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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

OA No.594/90

Date of order: 31-3-1998

C.P.Sharma S/o Shri M.P.Sharma, resident of S-61,
Krishna Marg, Bapur Nagar, Jaipur

.. Applicant

Versus

1. Employees' State Insurance Corporation through its Director General, Kotla Road, New Delhi.
2. The Regional Director, Regional Office, Employees' State Insurance Corporation, Bhawani Singh Road, Jaipur.

.. Respondents

Mr. S.K.Jain, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Eatan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

The applicant Shri C.P.Sharma had originally filed the OA on 19.12.1990 and it was disposed of by this Bench of the Tribunal by an order dated 11.1.1995. The respondents had challenged the order by filing Civil Appeal No.9388 of 1996 before the Hon'ble Supreme Court. The Hon'ble Supreme Court by its judgment dated 19.7.1996 set-aside the order of the Tribunal and sent it back to the Tribunal for disposal afresh, leaving all the contentions open. One of the grounds on which the OA has been allowed by the Tribunal was that the

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respondents had relied upon certain instructions issued by the Posts and Telegraphs Department. When the matter went before the Hon'ble Supreme Court, it was clarified that 'P and T' stands for Personnel and Training and, therefore, the instructions relied upon by the respondents were not of the Posts and Telegraphs Department but of the Department of Personnel and Training.

2. Thereafter an amended OA was filed by the applicant on 4.3.1997. We have now to dispose of the matter on the basis of the amended OA.

3. In this OA, the applicant has prayed for the following reliefs:

- i) The reversion order dated 7.12.1990 may be declared to be null and void and ineffective and violative of Article 16(1) of the Constitution.
- ii) Regulation 24 of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 (for short the Regulations) may be declared ultra vires and ineffective against the applicant.
- iii) The OM dated 24.12.1986 Ann.R2 be declared to be ultra vires of the above Regulations and the order of reversion dated 7.12.1990 based on the said OM be quashed with all consequential benefits.
- iv) The respondents may be commanded to allow the applicant to hold the post of Deputy Regional Director with all consequential benefits.
- v) The respondents may be directed not to revert the applicant till his juniors are reverted in the first instance.

4. The case of the applicant as set out in the

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amended OA is as follows. The applicant was initially recruited on the post of Assistant Regional Director, Employees' State Insurance Corporation (for short the Corporation) through the UPSC in November, 1986. Vide Memorandum dated 10.8.1989 a provisional seniority list of Assistant Regional Directors and others in equivalent rank as on 31.5.1989 was circulated in which the applicant's name was shown at Sl.No. 125 and in which his juniors have been shown at Sl. Nos. 126 onwards (Ann.A2). Vide order dated 10.8.1989 (Ann.A3), the applicant alongwith several others was ordered to be promoted to the post of Deputy Regional Director on ad hoc basis. The applicant's name appears at Sl.No. 13 in the said order and his juniors appear at Sl. No. 14 downwards. The promotion order was not purely a stop-gap arrangement. The promotion order was issued after considering all the eligible candidates and after taking into consideration their eligibility and suitability. Thereafter vide order dated 5.12.1989 (Ann.A4) eight others, junior to the applicant, were also ordered to be promoted to the post of Deputy Regional Director. The applicant was transferred vide order dated 30th July, 1990 passed by the Director General of the Corporation at New Delhi. The applicant challenged the transfer order before the Tribunal which passed an interim order on 13.9.1990 restraining the respondents from relieving the applicant in case he had not already been relieved. Because of the applicant's challenging the transfer order which was malafide and punitive in nature, the respondents adopted a revengeful attitude against him by passing order dated 7.12.1990 (Ann.A1) reverting the applicant to the post of Assistant Regional Director, without any

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justification. The applicant's juniors have, however, been allowed to continue as Deputy Regional Directors. The applicant has been singled out for reversion on pick and choose basis. This action of the respondents when his juniors have been allowed to continue on the post of Deputy Regional director is violative of Article 16(1) of the Constitution as also Article 14 of the Constitution, inasmuch as, the order of reversion cannot stand the test of equal treatment to equals and ~~it~~ reflects malafide exercise of power.

5. Other grounds on which the order of reversion has been challenged by the applicant are as follows. The grounds on which the order of reversion has been passed have not been disclosed to the applicant. Since he had been promoted after considering the eligibility and suitability of all the candidates falling in the zone of consideration, the respondents were not justified in reverting the applicant while allowing his juniors to continue. No opportunity of being heard was given to the applicant before passing the order of reversion. The applicant has, therefore, been visited with penal consequences. The respondents have disclosed in their reply (filed with the unamended OA) that the order of reversion has been passed in view of the Government of India OM dated 24.12.1986 issued in the Department of Personnel and Training. Actually, 'P and T', ^{the} abbreviation as used in the said OM indicates Posts and Telegraphs but even if it is assumed that it is issued by the Department of Personnel and Training, it has no applicability to the applicant because the said OM cannot apply to a Public Sector Undertaking like the Employees' State Insurance Corporation which, according to him, is registered under the Companies Act. In

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their reply to the unamended OA, the respondents have stated that the applicant has been reverted on the basis of the OM dated 24.12.1986 on the ground that he had not completed one year's of service in the promoted post and because disciplinary proceedings had been initiated against him. Thus, his reversion was actually on account of the pendency of the disciplinary proceedings against him. Therefore, the reversion was penal in nature and this action could be taken only after holding an inquiry. Regulation 24 of the Regulations provides that in respect of all other matters relating to conditions of service of the employees of the Corporation for which no provision or insufficient provision has been made in these Regulations, the rules applicable from time to time to the corresponding category of the Central Govt. employees shall apply subject to such modifications, variations and exceptions as the Director General with the approval of the Standing Committee may specify. Therefore, this OM of the Central Govt. can apply to the employees of the Corporation only if no provision or insufficient provision has been made in the Regulations with regard to the matter dealt with in the OM. However, the Regulations contain ample provisions regarding promotion and reversion of the employees of the Corporation and these provisions are not insufficient in any manner. Therefore, this OM has no application to the case of the applicant. The OM dated 24.12.1986 is only an instruction issued by the Central Govt., whereas Regulation 24 of the Regulations provides for applicability of rules applicable to Central Govt. employees. Therefore, this OM dated 24.12.1986, not being a rule has no applicability to

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the case of the applicant. Further, the rules framed by the Central Govt. cannot apply automatically to the employees of the Corporation but are applicable only when these have been placed before the Standing Committee and the Standing Committee has made them applicable to the employee with such modifications, variations and exceptions as it may provide. Since the OM dated 24.12.1986 was never placed before the Standing Committee, it cannot apply to the employees of the Corporation. Explanation (iv) of Regulation 11 of the Regulations provides that reversion of an employee officiating in a higher grade or post to a lower grade or post on the ground that he is considered to be unsuitable for such higher grade or post or on any administrative ground unconnected with his conduct shall not amount to imposition of a penalty on him. Since the OM dated 24.12.1986 provides for reversion of an employee within a period of one year without any such consideration of his case, it is contrary to Explanation (iv) of Regulation 11. The OM dated 24.12.1986 authorises reversion of an ad hoc employee if his ad hoc appointment is for a period of less than one year, when disciplinary proceedings are initiated against him. Thus this OM provides for reversion without holding a departmental inquiry. Even if the OM dated 24.12.1986 has the force of law and applies to the case of the applicant, the applicant's reversion is illegal as the order of reversion has been passed after one year of the applicant's promotion. The applicant was promoted vide order dated 10.8.1989 and the order of reversion was passed on 7.12.1990. Therefore, the order of reversion Ann. Al has been passed after approximately one year and four months and, therefore,

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the OM dated 24.12.1986 does not apply to the case of the applicant. Regulation 24A of the Regulations provides for the competent authority for the purpose of application of the Central Govt. rules. The Standing Committee has been held under rule 24A to be the competent authority to exercise all the powers and functions for the purpose of application of the Central Govt. rules to the employees of the Corporation under the Regulations. The instructions contained in the OM dated 24.12.1986 could, therefore, apply to the applicant only if these have been specifically made applicable by the Standing Committee to the employees of the Corporation. In view of the provisions of Regulation 9 of the Regulations any matter regarding the conduct, discipline and control over an employee of the Corporation shall be governed by the Regulations or as per the directions of the Director General. Therefore, no circular or rule can become applicable to the employees of the Corporation unless specified by the Director General. Since the OM dated 24.12.1986 had not been adopted by the Corporation, it cannot apply to the applicant. Regulation 8 provides for the conditions of service of the employees of the Corporation. According to this Regulation, the conditions of service of the employees of the Corporation shall be as laid down in the Regulations and such other orders as may be passed by the Corporation or its Standing Committee. Under Regulation 3 the mode of recruitment has been provided. The OM dated 24.12.1986 can apply only when the orders have been issued by the Corporation or by the Standing Committee. Since no such orders have been passed, the aforesaid OM has no application to the case of the employees of the Corporation. In view of the

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Explanation to Regulation 24, the Director General has to specify with the approval of the Standing Committee the posts under the Corporation which shall correspond to the posts under the Central Govt. for the purpose of applicability of Regulation 24. To the best of knowledge of the applicant no such posts have been specified by the Director General. Under Section 17 (4) of the Employees' State Insurance Corporation Act, it has been provided that if any question arises whether the post corresponds to Group-A and Group-B posts of the Central Govt., the question shall be referred to the Govt. whose decision shall be final. No decision has been given by the Central Govt. in this regard. In such a situation, Regulation 24 can have no application and, therefore, the rules framed by the Central govt. cannot apply to the employees of the Corporation. Also under Section 97 of the Employees' State Insurance Corporation Act, the power has been conferred on the Corporation to make regulations which are not inconsistent with this Act and rules framed thereunder. There is no provision of delegation under Section 97 of the Act. Therefore, the Corporation cannot frame any regulation adopting the rules, OMs etc. of the Central Govt. automatically for application to the employees of the Corporation. Such a power would amount to power of delegation and, therefore, contrary to the provisions of Section 97 of the Act. Therefore, Regulation 24 itself has to be struck down as conferring excessive delegation on the Corporation.

6. The applicant has further stated that clause (i) of the OM dated 24.12.1986 applies only to those ad hoc promotions which are against short term vacancies or against leave vacancies or if the official has been

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appointed to officiate⁹ till further orders. The order Ann.A3 dated 10.8.1989 shows that the applicant's promotion was made against regular vacancy. Therefore, clause (i) of the aforesaid OM cannot apply to the case of the applicant. Even the disciplinary proceedings initiated against the applicant on the basis of which his reversion has been ordered have since been finalised by imposing on the applicant a minor penalty of withholding of two grade increments of pay without cumulative effect, by passing order dated 11.9.1995. However no increments have been paid to the applicant for the last more than 5 years either on the post of Assistant Regional Director or on the post of Deputy Regional Director. Since the applicant has already undergone the penalty, he is now entitled to promotion forthwith on the post of Deputy Regional Director.

7. The respondents in their reply to the amended OA have stated that the applicant was promoted as Deputy Regional Director on purely ad hoc and temporary basis on the basis of the provisional seniority list ~~in the~~ of Assistant Regional Directors and assumed charge as Deputy Regional Director on 11.12.1989 at Jaipur. The promotion was ^{not} ~~in~~ accordance with the statutory rules. Since this was a Group-A post, promotion thereto was required to be made on the basis of merit-cum-seniority to be judged by a Departmental Promotion Committee ~~from~~ ^{amongst} officials falling within the zone of consideration. The promotions made vide Ann.A3 dated 10.8.1989 were made to meet the administrative exigencies, as a stop-gap arrangement purely on the basis of provisional seniority without holding the selection process for regular~~and~~ promotions. The respondents have denied that all eligible candidates were considered on the basis of

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their eligibility and suitability.

8. With regard to the transfer of the applicant, the respondents have denied the averments of the applicant and have also denied that any revengeful attitude was adopted against the applicant on account of his filing an OA before the Tribunal. The respondents have also denied that his reversion was ordered as a measure of punishment and without any justification. Certain acts of misconduct on the part of the applicant came to the notice of the competent authority who initiated disciplinary proceedings against the applicant by issuing a charge-sheet for major penalty vide memorandum dated 30.11.1990 (Ann.R1). By virtue of Regulation 24, the Corporation had adopted the rules and orders relating to conditions of service made by the Govt. of India in respect of Central Govt. employees and made these applicable to the employees of the Corporation. Thus the various orders and instructions issued by the Govt. of India are, mutatis mutandis, applicable to the employees of the Corporation. Since the applicant had been officiating on the higher post of Deputy Regional Director on ad hoc basis for a period of less than one year and disciplinary proceedings had been initiated against him, the appointing authority, acting on the instructions in the OM dated 24.12.1986 (Ann.R2), issued by the Department of Personnel and Training, Govt. of India, had passed the order dated 7.12.1990 reverting the applicant to his lower regular post. Since the reversion ^{order} has been passed in conformity with the provisions of the OM dated 24.12.1986, there was no pick and choose involved and, therefore, there was no violation of Articles 14 and 16 of the Constitution.

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The applicant, against whom disciplinary proceedings were initiated, cannot claim equal treatment with other officers against whom no disciplinary proceedings had been initiated. The reversion order can also, therefore, not be described as malafide exercise of power nor can it be described as arbitrary, capricious, discriminatory etc. There was no obligation on the part of the respondents to have disclosed reasons and grounds for the order of reversion, since it has been passed in conformity with the provisions contained in the OM dated 24.12.1986. There was no requirement of giving an opportunity of hearing to the applicant before passing the order of reversion. Since the applicant had been holding the higher post on ad hoc basis, he had no legal right to hold the said post and, therefore, his reversion by an order simplicitor cannot be said to have visited the applicant with evil consequences. The applicant's contention that 'P and T' stands for Posts and Telegraphs Department is misconceived. The matter has also been clarified before the Hon'ble Supreme Court and P and T stands for the Department of Personnel and Training of the Govt. of India, New Delhi. The instructions contained in the OM dated 24.12.1986 were issued by the Department of Personnel and Training. This matter has also been clarified by a communication Ann.R4 dated 21/22 February, 1991 issued by the Department of Personnel and Training, Govt. of India, New Delhi. The Director General had ordered the reversion of the applicant as is evident from the order Ann.A1 by which the applicant has been reverted. The fact that there is no reference to the OM dated 24.12.1986 in the order of reversion does not affect its legality. The power to effect

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reversion of a temporary and ad hoc official within one year of such promotion has been conferred on the authority concerned by the OM dated 24.12.1986. The applicant had been reverted before the expiry of one year of his tenure on the promoted post. Even otherwise a person promoted on temporary and ad hoc basis does not acquire any right to hold the post to which he has been promoted. The respondents have further stated that initiation of disciplinary proceedings against an official shows that the said official is unsuitable to hold the promoted post and, therefore, there is no legal impediment to reverting such official to his original, lower post on the ground of unsuitability to hold the higher post. It is not necessary in every case that there should be departmental inquiry against an ad hoc promoted employee before he could be reverted. There is difference between a reversion simplicitor on the ground of unsuitability which may be due to initiation of disciplinary proceedings against the official and the reversion ordered as a measure of penalty after holding a proper inquiry in accordance with the disciplinary rules. The applicant's reversion has not been ordered under the disciplinary rules applicable to the applicant. Therefore, the applicant has not been visited with any penal consequences and no stigma is attached on account of the passing of the order of reversion simplicitor.

9. Further according to the respondents, Regulation 24 of the Regulations is in the nature of a residuary and omnibus provision by which rules applicable from time to time to the corresponding category of the Central Govt. employees had been made applicable to the employees of the Corporation, to the extent the

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Regulations do not contain any provision or contain insufficient provision in respect of any matter relating to the conditions of service of an employee. Reversion is also an incident as well as a condition of service. A reversion can be ordered as a measure of penalty or as reversion simplicitor. The rule making authority cannot visualise all the possible circumstances with a view to making provisions in the Regulations to cover all the circumstances in which reversion simplicitor can be ordered. The Regulations do not contain any provision for passing an order of reversion simplicitor. Thus the Regulations contain insufficient provisions with regard to the matters of reversion and there is no provision therein similar to that contained in the Govt. of India's OM dated 24.12.1986. Therefore, by virtue of provisions of Regulation 24 the OM dated 24.12.1986 is applicable to the employees of the Corporation. The expression "Rules" used in the regulation 24 includes within its ambit all statutory and non statutory rules, orders and instructions issued by the Govt. of India. Since Regulation 24 is in the nature of residuary and omnibus provision, the expression 'Rule' will have to be given the widest interpretation that is in consonance with the object of the Regulations. Merely because the instructions dated 24.12.1985 are in the form of an OM does not mean that these cannot be treated as a rule having the force of law. Where no modifications in a rule adopted have been made in view of the provisions of Regulation 24, the said rule or the order issued by the Govt. of India would automatically apply to the employees of the Corporation in view of the provisions of Regulation 24. Since no modifications, variations

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etc. have been made by the Corporation in respect of OM dated 24.12.1986, it becomes automatically applicable to the employees of the Corporation and it does not require any approval of the Standing Committee before its application. The provision in Explanation (iv) below Regulation 11 which provides that reversion of an employee officiating in higher grade or post on the ground of unsuitability to hold the higher grade or post or on any administrative ground unconnected with his conduct does not amount to a penalty does not mean that all other reversions would be penal in nature. The OM dated 24.12.1986 is not contrary to the provisions of the aforesaid Explanation. The OM dated 24.12.1986 empowers reversion of a Govt. employee if he had held appointment for less than one year. By virtue of the order Ann.A3 dated 10.8.1989 by which the applicant was promoted on ad hoc basis, the promotion was to take effect from the date of joining on the promoted post. The applicant joined on the promoted post on 11.12.1989. The order of reversion was passed on 7.12.1990 and it was to have immediate effect. Thus the reversion has became effective on 7.12.1990 i.e. within the period of one year from 11.12.1989. The applicant's case that in view of the provisions of Regulation 24A, only the Standing Committee could have exercised the power of reversion of the applicant is misconceived. The OM dated 24.12.1986 can be said to have been properly covered by Regulation 9 which provides that all employees of the Corporation shall be subject to the superintendence and control of the Director General and shall be governed by the provisions contained in the Regulations. Even under rule 8 of the Employees' State Insurance Corporation (Recruitment) Regulations, 1965,

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the said OM becomes a part of the conditions of service of the employees of the Corporation and there is no need to pass a specific order by the Corporation or the Standing Committee to make it applicable to them. The OM dated 24.12.1986 applies to all Government servants and, therefore, it applies to all employees of the Corporation as well and, therefore, there is no requirement of notifying any corresponding category of employees of the Corporation (corresponding to categories of employees of Central Govt.) by the Director General or the Standing Committee. Regulation 24 is intra vires of Section 97 of the Employees' State Insurance Act as this Regulation provides for adoption of rules relating to other services in matter where there is no specific provision in the Regulations applicable to the Corporation. The order of promotion of the applicant in effect means that the promotion is until further orders. The applicant has not alleged malafide against any particular officer of the Corporation and, therefore, his allegations of malafides are untenable.

10. The respondents have admitted that a penalty of withholding of two increments without cumulative effect has been imposed on the applicant vide an order dated 11.9.95. Since the said penalty is now current, the question of promotion during the currency period of the penalty does not arise. They have prayed that the application should be rejected.

11. The applicant has also filed a rejoinder to the reply filed by the respondents.

12. During his oral arguments the learned counsel for the applicant while reiterating the averments made in the OA stressed that in view of Regulation 24 of the

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Regulations, unless a rule applicable to the corresponding category of the Central Govt. employees is specifically adopted for application to the employees of the Corporation by the Director General with the approval of the Standing Committee, such a rule cannot apply to the employees of the Corporation. The OM dated 24.12.1986 is not even a rule covered by the provisions of the Regulation 24 as it is not covered by the definition of rules in Section 3 (51) of the General Clauses Act. Moreover, a rule cannot come into force unless it is published in the Official Gazette. Regulation 11 is a self contained Regulation and Explanation (iv) thereof covers all cases of reversion on grounds unconnected with the conduct of the applicant. The respondents have not specified any ground for reverting the applicant in the order but they claim in their reply that the reversion has been ordered on account of the provisions in the OM dated 24.12.1986. The OM dated 24.12.1986 talks about reversion where disciplinary proceedings have been initiated. Thus the reversion becomes straightway penal in character. Moreover, the OM dated 24.12.1986 was not brought to the notice of the Ministry of Labour, which is the nodal Ministry for the Corporation and there is nothing to suggest that the OM was brought to the notice of the Corporation and to the employees of the Corporation before its being applied. There has been specific adoption of various rules of the Central Govt. to the Corporation and, therefore, there is no reason why the OM dated 24.12.1986 should not have been specifically adopted by the Corporation if it was the intention to apply it to the employees of the Corporation. The disciplinary proceedings initiated

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against the applicant are the foundation and not the motive for passing the order of reversion. Therefore, the order passed against the applicant reverting him to the lower post is penal in nature.

13. The learned counsel for the applicant cited the following judgments in support of the pleas raised by him in the OA and the oral arguments:-

- i) Babulal Vs. State of Haryana and Others, (1991) 2 SCC 335, according to which if a simple order of termination is found to be a camouflage for a punitive action, the order is liable to be set-aside. In this case services of the appellant were terminated pursuant to the criminal proceedings pending against him. The Hon'ble Supreme Court ordered that after acquittal by the Criminal Court he was entitled to be reinstated in service.
- ii) Omprakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd., Shimla and Another, (1991) 3 SCC 291. In this case a charge-sheet was served on the appellant and inquiry conducted but before conclusion of the inquiry a simple order of termination was passed. The Hon'ble Supreme Court held that the order was made on the ground of misconduct and was punitive in nature. Further where services of a senior have been terminated while the junior's have been retained, it is violative of Articles 14 and 16 of the Constitution.
- iii) Hardeep Singh v. State of Haryana and Others, 1987 (Supp) SCC 295, in which the Hon'ble Supreme Court held that it is the substance of the order which is to be seen to find out whether it is

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punitive in nature and, therefore, passed in violation of Article 311(2) of the Constitution.

iv) Smt. Rajinder Kaur v. State of Punjab and Another, (1986) 4 SCC 141. In this judgment the Hon'ble Supreme Court held that an order of discharge of temporary Government servant from service on the basis of confidential enquiry conducted into allegations of misconduct without affording any opportunity of hearing was violative of Article 311(2) and was liable to be quashed. It was further held that the mere form of the order purporting to be made under the service rules would not save it from invalidity if in essence it is punitive and passed without following the rules of natural justice.

v) K.H. Phadnis v. State of Maharashtra, AIR 1971 SC 998, in which the Hon'ble Supreme Court held that reversion of the Government servant from temporary officiating post to substantive post was liable to be quashed when the reversion was in the nature of punishment.

vi) Ram Ekbal Sharma v. State of Bihar and Another, AIR 1990 SC 1368, in which an order of compulsory retirement of a civil servant in public interest was held to be an order by way of punishment when there were averments by the State that the order was passed in view of financial irregularities committed by the appellant leading to financial loss. It was on a perusal of the counter affidavit filed on behalf of the State Government that the Hon'ble Supreme Court inferred that the order of compulsory retirement had in fact been made by way of punishment. Thus, according to the

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learned counsel for the applicant, the averments made by the respondents in the counter affidavit can be the basis for judging whether the order of reversion passed by the respondents against the applicant is punitive in character or otherwise.

vii) P.C.Wadhwa v. Union of India and Another, AIR 1964 SC 423. In this case the appellant, a member of Indian Police Service and holding substantive rank of Assistant Superintendent of Police was promoted as Superintendent of Police. After he had earned one increment in that post, he was served with a charge-sheet and before the inquiry, which had been ordered had started, he was reverted to his substantive rank of Assistant Superintendent of Police, the ground suggested for reversion being unsatisfactory conduct. The order of reversion was held in effect to be an order of reduction in rank within the meaning of Article 311(2) inasmuch as the appellant was given no opportunity of showing cause against the said order of reversion.

viii) K.Dayanandalal and Others v. State of Kerala and Others, (1996) 9 SCC 728, in which the Supreme Court held that certain circulars and standing orders issued by the State Government as well as the circulars issued by the Inspector General of Police for the members of the Police Force which were published in the Kerala Police Gazette cannot be said to have been published in the State Gazette under the authority of the State Government and, therefore, the requirement of publication thereof in the State Gazette cannot be said to have been fulfilled and, therefore,

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these should merely be treated executive order only. This judgment was relied upon by the learned counsel for the applicant to state that in view of non-publication of the OM dated 24.12.1986 in the official gazette, the contents thereof could not be considered to be a rule.

ix) *Harla v. The State of Rajasthan*, AIR 1951 SC 467, in which it was held that proclamations and orders of appropriate authority must be published in the Gazette or by other means to make them the law.

x) *Union of India and Others v. S.L.Abbas*, (1993) 25 ATC 844, in which the Hon'ble Supreme Court held that executive instructions such as for transfer of Govt. servants, are in the nature of guidelines and do not confer any legally enforceable right on a Govt. servant. The learned counsel for the applicant stated that on the same analogy the OM dated 24.12.1986 is only in the nature of guidelines and, therefore, not an enforceable rule.

xi) *The U.P.State Electricity Board and Another v. Hari Shankar Jain and Others*, (1978) 4 SCC 16. In this judgment the learned counsel for the applicant relied on the observations of the Hon'ble Supreme Court to the effect that the words "rules and regulations" have come to acquire a special meaning when used in statutes and used to describe subordinate legislation made by the authorities to whom the statute delegates that function. According to the learned counsel for the applicant, the OM dated 24.12.1986 cannot fall in the category of a rule and, therefore, is

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not one which could have even been adopted under Regulation 24 of the Regulations of the Corporation.

14. Other judgments cited by the learned counsel for the applicant to support the plea that an order whereby reversion has been ordered or similar action has been taken is in fact punitive in nature if passed without following the principles of nature justice or applying the provision of Article 311(2), are as follows:

xii) *Madhab Ch. Das v. Union of India and Others*, 1989 (3) SLR 153 (CAT).

xiii) *Gian Chand v. Union of India and Others*, 1989 (7) SLR 346 (CAT)

xiv) *Raghubans Narain Singh v. Union of India and Others*, 1991 (6) SLR 515 (CAT)

xv) *Chandi Das Banerjee v. Union of India and Others*, 1991 (3) SLR 264 (CAT).

15. Some of the other judgments cited by the learned counsel for the applicant which, according to him, directly or indirectly support his case are as follows:

xvi) *G.J.Fernandes v. State of Mysore and Others*, (1967) 3 SCR 636.

xvii) *M/s Raman and Raman Ltd. v. State of Madras and Others*, 1959 (2) SCR 227

xviii) *Channappa v. the Secretary to Government of Karnataka and Others*, AIR 1993 Karnataka 236.

16. The learned counsel for the respondents stated during his oral arguments that the applicant's promotion commenced from the date of joining the promoted post of Deputy Regional Director on 11.12.1989. The period of officiation of one year on this post, to find out whether the OM dated 24.12.1986 is applicable or not, is to be reckoned from the date

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of actual joining on the promoted post. Reversion order is dated 7.12.1990 though it may have been served on 16.12.1990. The reversion was to take immediate effect. Thus while the applicant joined the promoted post on 11.12.1989, he was reverted with immediate effect on 7.12.1990. In State of Punjab v. Balbir Singh, 1976 SLJ 278 (SC), the Hon'ble Supreme Court held that a order takes effect from the date on which it is issued or sent out. Therefore, the order of reversion became effective within one year from the date of the applicant's joining the promoted post and accordingly his reversion can be said to have been made when the applicant had held the promoted post for less than one year. The order of reversion does not indicate any ground because it is an order of reversion simplicitor. Where an order of reversion simplicitor is passed, no stigma attaches to the employee concerned. The following judgments were cited by the learned counsel for the respondents in support of this plea:

- i) Madhya Pradesh Hasta Shilpa Vikas Nigam Limited v. Davendra Kumar Jain and Ors., 1995 (1) SLR 272 (SC).
- ii) State of Utter Pradesh and Others v. Kaushal Kishore Shukla, 1991 (2) SLJ 96 (SC).
- iii) Triveni Shankar Saxena v. State of U.P. and Others, 1992 (3) SLR 128 (SC).
- iv) State of U.P. and Others v. Ramla Devi and Another, 1996 (4) SLR 455 (SC).
- v) Union of India and Another v. Bihari Lal Sidhana, 1997 SCC (L&S) 1976.
- vi) Nitesh Kumar Roy v. Union of India and Others, 1987 (3) SLR 815 (CAT).

17. Reasons for passing an order may be in the file

in which the case of the applicant was dealt with. He cited the following two judgments in support of the plea that reasons for passing an order need not be in the order itself, but these may be recorded in the relevant file.

- i) State of Maharashtra and Others v. V.S.Naik, 1980 (2) SLR 492 (SC).
- ii) Union of India v. E.G.Nambudiri, 1991 (2) SLR 675 (SC).

In E.G.Nambudiri's case it was held by the Hon'ble Supreme Court that in the absence of any statutory or administrative requirement, the order rejecting the representation of the respondent was not rendered illegal for absence of reasons therein. As to the plea of the applicant that the expression "rule" used in Regulation 24 of the Regulations does not cover an OM, the learned counsel for the respondents stated that the general meaning of the expression "rule" has to be applied and it can ^{also} be an order or a circular. In support of this arguments, he cited the following two judgments:

- i) Wazir Chand v. Union of India, Full Bench CAT Judgment, 1989-91 Vol.II, p.297, Bahri Bros.
- ii) DDA Graduate Engineer Association v. Lt. Governor of Delhi, 1993 SCC (L&S) 230.

In Wazir Chand's case the Full Bench of the Tribunal had held that the Railway Board can frame rules under Rule 123 of the Indian Railway Establishment Code, which may be in the form of a circular or letter or a decision. In the judgment in DDA Graduate Engineers' Association's case, the Hon'ble Supreme Court held that where rules had not been framed under Article 309 of the Constitution, there was nothing wrong in amending

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them by executive instructions. Thus rules can be made or amended even by executive instructions. Further according to him, the definition of "rule" given in the General Clauses Act is not applicable when this expression is used in Regulation 24 of the Regulations. As per Regulation 24, the instructions issued by the Central Government shall automatically apply if there is no provision or insufficient provision in the Regulations of the Corporation with regard to the matter dealt with in the instructions issued by the Central Government. There is no provision in the Regulations of the Corporation exactly corresponding to the instructions contained in the OM dated 24.12.1986 and, therefore, this OM will apply to the employees of the Corporation automatically. Explanation (iv) of Regulation 11 of the Regulations is an insufficient provision inasmuch as it does not cover all the other grounds on which an employee may be reverted without the reversion being treated as a measure of penalty. On the question of automatic application of the instructions issued by the Government, the learned counsel for the respondents cited the following two judgments to support his plea:

- i) V.Narsimha v. Director General Employees' State Insurance Corporation and Another, 1992 (3) SLR 622 (CAT).
- ii) P.C.Wadhwa v. State of Haryana, 1991 (2) SLR 212 (SC).

In V.Narsimha's case the Tribunal held that the orders issued by the Government of India on the question of reservation would apply to the Corporation as well. Further, according to him, the judgments cited by the learned counsel for the applicants all pertain to

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application of statutory rules or orders and, therefore, have no applicability to the facts of the present case. As regards the OM dated 24.12.1986, it was published in the June, 1987 issue of the Services Law Journal published from New Delhi having a wide circulation. Therefore, the requirement of publication thereof had been met. On the question whether the requirements of the publication are fulfilled, he cited the following two judgments:

- i) R.K.Gupta v. Union of India and Others, 1988 (4) SLR 320 (CAT)
- ii) Talwinder Singh Behal v. Punjab State Electricity Board, 1987 (1) SLR 450.

In R.K.Gupta's case it was argued that an order of the Government had not been published in the Official Gazette and, therefore it could not be relied upon by the respondents. The Tribunal observed that there was no provision of law or authority to sustain the contention that an order will be effective in the absence of its publication in the gazette and if an order is otherwise valid and legal it does not cease to be effective merely on account of its non publication in the gazette.

18. As to the grievance of the applicant that the categories of the employees of the Corporation corresponding to those of the Central Government for the purpose of application of OM dated 24.12.1986 had not been specified, the learned counsel for the respondents stated that the OM applies to all the Central Government employees and, therefore, it applies to all the employees of the Corporation and accordingly it was not necessary to specify any category of employees of the Corporation to which it would apply.

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The learned counsel for the respondents referred to the rejoinder filed by the applicant drawing attention to specific adoption of certain rules of the Central Government by the Corporation. The learned counsel for the respondents stated that all the rules specifically adopted are those which had financial implications. Therefore, it could not be inferred that all orders of the Central Government can be made applicable to the employees of the Corporation only after their specific adoption with the approval of the Standing Committee. Since the Director General was the appointing authority of the applicant and it was he who had passed the order of reversion, the applicant's challenge to passing of the order by the Director General was not maintainable. There was no violation of Article 14 of the Constitution inasmuch as all ad hoc employees who had not completed one year of service and who were facing disciplinary action were liable to be reverted in view of the provisions of the OM dated 24.12.1986.

19. In his rejoinder to the oral arguments of the learned counsel for the respondents, the learned counsel for the applicant mainly reiterated the averments and arguments advanced earlier and sought to distinguish the judgments cited by the learned counsel for the respondents stating that these were on different facts or the ratio laid down therein was different from that stated to be emerging therefrom by the learned counsel for the respondents. He particularly stated that the OM dated 24.12.1986 was not even within the knowledge of the Corporation because there was nothing in the OM to show that it had been forwarded to the Corporation and, therefore, it was not clear how the Standing Committee could at all

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decide whether it can be applicable to the employees of the Corporation. It could also not apply even automatically to the employees of the Corporation because it was not within the knowledge of the Corporation. The ground of reversion of the applicant was not unsuitability to hold the post of Deputy Regional Director and, therefore, all the judgments cited by the learned counsel for the respondents justifying the order of reversion simplicitor were not applicable.

20. We have heard the learned counsel for the parties, have perused the material on record and have also gone through the judgments cited by the learned counsel for the parties.

21. The Corporation is a statutory body set up by an Act of Parliament and the conditions of service of the employees thereof are governed by the Regulations of 1959 framed by the Corporation under the powers conferred on it in this regard. The applicant has assailed the action of reversion to the lower post of Assistant Regional Director taken against him on the ground that the OM dated 24.12.1986, in terms of which the action was claimed to have been taken against the applicant by the respondents, was in effect not applicable to him for various reasons including the one that it had not been specifically adopted by the Corporation in view of Regulation 24 which provides as under:

"24. OTHER CONDITIONS OF SERVICE-

In respect of all other matters relating to the conditions of service of employees, for which no provision or insufficient provision has been made in these regulations, the rules applicable from

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time to time to the corresponding category of Central Government servants shall apply, subject to such modifications and variations or exceptions if any, as the Director General may, with the approval of the Standing Committee, by order from time to time, specify.

EXPLANATION: For the purpose of these regulations, the Director General may, with the approval of the Standing Committee, by order specify, the posts under the Corporation which shall correspond to the posts under the Central Government."

The OM dated 24.12.1986 issued by the Department of Personnel and Training, Government of India (Annexure-F2) provides in substance that an ad hoc appointee shall be reverted to his lower, substantive post, if he has held the ad hoc appointment for less than one year, where disciplinary proceedings are initiated against him.

22. It is also the case of the applicant that whether or not the OM dated 24.12.1986 has been adopted by the Corporation and whether or not it is in fact applicable to the employees of the Corporation, the reversion of the applicant amounts to imposition of a penalty on him and, therefore, such action could not have been taken without holding of inquiry in terms of Article 311(2) of the Constitution and the provisions made consequent thereto in the Regulations. The case of the respondents is that the OM dated 24.12.1986 is applicable to the employees of the Corporation for various reasons set out by them and they were entitled to take action against the applicant in terms of the provisions of the said OM. The further case of the respondents, however,

is that in any case the applicant had no right to hold the post of Deputy Regional Director to which he was appointed only on ad hoc and temporary basis and, therefore, his reversion to the lower post of Assistant Regional Director by virtue of an order simplicitor which casts no stigma to him did not amount to any imposition of penalty on him and such reversion was within the terms of his appointment to the post of Deputy Regional Director as set out in Ann.A3 dated 10th August, 1989 being the order of promotion of the applicant alongwith others. Thus, the respondents have also sought to justify the order of reversion of the applicant independently of application of provisions of the OM dated 24.12.1986.

23. We are of the view that in the facts and circumstances of the present case, it is not necessary for us to decide whether the OM dated 24.12.1986 was in fact applicable to the employees of the Corporation, because the justifiability or otherwise of the reversion of the applicant can be examined independently having regard to the nature of appointment of the applicant to the post of Deputy Regional Director, the terms and conditions of appointment of the applicant to the said post and the nature of the order passed reverting the applicant.

24. The applicant's promotion was ordered as stated above vide order Ann.A3 dated 10th August, 1989. Some of the conditions of promotion incorporated in the order Ann.A2 were as under:

" The promotions of these Officers in the grade of Rs. 2200-75-2800-EB-100-4000/- have been made on purely ad-hoc and temporary basis on the basis of provisional seniority drawn. They are liable

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to be reverted to the lower post at any time without any notice or assigning any reason therefor. The ad-hoc promotion will not confer on them any right to continue in the post or for regular promotion in future. It is also made clear to them that the period of service to be rendered by them on ad-hoc basis in the promoted grade/cadre will neither count towards seniority in the grade nor for eligibility for promotion to the next higher grade/cadre. The promotion of these officers will take effect from the date of their joining the promoted post.

It is clear from the terms and conditions of the appointment of the applicant to the post of Deputy Regional Director that his promotion to the said post was on purely ad hoc and temporary basis on the basis of the provisional seniority list. Such an appointment does not confer any right on the person concerned to hold the promoted post. The order passed reverting the applicant to the lower post of Assistant Regional Director is an innocuous order, and that it does not contain any reason for the reversion of the applicant and does not cast any stigma on him. It is well settled that the form of the order is not conclusive as to the nature of the action taken by virtue of the order but the court is entitled to lift the veil and see whether the order passed is in fact an order of punishment. In this case, the reversion of the applicant has been ordered on the ground that disciplinary proceedings had been initiated against him, subsequent to passing of the order of promotion of the applicant, by Memorandum dated 30.11.1990 (Ann. El). Question is whether reversion of the applicant on the ground that

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disciplinary proceedings had been initiated against him on some charges relating to misconduct etc. amounted to imposition a penalty on him. According to the learned counsel for the applicant, because the disciplinary proceedings initiated against him were the reason for his reversion, a penalty had in fact been imposed on him. The factual position, however, that it is not on the ground of charges contained in the Memorandum dated 30.11.1990 that the order of reverion has been passed against the applicant. It is only on the ground of the fact of a chargesheet having been issued to the applicant that he has been reverted. The fact of issue of a chargesheet is independent of the charges contained in the chargesheet by which disciplinary proceedings have been initiated against him. In fact on the basis of the charges contained in the chargesheet issued to the applicant and the inquiry conducted subsequently, penalty of withholding of two grade increments of pay without summulative effect has been imposed on the applicant vide order dated 11.9.1995, as admitted by the applicant himself. However, on account of the very fact that the applicant has been chargesheeted, they would not be unjustified in considering him as unsuitable for holding the post to which, in any case, he has been appointed on purely adhoc and temporary basis. The respondents are entitled to judge the suitability of a person to hold a particular post when he is under a cloud. In our view, it is not the same thing as imposing a penalty on him which would be imposable if the charges contained in the chargesheet are proved against him and which was in fact imposed on him subsequently. The order passed reverting the applicant to the lower post does not

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visit with him evil consequences. Since the applicant had no right to hold the post to which he had been promoted, the order of reversion cannot be questioned. The allegation of violation of Article 16(1) or discrimination in terms of Article 14 is not tenable because the juniors of the applicant who have been retained in the promoted post had not been chargesheeted and therefore could not be said to have been found unsuitable on the ground of their being under a cloud.

25. We have considered the judgments cited before us by the learned counsel for both the parties on the question whether reversion of an employee in the circumstances akin to those obtaining in the present case would amount to imposing a penalty. The judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36 lays down the law on the subject very clearly and this judgment has been followed in most of the subsequent judgments of the Hon'ble Supreme Court on this subject. In this case also the appellant was reverted to the lower post though the ground of reversion was his unsuitability to hold the higher post on account of adverse entries in his confidential records. In this judgment, the Hon'ble Supreme Court held that 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 of the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or loss of his seniority in a substantive rank or the stoppage or postponement of his future chances of promotion, then

the circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employee or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government had terminated the employee and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. Inspite of the use of such innocuous expressions, the court has to apply two tests discussed in the judgment namely (i) whether the servant had a right to the post or rank or (ii) whether he had been visited with evil consequences of the kind referred to above. If the case satisfies either of the two tests then it must be held that the Government servant had been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank. This ratio of the judgment of the Hon'ble Supreme Court has also been applied in the case of State of Utter Pradesh and Others v. Kaushal Kishore Shukla relied upon by the learned counsel for both the parties to advance their respective cases. The reversion of the applicant did not amount to taking away any of the benefits of his substantive post of the Assistant Regional Director and, therefore, in view of what has been stated in Parshotam Lal Dhingra's judgment, the applicant was not visited with any evil consequences by virtue of passing of the order of reversion. It is the settled law that an employee holding a promoted post on ad hoc and temporary basis does not acquire any right to hold that post. In the case of Kaushal Kishore Shukla, the Hon'ble Supreme Court has further held that the evil

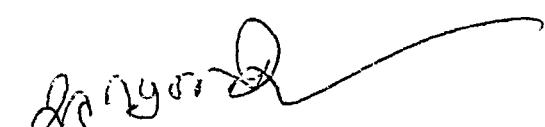
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consequences as held in Parshotam Lal Dhingra's case do not include termination of services of a temporary Government servant in accordance with the terms and conditions of service.

26. We, therefore, hold that since the applicant had acquired no right to hold the post of Deputy Regional Director, the order of reversion passed in his case was in accordance with the terms and conditions of his appointment to the post of Deputy Regional Director, the order of reversion was innocuous, casting no stigma on the applicant and it was not passed on the ground of the charges framed against him as contained in the Memorandum Ann.R1 dated 30.11.1990, the order cannot be assailed as being penal in nature and bad in law. As held by the Hon'ble Supreme Court in Parshotam Lal Dhingra's case and Kaushal Kishore Shukla's case, the motive or the inducing factors which influenced the Government to take action under the terms of contract of employment or the specific service rules is immaterial. We, therefore decline to interfere with the order of reversion of the applicant.

27. In the circumstances, we do not consider it necessary to deal with other grounds raised and reliefs claimed by the applicant.

28. The application is dismissed. No order as to costs.



(Ratan Prakash)

Judicial Member



(O.P. Sharma)

Administrative Member