

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 908799

DATE OF DECISION:

Shri T.B. Singh _____ Applicant.

Shri D.V. Gangal _____ Advocate for
Applicant.

Versus

Union of India and others _____ Respondents.

Shri V.S. Masurkar _____ Advocate for
Respondent(s)

CORAM

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman
Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not?
(2) Whether it needs to be circulated to
other Benches of the Tribunal?
(3) Library.

R.G. Vaidyanatha
(R.G. Vaidyanatha)
vice Chairman

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CENTRAL LABOUR COMMISSIONERATE BENCH
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:908/99

MONDAY the 22nd day of NOVEMBER 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri B.N.Bahadur, Member (A)

T.B.Singh
Residing at
Mansarovar Housing Complex
Block No. 103
Varal Devi Road
Bhiwandi.Applicant

By Advocate Shri D.V.Gangal alongwith Shri S.V.Marne.

V/s

1. Union of India, through
The Secretary
Ministry of
Telecommunications
10, Sanchar Bhavan
New Delhi.

2. The General Manager
Kalyan Telecom District
KalyanRespondents

By Advocate Shri V.S.Masurkar.

ORDER

(Per Shri Justice R.G.Vaidyanatha,Vice Chairman)

This is an application filed by the applicant challenging the proposed order of reversion that may be passed by the respondents. Respondents have filed reply. We have heard counsel for both sides regarding admission and interim relief.

2. The applicant has been promoted as Sub-Divisional Engineer / Commercial Officer on officiating basis and the officiating promotion has been extended from time to time.

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In the meanwhile a charge sheet was issued on 13.7.1999 for certain misconduct. It was a minor penalty charge. After reply of the applicant, the competent authority has passed order imposing minor penalty. The applicant has challenged that order by preferring an appeal before the Appellate Authority. Now the applicant apprehends that in view of the punishment order he may be reverted, therefore he rushed to the Tribunal by filing the present OA. The applicant has also filed MP 732/99 for amendment of the OA.

3. The respondents have filed reply opposing the application. It is stated that applicant's promotion was purely on temporary and local officiating basis for a period of 180 days. He is liable to be reverted on completion of 180 days only otherwise reverted earlier due to any other reason the competent authority can take any action as per the Government order dated 24.12.1986. Applicant's promotion on regular basis will be considered after promotion of all his juniors.

4. After hearing both sides and going through the material on record, we find that applicant's present promotion was purely on temporary and on local officiating basis as could be seen from the promotion orders which are at page 10 and 11 of the paper book. Further, the first order at page 10 makes it clear that the promotion is only for a period of 180 days unless otherwise reverted earlier due to any other reasons. Therefore it is for the administration to decide whether particular officer's promotion should be continued beyond 180 days or not and then they have to decide whether officiating promotion should be put to an end by an earlier date for sufficient reasons. The Tribunal cannot interfere at this stage when the department has not taken

any action. There is no particular order by which the applicant is aggrieved. In view of the penalty order against the applicant it is for the administration to decide whether the reversion is necessary. The Tribunal cannot go into the hypothetical question and decide one way or the other. On the face of it the order of promotion is for a period of 180 days unless otherwise reverted earlier due to any other reasons. If an order passed is illegal or arbitrary then the applicant can challenge the same according to law. Therefore at this stage we cannot decide whether the department has right to revert the applicant. These are hypothetical questions.

5. From the latest order dated 2.7.1999 the officiating promotion comes to an end after 180 days. The applicant has assumed the charge in the promotional post on 19.7.1999 and 180 days comes to an end by 17th or 18th January 2000. It is for the administration to decide whether officiating promotion to be continued beyond that date or not. Then the question is whether administration can now itself pass the order of reversion.

The punishment order is at page 17 of the paper book which is dated 5.10.1999. The order of penalty shows that pay of the applicant is reduced to lower stage for a period not exceeding three years. When the punishment is in operation he cannot be promoted at all. The punishment order comes to an end after 180 days but the question is whether the order of reversion can be passed earlier.

The learned counsel for the respondents invited our attention to the Government order dated 24.12.1986 exhibit R1 which is at page 28 of the paper book. This Government order shows that if an appointment has been made purely on adhoc basis against a short-term vacancy or a leave vacancy or if the government servant appointed to officiate until further orders and the adhoc promotion is less than one year then the officer must be reverted. In other cases official need not be reverted only on the ground of disciplinary proceedings initiated against the official. Here also a discretion is given but it is not mandatory that he should be reverted. Since in this case the applicant has already suffered penalty in case of disciplinary proceedings. "Appropriate action in such case will be taken depending on the out come of the disciplinary proceedings". In the present case the disciplinary case has come to an end giving minor penalty to the applicant. What appropriate action has to be taken is for the competent authority. If the action is taken is contrary to rule then the applicant can challenge the same according to law. The authority has the right to take appropriate action according to law. Similarly the order of promotion also states that an officer on officiating promotion could be reverted before 180 days for reasons. Therefore, on this count also, the administration has to pass an order. If such an order is bad and illegal and malafide, the applicant can challenge the same according to law. We cannot at this stage interfere and stall the administration when it has right to take action according to law.

6. The learned counsel for the applicant contended that applicant was promoted on adhoc basis and he can be replaced only by a regularly selected candidate. He placed reliance on the judgement of Supreme Court in Piara Singh reported in 1992 SCC (L&S) 825. The Supreme Court in para 46 observed that an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority; the judgement strictly may not apply to cases of promotion. Whether the applicant has to be continued in the promotional post or not has to be decided by the competent authority. Only when an order of reversion is passed we have to see under what circumstances ^{order} ~~under~~ was passed and whether it is according to rule.

7. In view of the above discussion we hold that it is for the competent authority to pass appropriate order according to law. If any adverse order is passed illegally or arbitrarily then it is open to the applicant to challenge the same according to law. At this stage we find that it is too premature to interfere. Therefore the OA is disposed of subject to the observation mentioned above.

8. In the result the OA is disposed of subject to above observations. Interim order dated 25.10.1999 continued from time to time is hereby vacated. No order as to costs.

B.N.Bahadur
(B.N.Bahadur),
Member (A)

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R.G.Vaidyanatha
(R.G.Vaidyanatha)
Vice Chairman