

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

PA 26/95 and MA 129/95 : Date of order : 6-4-1995
in OA 154/87.

S.C. Mahavar : Applicant

v/s

Union of India & Others : Respondents

CORAM

Hon'ble Mr. Gopal Krishna, Member (Judicial)
Hon'ble Mr. O.P. Sharma, Member (Administrative)

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

Shri S.C. Lal Mahavar has filed this application for review of the order dated 18.3.94 (Annexure A-1) passed in OA no. 154/87.

1. In the aforesaid OA, the applicant's case was that while working as Head-Clerk/Inspector of Post Offices, he was promoted as ASPO (Assistant Superintendent of Post-Offices) on ad hoc basis by order dated 9.10.79, he continued to work on the said post on ad hoc basis from 1979 to 1987, and by order dated 24.4.87, he was reverted to the post of Inspector of Post Offices. The applicant's prayer was that the reversion order may be quashed and the applicant's name may be included at a appropriate place in the list prepared for regular promotions on temporary basis, and that his promotion on the post of ASPO on ad hoc basis be regularised, as done in the cases of others. The applicant's claim was based on the ground that he had already worked as ASPO for a long period of nine years, though on ad hoc basis, and therefore, he could not be reverted to the lower post of Head-clerk/Inspector.

2. The respondents in their reply had stated that no DPC could be held for promotion to the post of ASPO from amongst Head-clerks/Inspectors during the period January, 1983 to January, 1987. Further, according to them, in the DPC held on 10.3.87, the applicant's name was considered but he was not found fit for inclusion in the panel of candidates found fit for promotion. He was, therefore,

reverted to the lower post. The applicant countered the above reply by stating that a DPC was indeed held in 1983 as could be seen from the order dated 22.2.83, passed by the respondents promoting various persons working as Head-clerks/Inspectors to the posts of ASPOs.

4. The Tribunal in its order dated 18.3.94, of which a review has been sought now, had noted that the fact that promotion orders were issued for ASPOs on 23.2.83 did not prove that the DPC on the basis of which these promotion orders were issued was necessarily held in 1983. According to the Tribunal, these orders could well be on the basis of a DPC held prior to 1983. The Tribunal held that in any case, the results of any of the DPCs held for promotion for the posts of ASPOs were not under challenge, and the applicant's prayer was that the reversion order is illegal. The Tribunal had also noted that the non-inclusion of the applicant's name in the selection list prepared by the DPC on the basis of which orders dated 23.2.83 were issued could have been challenged at the appropriate time. The Tribunal had further noted that the results of the DPC of 1987, which did not include the name of the applicant in the selection list, on orders the basis of which / reverting the applicant from ad hoc post of ASPO was passed, were not challenged in the OA. The Tribunal, therefore, observed that no relief could be granted to the applicant with regard to the proceedings of any of the DPCs held for promotion to the post of ASPOs and non-inclusion of the applicant's name in the selection lists prepared by such DPCs. The concluding observations and the directions of the Tribunal as contained in para 7 of its order dated 18.3.94 were as under:-

"The applicant functioned as ASPO on ad hoc basis from 1979-87. We do not know whether his name was considered by the DPC held prior to 1983 and if

it was considered, whether he was considered for inclusion in the selection list. This issue is not before us. In the DPC held in 1987, he was not found fit for inclusion in the selection list and thereafter he was reverted, apparently to make way for appointment of regularly selected candidates. The post of ASPO is a selection post and only those who have been duly approved by the DPC are entitled to continue on the post. In these circumstances, we find no merit in the OA. It is, therefore, dismissed with no order as to costs."

5. In the Review Application, the applicant has stated that he was allowed to continue on the ad hoc post of ASPO for a period of more than seven years. Since after the completion of one year of his functioning on the post of ASPO, no order sending the applicant back to his parent post was passed, the applicant was impliedly confirmed on the post of ASPO. Regarding the observation of the Tribunal in the order dated 18.3.94 in respect of the DPC on the basis of which orders of promotion dated 23.2.83 was passed, the applicant has stated that the DPC was actually held on 23.2.83 but the applicant's case was not considered by the DPC, and therefore, the fundamental right of the applicant, guaranteeing equality before law, as envisaged in Article 16 of the Constitution, was violated. As regards the Tribunal's observation that the results of the DPCs were not under challenge in the OA, filed by the applicant, the applicant has stated in the Review Application that the results of the DPC held on 23.2.83 had been challenged by the applicant as seen from Annexure A-1 dated 4.7.83 of the OA. He has added in the Review Application that the orders of reversion of the applicant to the lower post are illegal and contrary to the provisions of Article 311(2) of the Constitution. With regard to the Tribunal's observation that the non-inclusion of the applicant in the selection lists prepared by the DPCs could have been challenged at the appropriate time, the applicant has stated in the Review

Application that these findings are contrary to the evidence on record in the form of Annexure A-4 dated 4.7.83 of the OA. He has further stated that the result of the DPC of 1987 was challenged in the OA filed by the applicant. In respect of the Tribunal's observation that it was unaware whether the applicant's name was considered by the DPCs held prior to 1983 and if so whether his name was considered for inclusion in the selection list, prepared by the DPCs, the applicant has stated that this is contrary to material on record in the said OA. As the case of the applicant was not considered for inclusion in the select lists prepared in the years 1980, 1983 and 1987, the fundamental right of the applicant guaranteed under Article 16 of the Constitution had been violated. Coming to the findings of the Tribunal that in the DPC held in 1987, the applicant was not found fit for inclusion in the select list and was therefore reverted, the applicant has stated that these findings of the Tribunal disclose that the order of reversion was penal in nature and, therefore, provisions of Article 311 were attracted and accordingly the orders of reversion as per Annexures A-7 and A-8 of the OA had been passed without providing an opportunity of being heard to the applicant, as contemplated under Article 311(2) of the Constitution. The applicant has concluded that since the aforesaid errors are apparent in the order dated 18.3.94 passed by the Tribunal, the said order requires to be reconsidered, revised and reviewed by the Tribunal.

6. We have reexamined the matter in the light of facts on record and averments made by the applicant in the Review Application.

7. In OA no. 154/87, the applicant had prayed as under:-

- "(i) That by any appropriate order or direction the reversion orders (Ex. 7 and Ex. 8) of the applicant from the post of ASPOs may kindly be set-aside and quashed.
- (ii) That Hon'ble Tribunal may be pleased to direct the respondents to include the name of the applicant at appropriate place in the list prepared for regular promotion on temporary basis.
- (iii) That the applicant's promotion on the post of ASPOs on ad hoc basis be regularised on temporary basis like of others."

8. It is obvious from the above prayers that the applicant had not specifically challenged the non-inclusion of his name in the select panels prepared by any of the DPCs held at any time, including the one held in 1983 and the one held in 1987. All that he had sought was inclusion in the list prepared for regular promotion on temporary basis, apparently to the post of ASPO. A person can be granted promotion to selection post, which the post of ASPO is, only after the DPC selects him for promotion. Therefore, without first challenging the findings of any DPC, he cannot pray for inclusion of his name in the list/order of promotions. The applicant has repeatedly referred to Annexure A-4 dated 4.7.83 of the OA, which according to him, constitutes his challenge to the non-inclusion of his name in the select panel prepared by the DPC held in 1983 or prior to that on the basis of which order dated 23.2.83 was issued in which name the applicant's/was not included. It is, however, seen that Annexure A-4 of the OA, which was filed alongwith applicant's rejoinder to the respondents' reply is in fact a representation made by the applicant to the Post-Master General, Rajasthan Circle, Jaipur, praying that his case for promotion should be sympathetically considered, because his juniors have been promoted. Submitting a representation to the Departmental authorities is different from making a prayer

in the OA for appropriate relief. Since the applicant did not specifically challenge the findings of any of the DPCs held for promotion to the post of ASPO, no relief could be granted to the applicant on the ground that his name was wrongly excluded from the select panels prepared by any of the DPCs or that his name had not been considered for promotion by any of the DPCs. Therefore, we cannot adjudicate on the question whether any fundamental right of the applicant in not being considered for promotion or being ignored for promotion by any of the DPCs had been violated. Regarding the reversion of the applicant to the lower post on account of his non-selection for the post of ASPO, it does not amount to a reversion to a lower post as envisaged in Article 311(2) of the Constitution and, therefore, there was no question of any opportunity of being heard being granted to the applicant before ordering such reversion. We do not find that the order of reversion was penal in nature in terms of the provisions of Article 311(2) of the Constitution as claimed by the applicant. The applicant's submission that his name was not considered for inclusion in the select lists prepared in the years 1980, 1983 and 1987 is something which is now beyond the scope of this Review Application.

9. In the circumstances, we do not find any merit in this Review Application. Insofar as the applicant seeks review of the decision of the Tribunal on merits, order XLVII Rule 1 of the CPC bars such review. The Review Application is, therefore, rejected in limine on merits.

10. The applicant has filed MA no. 129/95, seeking condonation of delay in filing the Review Application. Since the Review Application has been considered and disposed of on merits, the said MA now becomes infructuous and, is, therefore, dismissed.

(O.P. SHARMA)
MEMBER (A)

C. Raghuram
(GOFAL KRISHNA)
MEMBER (J)