

O.A.No.106/94

Dt. of order: 4-5-1994

Shankar Singh : Applicant

Vs.

Union of India & Ors. : Respondents

O.A.No.107/94

O.P.Sharma : Applicant

Vs.

Union of India & Ors. : Respondents

✓ O.A.No.108/94

Gopal Lal Meena : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for the applicants

Mr.U.D.Sharma : Counsel for the respondents No.1 to 3

Mr.Mahendra Shah : Counsel for Resp. No.4 & 5

CORAM:

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

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

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicants Shankar Singh, O.P.Sharma and Gopal Lal Meena, have filed separate applications referred to above under Sec. 19 of the Administrative Tribunals Act, 1985, wherein they have prayed that order dated 28.2.94 (Annx.A-1) whereby they were reverted from the post of Statistical Assistant to that of Computer may be quashed with all consequential benefits.

2. The applicants who were earlier working as Computers in the Directorate of Census Operations, Rajasthan, Jaipur, were appointed to the temporary posts of Statistical Assistant in the scale Rs.425-700 on regular basis w.e.f. 20.7.84, by promotion on the recommendations of the DPC (Annx.A-2). Vide order dated 28.2.94 (Annx.A-1) all the 3 applicants were reverted to the lower post of Computer. The reason given for reversion in Annx.A-1 is that sanction for 3 posts of Investigator for Census 1991 came to an end on 28.2.94, therefore, the incumbents of these posts were reverted/and as a result the 3 applicants working as Statistical Assistants are reverted to the lower

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posts of Computer w.e.f. 28.2.94. The case of the applicant is that they were reverted to the lower post without any prior notice or after following the procedure prescribed by law. They have added that earlier they had been reverted from the posts of Statistical Assistant to that of Computer vide order dated 15.5.86 and they had challenged the said order before the Tribunal, on the ground that ad hoc employees respondents No.4 and 5 in that application had been allowed to continue whereas the applicants holding the promotional posts on a regular basis were reverted. During the pendency of the said case, the applicants were again promoted to the post of Statistical Assistants w.e.f. 12.4.90 on a regular basis on the recommendations of the DPC. The Tribunal had allowed the application vide order dated 12.10.93 and had quashed the reversion with all consequential benefits. By reverting the applicants, the respondents have committed the same mistake which was rectified by the Tribunal vide order dated 12.10.93. The applicants had not been given any opportunity of furnishing an option for accepting a lower post. Whereas respondents No.4 & 5 are immune from any unpleasant action such as reversion, the applicants have been subjected to the order of reversion even though their earlier reversion order was quashed by the Tribunal vide order dated 12.10.93 on the ground that the respondents No.4 & 5 were junior to the applicants. Further, according to the applicants, the total strength of posts of Statistical Assistant is 34 and only 31 persons are working against these posts. There has been no reduction in the strength of these posts.

3. The respondents in their reply have stated that in the O.A. ~~earlier~~ filed earlier which was decided on 12.10.93, the applicants had challenged their reversion only on the ground that respondents No.4 & 5, who are also respondents No.4 & 5 in these applications are junior to the applicants. Respondents No.4 & 5 were assigned seniority at Sl.No.1 & 2 in the seniority list by regularising their services consequent to the order dated 11.3.91 issued by the Registrar General of Census Operations.

The reversion of the applicants had been quashed by the Tribunal vide order dated 12.10.93 on considerations which are not applicable to the present case. The respondents No.4 & 5 are now undoubtedly senior to the applicants. They have maintained that the total strength of the post of Statistical Assistant is 31 out of which 17 posts are permanent and 14 posts pertained to 1991 Census which are continued on short term basis. 3 posts of Investigators for 1991 Census have been abolished w.e.f. 28.2.94 and S/Shri J.P.Kateja, R.S.Sharma and S.C.Sharma, who have been promoted as Investigators from the original posts of Statistical Assistant have been reverted to the parent posts of Statistical Assistant w.e.f. 28.2.94 consequent on abolition of the said 3 posts of Investigators. As a consequence 3 junior-most persons in the cadre of Statistical Assistants were required to be reverted from the said post to the lower post to maintain the position of the physical strength of the cadre at 31. The applicants have been reverted to their original posts of Computer consequent on the placement of senior persons in the cadre of Statistical Assistant on account of their reversion from the higher posts of Investigators. The applicants had been promoted as Statistical Assistants on a temporary basis against a temporary vacancy and had acquired no right to hold the said post for all times to come, ^{hence} they could be reverted to their lower posts on administrative consideration, as done in the present case. They have not been reverted by way of punishment. Since they had been reverted in a proper and legal manner, there was no question of declaring them as surplus and giving them an option to accept the reversion post or to go to the surplus Cell for redeployment.

4. The operation of the order dated 28.2.84 reverting the applicants to the lower post of Computer was stayed as an interim measure vide order dated 4.3.94. The said stay ^{order} continues.

5. During the arguments, the learned counsel for the applicants explained the hierarchy of posts which are relevant for consideration of the applicant. The highest post is that of Investigator, the next lower post is Statistical Assistant, the

next lower post is that of Computer and the lowest post is of Assistant Compiler. According to him since the applicants were regularly selected for appointment, they could not be reverted to the lower post particularly without following the principles of natural justice. He relied upon the following judgments to support his case.

- i) Shri K. Manappa Vs. Central Board of Excise & Customs & Anr. ATR 1986 CAT 245.

In this judgment the Madras Bench of the Tribunal held that where a person is promoted on regular basis on the basis of the recommendations of the duly constituted DPC and had officiated on the higher post for some time he had acquired the right to hold the post. They held that his reversion would be against the principles of natural justice if he is reverted without giving him an opportunity to represent against the action of reversion.

- ii) Chunni Lal & Ors. Vs. Union of India & Ors. ATR 1988(2) CAT 46.

In this judgment the Chandigarh Bench of the Tribunal held that the order of reversion without show cause notice is liable to be quashed. In this case, the applicants were mazdoors who were appointed by a regular process of selection, were placed on probation and had become due for confirmation on completion of their probation period satisfactorily. Principles of natural justice will come into play in such case.

- iii) Baleshwar Dass & Ors. Vs. State of U.P. & Ors. AIR 1984 SC 41

In this judgment, the Hon'ble Supreme Court held that when Engineers are appointed to temporary posts but after fulfilments of all the tests for regular appointments they must be held to hold the appointment in a substantive capacity. The learned counsel for the applicants relying upon the above judgments pleaded that the applicants must be held to have been holding the posts of Statistical Assistant on a substantive basis and therefore they could not be reverted in the manner done by the respondents particularly without being given an opportunity

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to show cause against the proposed reversion. He also added that the procedure to be followed when a person become surplus as laid down by the Government for redeployment etc. has not been followed in this case. While concluding, the learned counsel for the applicant however stated that he would not press for any relief against the respondents No.4 & 5 who are functioning as Statistical Assistants.

6. The learned counsel for the government respondents drew our attention to the appointment order Annx.A-2 dated 20.07.84 which stated that the applicants have been appointed to temporary posts of Statistical Assistants. The emphasis according to him was on the word 'temporary'. According to him even if a person was appointed in a substantive capacity to a temporary post, his appointment to the said post had to be treated as temporary in nature. For this purpose he relied upon the judgment of the Hon'ble Supreme Court in State of U.P Vs. Nand Kishore Tandon AIR 1977 SC 1267, wherein the Hon'ble Supreme Court held that where an appointment is made in a substantive capacity to a temporary post the appointee does not become permanent automatically. He further stated that a regular appointment is not the same thing as a permanent appointment. To support this argument, he relied upon the judgment of the Hon'ble Supreme Court in B.N.Nagrajan Vs. State of Karnataka & Ors. 1979 SLJ 468. He drew our attention to the observations of the Hon'ble Supreme Court at page 475, wherein they had stated that the words 'regular' or regularisation do not connote permanence. These are terms calculated to condone any procedural irregularities in making appointments. These cannot be construed so as to convey an idea of the nature of tenure of appointment. He also relied upon the judgment of the Punjab & Haryana High Court in Diwan Chand Vs. State of Haryana 1982(1) SLR 338, wherein the Hon'ble High Court had held that where the government servant had been promoted against a temporary post on temporary basis, and had been reverted on administrative grounds or exigencies of service, he had acquired no right to hold the post and therefore, it was not necessary to grant any hearing to him

before reverting him to the lower post. He further relied on judgment of the Hon'ble Supreme Court in State of U.P & Ors. Vs. Saughar Singh, wherein the Hon'ble Supreme Court held that the real test with regard to the correctness of the orders of reversion is to ascertain if the officer concerned has a right to the post from which he is reverted. Where the government servant has no right to the post, provisions of Article 311 are not attracted. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Parshotam Lal Dhingra Vs. Union of India & Ors AIR 1958 SC 36 to support the view that the applicants in this case could be reverted without giving an opportunity of being heard to them.

7. The learned counsel for the respondents further argued that once it became necessary to abolish the post of Investigator, it was necessary to accommodate them on the lower post on the principles of equity and consequently the persons holding the post of Statistical Assistant had to be reverted to their still lower post. Therefore, there was no irregularity in passing orders of reversion in this case.

8. We have heard the learned counsel for the parties, have gone through the records and have also gone through the judgments relied upon by the parties.

8. There is no dispute that the applicants were appointed to the posts of Statistical Assistant on a regular basis on being selected for appointment by a duly constituted DPC. Of course the post to which they were appointed was temporary. The applicants may not be permanent appointees to a permanent post but once they have been selected for appointment on a regular basis question is whether they can be reverted, without giving them an opportunity of being heard.

9. The judgments cited by the learned counsel for the applicants to support the view that once an employee is promoted/appointed to a post on a regular basis, reversion cannot be ordered without following the principles of natural justice. In the judgment of the Hon'ble Supreme Court in Band Kishore Tandon's case (supra) no specific question appears to have been raised

whether before terminating the services of an employee opportunity to show cause was required to be given or not. Also it was not clear from the judgment of the Hon'ble Supreme Court as to the rule under which the order of termination was passed in the case before the Hon'ble Supreme Court. The only question in this case was whether the services of the employee could be terminated when he had not been appointed either permanently or in a substantive capacity to a permanent post. As regards the judgment of the Hon'ble Supreme Court in Nagarajan's case, the Hon'ble Supreme Court were dealing with what exactly regularisation connotes. It is not however, the case of the applicants that they were appointed as Statistical Assistant on a permanent basis against permanent posts. Therefore, this judgment has no applicability to the facts of the present case. As regards the judgment of the Hon'ble Punjab & Haryana High Court in Diwan Chand's case, the facts of that case show that the government servants concerned who were reverted were not eligible to be promoted even on a temporary basis in view of the essential qualifications laid down for appointment to the post. Therefore this judgment also has no applicability to the facts of the present case, in as much as the applicants in this case were appointed after they had undergone the due process of selection and were qualified to hold the posts of Statistical Assistant.

10. We may now consider the judgments of the Hon'ble Supreme Court in the cases of Saughar Singh's case. The Hon'ble Supreme Court have themselves summarised the principles which emerged from their earlier judgment in Parshotam Lal Dhingra's case. In Saughar Singh's case the Hon'ble Supreme Court summarised the principle emerging from Parshotam Lal Dhingra's case as follows:

"(10) The first decision which has now become a locus classicus on the subject is the decision in Parshotam Lal Dhingra Vs. The Union of India. The principles that were laid down in that case are as follows:

(1) Article 311 of the Constitution of India makes no distinction between permanent and temporary posts and extends its protection equally to all government servants holding permanent or temporary posts or officiating in any of them.

9. Is the application accompanied by IPO/DD for Rs. 50/- ? : *yes*
10. Has the impugned orders original/ duly attested legible copy been filed ? : *yes*
11. Have legible copies of the annexures duly attested been filed ? : *no*
12. Has the Index of documents been filed and pagination done properly ? : *yes*
13. Has the applicant exhausted all available remedies ? : *NO*
14. Has the declaration as required by item 7 of Form-I been made ? : *yes*
15. Have required number of envelopes (file size) bearing full address of the respondents been filed : *yes*
16. (a) Whether the reliefs sought for, arise out of single cause of action ? : *yes*
- (b) Whether any interim relief is prayed for ? : *yes*
17. In case an M.A. for condonation of delay is filed, is it supported by an affidavit of the applicant ? : *—*
18. Whether this case can be heard by Single Bench ? : *DSC*
19. Any other point ? *It is in order*
20. Result of the scrutiny with initial of the Scrutiny Clerk : *3/3*

SECTION OFFICER (J) / *PR*

DEPUTY REGISTRAR

REGISTRAR

admission on 4-3-94

REGISTRAR

Shashi/

(2) The protection of Article 311 is available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise.

(3) If the termination of service or reduction in rank is not by way of punishment, Article 311(2) is not attracted. To determine whether the termination or the reduction is by way of punishment one has to consider whether the servant has the right to hold the post from which he has been either removed or reduced. In the case of a probationary or officiating appointment to a permanent or temporary post there is no such right. This does not mean, however, that the termination of service or reduction in rank of a servant who has no right to the post can never be dismissal or removal or reduction by way of punishment.* If government expressly chooses to penalise the servant for mis-conduct, negligence, inefficiency or the like by inflicting on him the punishment of dismissal, removal or reduction, the requirements of Article 311 must be complied with.

(4) A reduction in rank must be a punishment if it carries penal consequences with it and the two tests to be applied are:

- (i) Whether the servant has a right to the post or the rank, and
- (ii) Whether evil consequences such as forfeiture of pay and allowances, loss of seniority in his substantive rank, stoppage or postponement of future chances of promotion follow as a result of the order?

(11) Where either of these tests apply, the reduction in rank must be one within the meaning of Article 311(2) of the Constitution and will attract its protection."

In Saughar Singh's case, the respondent Shri Saughar Singh had been reverted from the post of Sub-Inspector/Platoon Commander in U.P. Armed Police to the substantive lower post of Head Constable held by him earlier. The Hon'ble Supreme Court^{were} of the view that the protection under Article 311(2) was not available to the applicant if the order reverting him to the lower substantive post did not affect his rights in the lower post of Head Constable. However, the Hon'ble Supreme Court noted that Shri Saughar Singh had been reverted to the lower substantive post of Head Constable when the post of Sub-Inspector/Platoon Commander had not been abolished^{and} the foundation of the order in fact was an adverse entry made in the character role of Shri Saughar Singh. The Saughar Singh's judgment will therefore have no applicability to the facts of the present case.

11. As regards the Hon'ble Supreme Court's judgment in Parshotam Lal Dhingra's case, the Hon'ble Supreme Court observed that a reduction in rank would be a punishment if the government servant has a right to hold the post or the rank and

* some words seem to be missing here.

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and whereat evil consequences such as forfeiture of pay etc. follow as a result of the order of reduction to the lower post. If these tests are satisfied, protection under Article 311(2) would be available to the government servant.

12. In these two judgments of the Hon'ble Supreme Court the question discussed relates to availability of protection under Article 311(2) of the Constitution. Clause (2) of Article 311 provides that no government servant can be dismissed or removed or reduced in rank except after an enquiry in which he has been informed about charges against him and given a reasonable opportunity of being heard in respect of those charges. Thereafter, certain exceptions to the applicability of this principle have been provided, which are not relevant for our purpose here. Protection granted under Article 311(2) is for a specific purpose and the purpose is that no government servant can be visited with serious penalties referred to therein without a full enquiry being held into the charges against the applicant. The charges ^{generally} include misconduct or failure to perform duties properly. There may be however a number of situations in which it is necessary to pass orders adverse to a government servant as an administrative measure. For example, it may be found that a higher seniority has been assigned to a government servant to which he is not entitled and on receiving representations from a person who has unjustly made junior to him or suo moto the administration is of the view that the seniority of the government servant needs to be lowered. A government servant may have been granted an extra increment on fixation of his pay on revision of scales and if it is found that the fixation of pay is wrongly done, ~~and~~ it may be necessary to take away the extra unjustified increment granted to him. There may be a number of other such circumstances which justifying passing orders against government servants ~~who~~ take away what has been granted to them earlier by orders considered erroneous by the administration. The reversal of such orders and consequently passing an adverse order against the government servant will not amount to imposition of penalty. The judgment of the Hon'ble Supreme Court in Saughar Singh's case

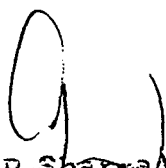
(13)

and Parshotam Lal Dhingra's case do not obviously cover or deal with such situations. When the administration considers it necessary to rectify an erroneous order and thereby pass an order adverse to the government servant, it does not intend to impose any penalty on him. It merely wants to rectify an administrative lapse which incidently results in an order adverse to the government servant being passed. In such circumstances also it would be necessary to follow the principles of natural justice by giving an opportunity of being heard to the government servant before passing an order adverse to him. So, we have to draw a distinction between the circumstances in which Article 311(2) is applicable and the circumstances in which even though Article 311(2) may not be attracted, the principles of natural justice have to be followed. The principles of natural justice are required to be followed even in cases in which the provisions of Article 311(2) are not attracted. Any decision which is likely to adversely affect a government servant though it is not in the nature of a penalty as contemplated in Article 311(2) or even ^{if} it does not visit the government servant with evil consequences as contemplated in the judgments of the Hon'ble Supreme Court in Saughar Singh's case and Parshotam Lal Dhingra's case should be preceded by a show cause notice to the government servant to explain his position. It is not clear from the pleadings whether persons reverted from the post of Investigators to the post of Statistical Assistants and the applicants who had to be reverted to the still lower post, to make room for the reverted Investigators had lien on the post of Statistical Assistant or whether they had a right to hold the post of Statistical Assistant. To decide the question whether the Investigators could be offered lower post of Statistical Assistant, if their posts were being abolished, by displacing the present incumbents of these posts, it was necessary to give opportunity of being heard to the persons who were being displaced to make room for the reverted Investigators.

13. In the facts and circumstances of the cases of these 3 applicants and after considering the arguments of the counsel for the parties as also the judgments cited before us, we hold that the 3 applicants who were incumbents of the posts of Statistical Assistant were entitled to an opportunity of being heard before being reverted to lower post. Accordingly, order dated 28.2.94 (Annx.A-1) is set aside. The applicants shall be taken back on service as Statistical Assistants with consequential benefits.

14. The respondents are however not precluded from passing fresh orders as they may be considered appropriate, after being giving opportunity of being heard to the applicants. The applicants shall also be at liberty to file fresh O.As if they are aggrieved by any orders passed by the administration which may adversely affect to them.

15. The 3 O.As are disposed of accordingly with no order as to costs.


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


(Gopal Krishna)
Member (J).