

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.1007/92

Dt. of order: 3.8.1994

N.B.Khandelwal

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.J.K.Kaushik

: Counsel for applicant

Mr.N.K.Jain

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.GOPAL KRISHNA, MEMBER(JUDL.).

Applicant N.B.Kandelwal has prayed in this application under Sec.19 of the Administrative Tribunals Act, 1985, that the impugned order dated 21.4.89 (Annx.A1) rejecting his representation for restoration of promotion to the post of Head Clerk may be quashed and the respondents be directed to restore the promotion of the applicant in accordance with the relevant rules with consequential benefits.

2. We have heard the learned counsel for the parties and have perused the records.

3. The applicant's case is that he was promoted on the recommendations of the DPC to the post of Upper Division Clerk in the office of the Regional Provident Fund Commissioner Rajasthan at Jaipur in the year 1972. He earned his promotion to the post of Head Clerk on 20.10.81 and he continued on this post till 2.2.88 when he was reverted to the post of UDC pursuant to an order dated 2.2.88, after conclusion of the disciplinary proceedings against him imposing upon him the penalty of reversion to the lower post of UDC for a period of one year from the date of the issue of the order which may be a bar for further promotion during the period of penalty. After the currency period of the penalty imposed was over, since the applicant was not restored to the post earlier held by him, he was compelled to file this application. It is contended that the action of the respondents in refusing restoration to the post of Head Clerk is not sustainable

in law.

Copy sent to
the ~~ad~~ inf - C

on und USIP

21 11-814

Q

R. a. W. L. W.
S. K. W. L. W.

4. The respondents' contention is that after the applicant had completed the penalty period of one year, his repromotion to the post of Head Clerk was considered by the DPC on 27.3.89. The DPC after evaluating his performance in the lower cadre of UDC did not adjudge the applicant fit for promotion. It is also contended that the question of automatic restoration to the post of Head Clerk as envisaged in FR 29(2) did not arise as prior to reversion the applicant held the post of Head Clerk on purely temporary and ad hoc basis. It is admitted by the respondents in their reply that the applicant having been restored to the post of Head Clerk vide order dated 30.5.89, there remains no grievance for him to agitate.

5. A penalty of reversion to the lower post of UDC was imposed upon the applicant for a period of one year from the date of the issue of the order dated 2.2.88. The period of punishment expired on 2.2.89. The applicant should have been restored to the post of Head Clerk w.e.f. 3.2.89 and not w.e.f. 30.5.89 as has been done by the respondents. Since the bar to his repromotion was merely to last for a period of one year, in terms of the penalty order, the promotion of the applicant to the post of Head Clerk should have been automatic on expiry of the currency period. If the applicant was working as a Head Clerk on ad hoc basis on the date the penalty was imposed his restoration on expiry of the period of one year would have also been on ad hoc basis. The question of holding a DPC for considering the applicant's promotion to the post of Head Clerk on expiry of the currency period of the penalty would not arise.

6. In the result, this application succeeds and the respondents are directed to restore the promotion of the applicant to the post of Head Clerk w.e.f. 3.2.89. The applicant shall be entitled to all consequential benefits. There shall be no order as to costs.

(O.P.Sharma)
Member (A).

C. Krishna
(Gopal Krishna)
Member (J).