

CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:
AT HYDERABAD.

O.A.NO.488 OF 1995.

DATE OF ORDER:- 20th NOVEMBER, 1997.

BETWEEN :

UMMEED SINGH

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APPLICANT

AND

1. Sardar Vallabhai Patel National
Police Academy, Ministry of
Home Affairs, Government of India,
Hyderabad, rep.by its Director.

2. Deputy Director(Administration),
Sardar Vallabhai Patel National
Police Academy, Ministry of
Home Affairs, Government of India,
Hyderabad.

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RESPONDENTS

COUNSEL FOR THE APPLICANT : MR.P.NAVEEN RAO

COUNSEL FOR THE RESPONDENTS: MR.N.R. DEVARAJ, SrCGSC

CORAM:

HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMINISTRATIVE)

HONOURABLE MR. B.S.JAI PARAMESHWAR, MEMBER (JUDICIAL)

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O R D E R.

(Per Hon. Mr.B.S.Jai Parameshwar,Member(Judicial))

1. None appeared for the applicant. The applicant was also absent when the O.A. was taken up for hearing. Heard Mr. N.R.Devaraj, the learned counsel for the respondents. We are deciding the O.A. on the basis of the material available on record in accordance with Rule 15(1) of the C.A.T.(Procedure)Rules,1987.
2. This is an application under Section 19 of the Administrative Tribunals Act. The application was filed on 17.4.1995.
3. The applicant was originally appointed as a Constable in the respondent No.1 organisation during 1964 while it was functioning at Mount Abu. Later he was promoted as Head Constable in 1978 and was further promoted as Sub-Inspector on ad hoc basis effective from 28.5.1993.
4. While the applicant was working as Sub-Inspector he was served with a Memorandum bearing No.CDI/OD/95 dated 15.3.1995 for certain acts of misbehaviour during out-door parade on the Parade grounds. The applicant submitted his explanation to the Memorandum dated 15.3.1995.
5. The explanation of the applicant was not found convincing. Hence the Assistant Director of the Academy was appointed as the officer to conduct a preliminary inquiry into the incident. The Assistant Director gave opportunity to the applicant to appear before him during the preliminary inquiry. The applicant failed to appear before the Assistant Director. The applicant submits that he was not given any duties and/or responsibilities thereafter.

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6. The applicant submitted a representation dated 10.4.1995 to the Deputy Director(Basic Course) of the Academy requesting him to allot duties and responsibilities. It evoked no response.

7. On 15.4.1995 the applicant was served with a Memorandum of Charges vide proceedings No.21011/13/95-Estt. On the same day in the evening the Deputy Director(Basic Course) of the Academy served an Establishment Order dated 15.4.1995 on the applicant reverting him to the post of Head Constable.

8. The applicant has filed this O.A. challenging the order dated 15.4.1995 through which he was reverted to the cadre of Head Constable.

9. The applicant has challenged the order of reversion on the following grounds :

(a) The impugned order is illegal, arbitrary and without jurisdiction.

(b) The impugned order is discriminatory as juniors are still continuing as Sub-Inspectors on ad hoc basis. The applicant submits that Sri Punam Ram and Sri Ram Swarup are juniors to him who are continuing as Sub-Inspectors. His promotion was made on the basis of the seniority.

(c) There was no need to revert the applicant. It is submitted that the same is intended to act as a punishment.

(d) The applicant relied upon the principle enunciated by the Hon'ble Supreme Court of India in the case of Om Prakash Goel v. The Himachal Pradesh Tourism Development Corporation Ltd. Shimla, reported in AIR 1991 SC 1490.

10. On 10.5.1995 this Tribunal passed an interim

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order which reads as follows :

" 5. The reversion order No.13011/2/92-Estt. dated 15.4.95 is suspended till the disciplinary proceedings are completed and the final order is passed by the disciplinary authority based on the inquiry report. Further, applicant's reinstatement in the post of S.I. on adhoc basis is against a vacant post if it is ~~want~~ at the vacant time of production of this order. None of his junior who is working as adhoc SI will be reverted to accommodate the applicant. If there is no vacant post at the time of production of this order, the suspension of the reversion order as per this order is treated as cancelled and will not be given effect to and in that event the applicant shall be posted only as Head Constable as per the reversion order dt.15.4.95."

11. The respondents have filed their counter justifying the impugned order of reversion on the grounds that the applicant had bad record of service; that the ad hoc promotion was given to him with a view to give him an opportunity to improve his conduct and career; that the impugned order is nothing to do with the disciplinary inquiry initiated against the applicant; that the reversion was justified; that the Deputy Director(Administration) is the appointing authority and the disciplinary authority who is competent to revert the applicant; that the reversion does not pre-judge the issue involved in the disciplinary proceedings; that the allegation that certain juniors of the applicant are still continuing as Sub-Inspectors on ad hoc basis is not correct; that Sri Ram Swarup is senior to the applicant; that Sri Punam Ram though junior to the applicant was promoted on ad hoc basis and subsequently he was made regular in the post of Sub-Inspector; that the applicant had several punishments to his credit; that after the impugned order of reversion, the applicant has remained absent from duties on medical grounds and that

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there are no grounds to interfere with the order of reversion.

12. The only point that arises for our consideration is, whether the order of reversion dated 15.4.1995 was issued on administrative grounds or as a kind of punishment in view of service of the Memorandum of charges dated 15.4.1995.

13. The respondents have detailed certain punishments which are to the credit of the applicant. If those punishments compelled them to revert the applicant to the post of Head Constable by the impugned order, then the same grounds could not have justified promotion of the applicant on ad hoc basis. Therefore, mere existence of certain punishments to the credit of the applicant cannot be taken as a ground for reverting the applicant by the impugned order.

In the case of Om Prakash Goel (supra) the Hon'ble Supreme Court held that termination of service on the ground that the employee's services were no longer required while retaining his junior was not legal. The aforesaid case may not apply to the case on hand for, here reversion is involved and not the termination. However, the fact that Sri Punam Ram who was junior to the applicant was continuing as S.I. on regular basis. He has not been continuing on ad hoc basis.

15. In the case of Ram Babu v. Union of India, reported in (1991) 17 ATC 532, the Principal Bench of this Tribunal observed that the applicant was entitled to protection of Articles 14 and 16 of the Constitution and the respondents in that O.A. were not within their rights to retain a junior as L.D.C. while reverting the applicant who was senior and who had longer spell of

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service.

16. In the case of Shri Krishan Lal Sharma v. Union of India and others, reported in 1987(4)(CAT)AISLJ 528, the Principal Bench of this Tribunal in para-5 observed as follows :

"5. So far as the order dated 19.5.1981 reverting the petitioner from the post of Daftry to the post of a peon is concerned, on the face of it, is wholly unsustainable. The order says that the Tabulation Officer, Coding Section and the Deputy Director(T) of Census Operations, Himachal Pradesh have reported that Shri Kishan Lal, ad hoc Daftry, has been "callous in his duties and arrogant towards his superior in official matters and irregular in office. Since the aforesaid official has fallen short of the normal call of the official duties as Daftry, it is hereby ordered reversion to his substantive post of Peon". It is clear from reduction to the lower rank, simpliciter. It is an order made for the alleged misconduct of the petitioner specifically mentioned therein. No doubt, as contended by the learned counsel for the Respondents, the petitioner had no right to the post of Daftry for he was promoted on ad-hoc without following the procedure prescribed under CCS(CCA) Rules, 1965. Admittedly, no inquiry whatsoever was held before petitioner's reversion. Obviously, realising the mistake that in the circumstances, an inquiry ought to have been held before reverting the petitioner, he was served with a Memo on 18th June, 1981 under Rule 16 of CCS(CCA) Rules, 1965 with a statement petitioner alleged to be a misstatement. The again no inquiry, whatsoever, was held. However, even if an inquiry were held, it could not validate the earlier order of reversion. Since no inquiry was held, the order of reversion is wholly unsustainable. That order and the subsequent proceedings referred to in this paragraph are accordingly quashed. He shall be

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17. In the case of Mrs. Nilima Bhatnagar v. Union of India and others, reported in (1989) 9 ATC 601, the Principal Bench of this Tribunal in paras 9 & 10 considered whether the reversion could be regarded as simpliciter or punitive. Paras 9 and 10 are reproduced below:

" 9. From the above narration of facts, it is abundantly clear that the petitioner was appointed as an Auditor upon her application made in response to Circular No. 12038/2/77-Staff/BSF, dated 31.8.1977. Though it is stated that she was appointed by way of promotion, admittedly there were no rules governing the recruitment to the post of Auditor; much less was there any provision for appointment by way of promotion. It is in the absence of any rules regulating the appointment to the post of temporary capacity. ~~There was no rule of officiating or~~ appointment. Applications of the eligible and willing persons who fulfilled the conditions were called. After selecting them on the basis of their performance in the test which was held specifically for this purpose, the petitioner having stood first was appointed to that post. Although the appointment letter says that it was way of direct recruitment. ~~Perhaps she was appointed by~~ to have a lien on the post of L.D.C. in the P.A.D.; but that does not make her appointment by way of promotion. The circular did not officiating or temporary basis; so it has to be deemed to be a regular appointment. Be that as it may, the fact remains that after she was appointed on 19.10.1977, she continued for a period of two years as an Auditor in the EDP Cell. It is also further clear from the letter dated 13.12.1979, addressed to her regarding respondents sought to take disciplinary action against her. The acts of misconduct, as can be gathered from that letter were: she was leaving the office without obtaining permission of the timings ~~for arrival, she was found marking wrong~~ the attendance register; and she was also tampering the attendance register; and she was also tampering the attendance by overwriting the timings. After she submitted her reply, no enquiry whatsoever was held. Instead, a memo dated 1.3.1980 was issued pointing out that the performance of the petitioner's work was not up to the mark. She was asked to explain and after receiving her explanation, the order of reversion was made.

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10. The order of reversion from the post of Auditor to that of LDC is a reversion by two stages. Ordinarily an LDC would have to be promoted as UDC and only an UDC would be promoted as Auditor. In the absence of any rules, when she was recruited and appointed to the post of Auditor in the EDP, whether she could be reverted at all is doubtful. Irrespective of whether the reversion is by one stage or by two stages, there could be a little doubt that an order of reversion even by one stage constitutes a major penalty. Before imposing any major penalty the CCS(CCA) Rules require an inquiry to be made in accordance with Rule 14. The order imposing this penalty is clearly in gross violation of CCS(CA) Rules. The procedure followed by the respondents does not conform to any rules and offends all principles of natural justice. This order of reversion is wholly unsustainable."

18. In the instant case, on the very day, the applicant was served with the Memorandum of charges. Mere service of Memorandum of charges may not be justified for doubt, the applicant was holding the post of Sub-Inspector on ad hoc basis. Even the rights of an ad hoc employee, the respondents have not shown any justification for the reversion either on administrative grounds or posting a regular employee to the post of Sub-Inspector or any other justifiable ground. That certain juniors to the applicant were continued as Sub-Inspectors on ad hoc basis clearly amounts to

19. We are not persuaded to hold that the impugned order of reversion was justified in the circumstances of the case. As already observed, if the applicant had bad service record, he could not have been considered for promotion on ad hoc basis. In that view of the matter, we feel that the impugned order of reversion was issued with

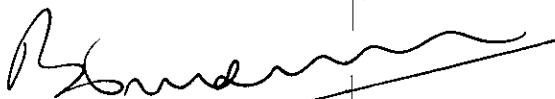
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mala fide intention. Hence we have no alternative but to set aside the impugned order of reversion.

20. Hence we pass the following order :

- (a) The impugned order of reversion dated 15.4.1995 (Annexure-6 at page 16 of the OA) is hereby set aside;
- (b) The applicant is entitled to all the consequential benefits.

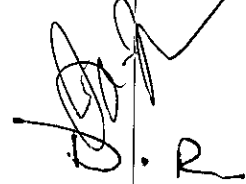
21. The O.A. is allowed; but in the circumstances, there would be no order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER(JUDICIAL)


(R. RANGARAJAN)
MEMBER(ADMINISTRATIVE)

DATED THE 20th NOVEMBER, 1997.

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6.10.97
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TYPED BY
COMPARED BY

CHECKED BY
APPROVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN :

AND

THE HON'BLE SHRI B.S. JAI PARAMES
M (1)

Dated: 20/11/97

ORDER/JUDGEMENT

M.A./R.A./C.A. NO.

IN

O.A. NO. 488/95

Issued.

Allowed

Disposed of with Directions

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

VLM

