

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 886 of 1994.

Dated this Friday, the 5th day of May, 2000.

Shri Nand Kumar Jivan Dalvi, Applicant.

Shri C. M. Jha, Advocate for the
applicant.

VERSUS


Union of India & Another, Respondents.

Shri V. D. Vadhavkar for Advocate for the
Shri M. I. Sethna, Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
- (iii) Library.


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

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

Nand Kumar Jivan Dalvi,
Upper Division Clerk,
R.O.C.B.-II, Residing at
47, Patil Apartment,
Gopi Tank, Shivaji Park,
Bombay - 400 016.

... Applicant.

(By Advocate Shri C. M. Jha)

VERSUS

1. Union of India through
The Director General,
Employees State Insurance
Corporation, Kotta Road,
New Delhi.

2. Regional Director,
Employees State Insurance
Corporation, ESIC Bhavan,
Lower Parel,
Bombay - 400 013.

... Respondents.

(By Advocate Shri V.D.Vadhavkar for
Shri M. I. Sethna).

OPEN COURT ORDER

PER : Shri R.G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant challenging the order of reversion dated 23.09.1993. The respondents have filed reply opposing the application. We have heard Shri C.M. Jha, the Learned Counsel for the applicant and Shri V. D. Vadhavkar for Shri M. I. Sethna, the Learned Counsel for the respondents.

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2. The applicant who was working as a U.D.C., was promoted as Assistant/Head Clerk by order dated 17.09.1992. But he came to be reverted on 23.09.1993 on the ground that applicant being visually handicapped, is not entitled to promotion. Even in the reply to the O.A., the respondents have justified the reversion on the ground that applicant is physically handicapped, namely - visually handicapped.

3. We had heard the matter in part on 01.03.2000 and it was adjourned for further arguments. Today when we took up the case for further arguments we find that the respondents have corrected the mistake and they have issued an order dated 12.04.2000 by granting retrospective promotion to the applicant w.e.f. 24.09.1993 as Assistant after holding a review D.P.C. Respondents' counsel tenders a copy of this order which is taken on record. We must appreciate the action taken by the respondents in promoting the applicant even though the O.A. is pending.

4. Now the Learned Counsel for the applicant submitted that the applicant is entitled to the pay and allowances of the post of Assistant from 24.09.1993 till 12.04.2000. But the Learned Counsel for the respondents submitted that since the applicant has not worked in the post of Assistant during this period, he is not entitled to any salary and allowances of this post or alternatively, he submitted that the applicant may be given the benefit of notional fixation of pay without granting arrears. But the Learned Counsel for the applicant submitted that when the applicant is deprived of the post by an order of reversion



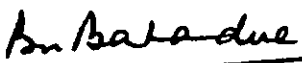
without any fault on his part, the applicant is entitled to not only reinstatement but also to salary and allowances.

5. As already stated, the applicant had been regularly promoted as an Assistant but by the impugned order he came to be reverted and the reason is, that applicant was not entitled for promotion being visually handicapped. At the time of argument, we have seen the necessary rules and find that there is no bar legally for the promotion of U.D.C. to the post of Assistant. This position is not even disputed by the respondents now and that is how the review D.P.C. held on 11.04.2000 has again promoted the applicant to the post of Assistant. Hence, in these circumstances, we hold that applicant was wrongly deprived of the post of Assistant by the impugned order of reversion dated 23.09.1993 and hence for the period of reversion, the applicant should get the salary and allowance for that post less whatever he has received as U.D.C.

Applicant's counsel submits that though the applicant received the order of promotion dated 12.04.2000 he could not join the post immediately, since the O.A. is pending and the matter was subjudice and further, the order did not mention anything about salary for the reversion period. Now the applicant's counsel submits that since the O.A. is being disposed of today, he will instruct his client to report to office as an Assistant on Monday, i.e. 08.05.2000, since tomorrow and day after are holidays, being Saturday and Sunday. Hence in the circumstances we feel that applicant should get the salary and allowances for the post of Assistant till 07.05.2000.

6. In the result, the application is allowed as follows :

- (i) The applicant's prayer for quashing the order of reversion and for a direction to promote him to the post of Assistant does not survive in view of the order of the administration dated 12.04.2000 granting him relief.
- (ii) The respondents are directed to pay salary and allowances for the post of Assistant to the applicant, less whatever salary and allowances he has received by working in the post of U.D.C. from 24.09.1993 till 07.05.2000. Applicant should join duty on 08.05.2000.
- (iii) Respondents should comply with this order about payment of backwages to the applicant within a period of three months from the date of receipt of a copy of this order.
- (iv) In the circumstances of the case, there will be no order as to costs.


(B. N. BAHADUR)

MEMBER (A).


(R. G. VAIDYANATHA)

VICE-CHAIRMAN.