were not proper and cancelled the decisions taken therein. Thereafter, the impugned order reverting the applicant was issued. In order to see that the applicant was not put to any financial loss, she was offered a post of Investigator in the same scale of pay as Statistical Assistant. She accepted this post on 16.10.1987. The subsequent events need not concern us.

5. On the basis of the arguments of the learned advocates on both sides, the short point for decision thus relates only to the reduction in rank of the applicant and whether this reduction in rank attracts the provisions of Article 311 of the Constitution. In our view there is no doubt whatsoever that the applicant was regularly

appointed to a post of Statistical Assistant and that even though such a post continued to exist, she was reduced in rank. There is also no doubt that she was not given any notice prior to this reduction in rank. In our view the fact that she was offered and accepted an alternative post can not obliterate the fact that she was first reduced in rank by the impugned order dated 9.6.1987. Mr. Mahalle cited a series of cases on which he proposed to rely. After going through these cases we ^{do} ~~need~~ not see the relevance of these citations. The ~~law~~ in this regard is well settled in P.L. Dhingra's case - AIR 1958 S.C. 36. For convenience we may quote from the notes in AIR's Supreme Court Digest, 1950 to 1986, Vol - 3 at page 185

"-- Art. 311 (2) - Termination of service or reduction in rank - When amounts to punishment - Test.

Majority view: The principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service the termination of his employment cannot, by itself be a punishment.

If the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with. A reduction in rank likewise may be by way of punishment or it may be innocuous thing. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. The use of the expression 'terminate' or 'discharge' is not conclusive.

Held, Per Bose, J.: - It is the effect of the order alone that matters; and Art. 311 applies wherever any substantial evil follows over and above a purely 'contractual one'. The Article


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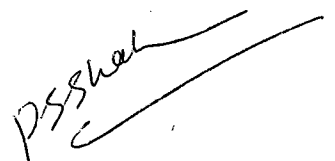
cannot be evaded by saying in a set of rules that a particular consequence is not a punishment or that a particular kind of action is not intended to operate as a penalty. It does not matter whether the evil consequences are one of the 'penalties' prescribed by the rules or not. The real test is, do they in fact ensue as a consequence of the order made?".

6. In this view of the matter, there is no doubt that the application deserves to succeed. It cannot be disputed that the applicant's appointment to the post of Statistical Assistant was as a result of the recommendations of a properly constituted DFC. It can not be disputed that she successfully completed her period of probation in this post.

7. We therefore, direct that the impugned order dt. 9.6.1987 be quashed and set aside. The applicant shall be paid the salary and other allowances due to her, but without interest, as if she had never been reverted from the post of Statistical Assistant w.e.f. 9.6.1987. The payments due to her shall be made within a period of 3 months from the date of receipt of a copy of this order. In the circumstances of the case, there will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(P.S. SHAH)
VICE-CHAIRMAN.