

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 2003
On
3/6
~~Hyd (A)~~
agreed
on 26/5
Ccl
3/6

O.A. No. 16/2003
T.A./No.

199

DATE OF DECISION 31.05.2003

JAGDISH PRASAD VADAV

Petitioner

MR. C.B. SHARMA

Advocate for the Petitioner (s)

Versus

UOI & ORS.

Respondent

MR. T.P. SHARMA

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

The Hon'ble Mr. G.C. Srivastava, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(G.C.Srivastava)

Member (A)

(G.L.Gupta)

Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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Date of Order : 04/06/2003.

O.A. NO. 16/2003

M.A.No. 148/2003 (O.A No.16/2003)

Jagdish Prasad Yadav S/o Shri Kalu Ramji, aged around 53 years, Resident of C/o Mohan Lal Saini, Old Station Road, Alwar (Raj). (Presently working as Chief Accounts Officer (TR), in the office of GMTD, Alwar).

.....Applicant.

versus

1. The Union of India through the Secretary, Ministry of Tele-Communication and Information Technology, Sanchar Bhawan, 30, Ashoka Marg, New Delhi.
2. The Chief General Manager (BSNL), Rajasthan Tele-communication Circle, Sardar Patel Marg, C Scheme, Jaipur.
3. The General Manager (BSNL), Tele-communication District, Moti Doongri, District Alwar (Rajasthan)

.....Respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman

Hon'ble Mr. G.C. Srivastava, Administrative Member

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Mr. C.B. Sharma, Counsel for the applicant.

Mr. T.P. Sharma, Counsel for the respondents.



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...2.

ORDER
[PER MR. JUSTICE G.L.GUPTA]

The order Annexure A/1 dated 9.1.2003, is under challenge in this instant C.A. By the said order, the applicant was ordered to be reverted to his parent cadre i.e. of Senior Accounts Officer w.e.f. 18.7.2002 (AN).

2. The applicant was initially appointed as Postal Clerk in the Posts & Telegraph department in the year 1969. On his passing the P&T Examination in the year 1974, he was made Junior Divisional Accountant first on officiating basis and thereafter on regular basis. He was promoted to the post of Accounts Officer in 1989 and to the post of Senior Accounts Officer in the year 1992. He was given promotion to the post of Chief Accounts Officer on officiating basis on 26.5.1997 for 180 days. That promotion continues on the basis of the orders issued time to time excepting the technical breaks of one or two days.

2.1. The say of the applicant is that having worked on promoted post for more than five years, he could not be reverted to the lower post. It is stated that no disciplinary proceedings are pending against the applicant. It is averred that one First Information Report (FIR) was lodged against the applicant and eight others on 7.9.2000 but, even after that the applicant was allowed to continue on the post of Chief Accounts Officer vide order dated 16.10.2001. It is stated that when the FIR did not come in the way of promotion at that time, the applicant could not be reverted now. It is further stated that the persons junior to the applicant have been allowed to continue on the post of Chief Accounts Officer but the applicant, who is senior, has been reverted.

3. In the counter, the respondents' stand is that pursuant to the Bharat Sanchar Nigam Limited, Headquarter's order dated



7.11.2002, a vigilance clearance in respect of the officers listed in the order, was called, but the vigilance clearance in respect of the applicant was not received from the Vigilance Cell. Rather, it was intimated that the vigilance case was pending against the officer and he has been prosecuted in the CBI Court. It was intimated that a Chargesheet has been filed against the applicant in the CBI Court. It is stated that since the vigilance clearance was not given for the applicant, he has been reverted.

4. In the rejoinder, the applicant's case is that he has been discriminated because Shri N.R. Vishnoi, against whom also, a case is pending, has not been reverted.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. It is now admitted position of the parties that the applicant was given promotion to the post of Chief Accounts Officer in the year 1997 on ad hoc basis and since then, he was continuing on the promoted post excepting the breaks of one or two days.

7. Two questions arise for determination. One, whether, the respondents have erred in reverting the applicant to his parent post on the basis of the vigilance matter? Two, whether, the applicant has been discriminated and, if so, he can succeed in this Q.A. on that ground?

8. It is not in dispute that a chargesheet has been filed in the Court of CBI against the applicant. For this reason the Vigilance Cell had not cleared the name of the applicant. It may be pointed out that whenever the applicant was given promotion on ad hoc basis, it was clearly stated in the order that the promotion of the



officer was subject to the condition that no disciplinary proceedings/vigilance case was pending against him and in case, the disciplinary proceedings/vigilance clearance was pending against the officer, he would not be relieved for promotion and the matter would be reported to the controlling office. The last order of promotion of the applicant was Annexure A/3 dated 16.10.2001 whereby, the applicant was given promotion on ad hoc basis from 19.7.2001 to 18.7.2002. By that time, the challan had not been filed against the applicant in the Court of CBI.

9. The BSNL Headquarter was informed about the filing of the Chargesheet against the applicant on 11.7.2002. After filing of the chargesheet, the order Annexre A/1 impugned in this instant O.A., has been issued. It was stated in the order that the applicant would stand reverted to the post of Senior Accounts Officer w.e.f. 18.7.2002. The order was issued on 9.1.2003. It means that the reversion has been ordered from retrospective effect.

9.2. In our opinion, no reversion could be directed from retrospective effect. The officer had worked on the promoted post even after the expiry of the term fixed in the order Annexure A/3 dated 16.10.2001. If a chargesheet had been filed against the applicant, an order of reversion could be passed immediately thereafter, but, it was not done. The order directing the reversion from retrospective effect cannot be upheld. The order of reversion Annexure A/1 shall take effect from the date the applicant was in fact relieved of the post of Chief Accounts Officer vide Annexure A/11 dated 29.1.2003.

9.2. However, fault is found on the part of the respondents when the applicant was not given further promotion in the order Annexure A/1 dated 9.1.2003. It may be that the persons junior to

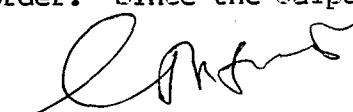


him, were allowed to continue on the promoted post but, that does not give a right to the applicant to continue on the promoted post. The promotion of the applicant was on ad hoc basis. When a criminal case has been filed in the Court of CBI, the respondents were perfectly justified in reverting the applicant.

10. As to the contention of the discrimination, it may be stated that on the basis of the non-reversion of Shri N.R. Vishnoi, the applicant cannot get the relief in this case. It is for the competent authority to consider the reversion or not of an employee on the basis of the disciplinary proceedings/vigilance inquiry. As a matter of fact, the applicant himself was allowed to continue on the promoted post vide order Annexure A/3 though, vigilance inquiry was pending against him. In any case, a wrong action of in action on the part of the respondents does not give a right to the applicant to claim similar wrong action.

11. Inviting our attention to the order Annexure A/10, it was contended that the Delhi Office allowed applicant's promotion to the post of Chief Accounts Officer for a further period of one year from 4.2.2003 and, therefore, the Jaipur Office, who was subordinate to the Delhi Office, could not pass order reverting the applicant.

11.1. It may be pointed out that in the order Annexure A/10, dated 23.10.2003, also it was clearly stated that the promotion of the officer (applicant) was subject to the condition that no vigilance case was pending against him and if, vigilance case was pending against him, he would not be relieved on promotion and the matter should be taken up with the vigilance branch. The order Annexure A/10 ^{did} ~~do~~ not give a right to the applicant to continue on the promoted post in view of the direction number 2 stated in the order. Since the Jaipur office received the intimation of the filing



of the chargesheet, it was perfectly justified in ordering the reversion of the applicant to the post of Senior Accounts Officer.

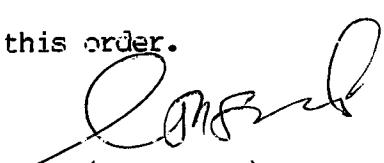
12. It is settled legal position that the promotion on ad hoc basis does not confer any right on a employee. If at all, there is some right, it is only to the extent that persons junior to the employee, should not be allowed to continue on the higher post. This principle, however, does not apply where the employee is working on ad hoc basis and reverted to the post on the ground of filing of a criminal case or initiation of the disciplinary proceedings.

13. In view of the aforesaid discussion, we find no fault in the order Annexure A/1 except to the extent that it could not be directed that the reversion would take effect from 18.7.2002.

14. Consequently, the O.A. is allowed in part. The applicant shall be deemed to have been reverted to the post of Senior Accounts Officer from the date he was relieved of the post of Chief Accounts Officer. In other aspects, the application fails and it is dismissed with no order as to costs. Interim order stands vacated.

15. The M.A. stands disposed of in terms of this order.


(G.C.Srivastava)
Adm.Member


(G.L.Gupta)
Vice Chairman

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jrm