Ori'gh OA 612/98

OA 696/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.612/98.
2. ORIGINAL APPLICATION NO.633/98.
3. ORIGINAL APPLICATION NO.693/98.
4. ORIGINAL APPLICATION NO.694/98.
5. ORIGINAL APPLICATION NO.695/98.
6. ORIGINAL APPLICATION NO.696/98.
7. ORIGINAL APPLICATION NO.697/98.
8. ORIGINAL APPLICATION NO.698/98.

Pronounced this the 29th day of January, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member,(A).

1. G.V.Dhumatkar,
1/65, Tulsi Building,
11th Khetwadi back Road,
Girgaum,
Mumbai. ... Applicant in O.A.NO.612/98.

2. Smt.Mariamma Kurian,
House No.14,
Kolivary Village,
Kalina,
Santacruz (East),
Mumbai-400 098. ... Applicant in O.A.NO.633/98.

3. K.P.Vijayan,
Flat No.1994,
Building No.49,
2nd Floor, Sector VII,
Central Government Servants Colony,
Antop Hill,
Mumbai-400037. ... Applicant in O.A.NO.693/98.

4. A.R.Somaiya,
C/2-403, Veena Nagar,
L.B.S. Marg,
Mulund (West),
Mumbai-400080. ... Applicant in O.A.NO.694/98.

5. S.D.Jagtap,
Flat No.2654,Bldg.No.208,
Ground Floor, Central Government
Servants Colony, Antop Hill,
Mumbai - 400 037. ... Applicant in O.A.NO.695/98

6. R.I.Barai,
Flat No.3654, Bldg.No.208,
Ground Floor, CGS Colony,
Antop Hill,
Mumbai-400 037. ...Applicant in O.A.NO.696/98

...2.

7. K.P.Hemani,
B/11, Yojana Society,
Natwar Nagar Road No.6,
Jogeshwari(E),
Mumbai-400 060. ... Applicant in O.A.NO.697/98.

8. V.B.Patil,
"Abhyudaya Nagar",
Building No.1,
Room No.58, 1st Floor,
Opp. Kalachowki Police Station,
Kalachowki,
Mumbai-400033. ... Applicant in O.A.NO.698/98.

(By Advocates Shri M.S.Ramamurthy and Shri G.K.Masand for applicants)

V/s.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi-110 001.
2. The Commissioner of Customs(General),
New Customs House,
Ballard Estate,
Mumbai-400 038.
3. The Chairman,
Central Board of Excise & Customs,
Ministry of Finance, Govt. of India,
North Block,
New Delhi-110 001. ... Respondents in all the 8 OAs.

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

: ORDER :

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

These are eight cases filed by the applicants challenging the decision taken by the respondents to revert the applicants from the post of Examiner to the lower post of either UDC/Tax Assistant/Tax Inspector. The respondents have filed reply opposing all the applications. We have heard learned counsels Mr.M.S.Ramamurthy and Mr.G.K.Masand on behalf of the applicants and Mr.M.I.Sethna along with Mr.V.D.Vadhavkar on behalf of the respondents.

...3.

2. In all these cases, admittedly the applicants were promoted as Examiners in 1994.

The applicant G.V.Dhumatkar in OA 612/98 was promoted as Examiner on ad-hoc basis on 7.7.1994 and was regularised by order dt.7.4.1995. Now, the applicant's case is that the respondents have now decided to revert him to the lower post of UDC on the ground that he is a handicapped person and therefore, he is not entitled to promotion to the post of Examiner. The applicant has approached this Tribunal challenging the decision of the apprehended reversion taken by the administration.

In OA 633/98 Smt.Mariamma Kurian was promoted from the post of UDC to the post of Examiner on regular basis by order dt. 17.2.1994. Now the administration has passed an order dt. 24.7.1998 reverting her to the post of UDC. The applicant is challenging the said order of reversion.

In OA 693/98 K.P.Vijayan was promoted from the post of Tax Assistant to the post of Examiner on ad-hoc basis on7.7.1994 and regularised in the said post on 7.4.1995. He has approached this Tribunal challenging the apprehended decision of reversion taken by the administration.

In OA 694/98 A.R.Somaiya was promoted from the post of UDC to the post of Examiner on ad-hoc basis from 7.7.1994 and was regularised as Examiner on 7.4.1995. He has approached this Tribunal challenging the apprehended decision of reversion taken by the administration.

In OA 695/98 S.D.Jagtap was promoted from the post of Tax Assistant to the post of Examiner on ad-hoc basis w.e.f. 7.7.1994 and was regularised as Examiner w.e.f. 7.4.1995. He has approached this Tribunal challenging the apprehended decision of reversion taken by the administration.

In OA 696/98 R.I.Barai was promoted from the post of Auditor to the post of Examiner on ad-hoc basis w.e.f. 26.4.1995 and subsequently he has been regularised as Examiner. He has approached this Tribunal challenging the apprehended decision of reversion taken by the administration.

In OA 697/98 K.P.Hemani was promoted from the post of UDC to the post

of Examiner on ad-hoc basis w.e.f. 7.7.1994 and was regularised w.e.f. 6.4.1995. He has approached this Tribunal challenging the apprehended decision of reversion taken by the administration.

In OA 698/98 V.B.Patil was promoted from the post of Tax Assistant to the post of Examiner on ad-hoc basis w.e.f. 26.4.1995 and was regularised in the said post w.e.f. 8.11.1995. He has approached this Tribunal challenging the apprehended decision of reversion taken by the administration.

It is therefore seen that in all these cases except O.A. 633/98, the applicants have approached this Tribunal challenging the purported decision of the administration to revert them to the lower post. The Tribunal has granted interim stay directing the administration to maintain status quo of the applicants post on the date of application till the next hearing date. The interim order has been continued from time to time till to day. However, in O.A. 633/98 there is already an order of reversion dt. 26.4.1998 and that is why no interim order was granted in that case.

The case of the applicants in all these cases is that the order of reversion is arbitrary and illegal. Their first point is that the order of reversion or the decision to revert them has been taken without hearing the applicants and without giving a show cause notice and thereby it violates the principles of natural justice. Then, on merits their stand is that though they are handicapped persons, they have been promoted on regular basis by subjecting them to scrutiny like other normal employees and they are not promoted against any reserved post, but they have been promoted on merits like any other normal employees and therefore, the administration has no right to revert them.

3. In the reply, it is admitted that in OA 633/98 reversion order has

been issued. It is also admitted that in all the other 7 cases, the respondents have decided to revert the applicants on the ground that their promotion was contrary to earlier Circulars of the Department since these posts of Examiners are not identified as being suitable for the handicapped persons and therefore the applicants who are handicapped persons could not have been promoted to those posts and therefore, if any promotion is given wrongly, it has to be set right by reverting the applicants.

4. Though we have heard lengthy arguments at the bar advanced on behalf of the applicants and the respondents, we feel that these OAs can be disposed of on a short legal ground viz. violation of principles of natural justice. Hence, it is not necessary to consider other factual and legal submissions made at the bar on merits of the case.

5. Admittedly, the applicants came to be promoted in 1994. Though in the initial period it was stated to be ad-hoc promotion, subsequently, after few months orders have been issued to the effect that the applicants have been regularly appointed as Examiners. That means the applicants cases have been considered by a regular DPC and the applicants promotion has been confirmed and they are promoted on regular basis. In such as case, whether the administration can unilaterally on one fine day take a decision to revert the applicants without observing the principles of natural justice. If a person who is regularly promoted is reverted to a lower post after three to four years, it would certainly affect his status, reputation and it would affect him financially since after reversion he will get a lower pay. When such is the civil consequences of reversion can the administration take a unilateral decision of reverting the applicants after three to four years. It is not a case where the promotions are still ad-hoc or officiating or temporary so that the administration can at any time revert an ad-hoc official to the lower

post. But in the case of the applicants here it was a regular promotion and therefore, the order of reversion cannot be passed without observing the principles of natural justice.

6. It is not a case where the applicants work in the promotional post was unsatisfactory. It is not the respondents case that applicants work was inferior to that of officials who had no physicial disability. There is no allegation of mis-conduct or inferiority in the working of the officials in the reply filed by the respondents. Here the applicants have been regularly promoted and when there is no allegation of mis-conduct or inferiority in the work of the applicants, then certainly respondents could not unilaterally revert them without at least issuing them a show cause notice to show under what grounds they are intended to be reverted and asking them to give a reply and then pass an appropriate order according to law. An order of reversion affects the reputation of the official and it involves civil consequences including loss of status and loss of pay and allowances. In such as case, the administration cannot adopt a summary remedy by just simply reverting the applicants without hearing them.

7. The learned counsel for the respondents invited our attention to a decision of the Supreme Court reported in 1997 (1) SC SLJ 103 (L.K.Singh Vs. Central Bank of India & Ors.). That was a case where a regular enquiry had been held and the only defect pointed out was non-supply of the enquiry report. The Supreme Court held that since no prejudice is established, the punishment cannot be set aside on the mere failure of non-supply of enquiry report unless prejudice is established. That was not a case where there was a summary removal of an official. It was a case of regular enquiry and the official had participated in the enquiry and therefore principles of natural justice had been followed. But, in the process at one stage there was some defect in the enquiry viz. that the enquiry report had not been supplied to

the delinquent.

In our view, the above decision has no bearing on the facts of the present case. Here is a case where no enquiry is held against the applicants and no show cause notice is issued to them and there is no allegation of mis-conduct or inferiority in the quality of their work, but suddenly after three to four years of regular promotion a decision has been taken to revert them to a lowser post. In our view, the action of the respondents suffers from glaring illegality and that an unilateral decision is taken without giving an opportunity to the applicants as to why they should not be reverted.

In the facts and circumstances of the case, we hold that the respondents unilateral decision to revert all the applicants to a lower post and that too when they have already worked for three to four years after regular promotion is bad in law and suffers from the vice of violation of principles of natural justice. In the view we have taken that the order should be quashed on the short ground, we do not want to express any opinion on the merits of the case lest it may prejudice either party when further action has to be taken by the respondents on our directions.

8. Even now, it is open to the respondents to issue a show cause notice to the applicants mentioning the grounds on which they are sought to be reverted to the lower post and calling upon the applicants as to why they should not be reverted on thouse grounds and giving them sufficient opportunity and time to give a reply. Then after receipt of reply from the applicants or if no reply is received after expiry of the time given, the administration may apply its mind and then decide whether the applicants are to be reverted to the lower post or not according to law. If any adverse decision is taken by the administration, then it is open to the applicants to

challenge the same according to law. Advisedly, we have not expressed any opinion on the merits of the contentions.

9. In the result, all the eight OAs viz. 612/98, 633/98, 693/98, 694/98, 695/98, 696/98, 697/98 and 698/98 are hereby allowed as follows:

(1) In all the eight OAs, the unilateral decision of the respondents to revert the applicants from the post of Examiner to the lower post is hereby quashed. We also quash the order dt.24.7.1998 under whcih the applicant Smt. Mariamma Kurian in OA 633/98 has been reverted.

(2) We direct the administration to reinstate Smt.Mariamma Kurian the applicant in OA 633/98 to the post of Examiner forthwith.

(3) Liberty to the respondents to issue show cause notice to all the eight applicants, the grounds on which they are intended to be reverted and calling them to submit their reply and on receipt of reply the administration may apply its mind and pass appropriate orders according to law. Needless to say that if any adverse order is passed, the applicants may challenge the same according to law.

(4) All contentions on merits are left open.

(5) In the circumstances of the case, there will be no orders as to costs.

(D.S.BAWEJA)
MEMBER(A).

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

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