

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 22/8/2000

OA 606/96

Lalit Kumar, Telegraphman, Central Telegraph Office, Ajmer.

... Applicant

v/s

1. Union of India through Secretary, Deptt. of Telecomm.
Min. of Communications, New Delhi.
2. Chief General Manager Telecomm., Rajasthan Telecomm.
Circle, Jaipur.
3. Telecom Distt. Manager, Ajmer.
4. Sub Dvl. Officer I Phones, Ajmer.
5. Dy. Dvl. Engineer, Incharge, Central Telegraph Office,
Ajmer.

... Respondents

CORAM:

HON'BLE MR. S. K. AGARWAL? XXXXXX JUDICIAL MEMBER

HON'BLE MR. N. P. NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. K. L. Thawani

For the Respondents

... Mr. Hemant Gupta, pray counsel
for Mr. M. Rafiq

O R D E R

PER HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act,
the applicant makes a prayer to quash the impugned order
dated 6.9.96, at Annexure A/1, and to direct the respondents
to continue the appointment of the applicant as Phone
Mechanic from the original date of appointment with all
consequential benefits.

Singh

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed as Telegraphman on 16.12.83. He was promoted and appointed as Phone Mechanic in the pay scale of Rs.975-1540 w.e.f. 14.7.96 after completing all the formalities and resumed his duties on 31.7.96 under Junior Telecom Engineer, Outdoor V, Ajmer. But all of a sudden the applicant was reverted vide order dated 6.9.96 to his substantive post of Telegraphman and the applicant resumed his duty as Telegraphman on 21.9.96. It is stated that the applicant was promoted on the post of Phone Mechanic after completing all the formalities and the training successfully and thereafter he worked on the post of Phone Mechanic for two months but all of a sudden he was reverted without following the principles of natural justice and in violation of Articles 14, 16 and 311 (2) of the Constitution of India. Therefore, it is stated that reversion of the applicant without following the lawful process was arbitrary, illegal and unconstitutional on the part of the respondents. Therefore, the applicant filed this OA for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant was awarded penalty of withholding of next increment for the period of three years vide order dated 19.12.94 and as per Rule-135 of P&T Manual Vol.III, the applicant cannot

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be promoted to a higher post during the currency ~~p~~ of the punishment period. Therefore, in order to rectify the mistake the promotion order of the applicant was rightly cancelled and the action of the respondents was in no way in violation of the principles of natural justice and provisions of Articles 14, 16 and 311 (2) of the Constitution of India. It is, therefore, stated that the applicant has no case for interference by this Tribunal and this OA is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The main contention of the learned counsel for the applicant in this case is that applicant was promoted on the post of Phone Mechanic after following the due process of law and after completing the training ~~successfully~~ successfully. He worked on the post for about two months but all of a sudden without following the principles of natural justice the applicant was reverted and sent back to his substantive post i.e. Telegraphman. Therefore, the impugned order is ~~not~~ illegal, unconstitutional and unjustified. On the other hand, the learned counsel for the respondents submitted that the applicant was promoted erroneously. Therefore, promotion by mistake may be corrected so as not to perpetuate that mistake and principles of natural justice are not attracted in such case.

D. S. Dutt

6. We have given anxious consideration to the rival contentions of both the parties.

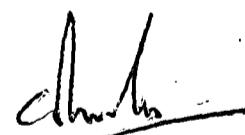
7. It is not disputed that the applicant was promoted on the post of Phone Mechanic w.e.f. 14.7.96 and he resumed duty on 21.7.96. It is also not disputed that the applicant was awarded a penalty of withholding of next increment for three years vide memo dated 19.12.94. As per Rule 135 of the P&T Manual Vol.III, the employee cannot be promoted to a higher post during the currency of punishment period. In case of Union of India v. K.Krishnan, AIR 1992 SC 1898, the Hon'ble Supreme Court held that non-promotion during the currency of a penalty imposed on a government servant does not amount to double jeopardy. Therefore, on the basis of the evidence produced before us, we can say that the applicant was awarded penalty of withholding of next increment for three years vide order dated 19.12.1994 and on the date of promotion on the post of Phone Mechanic the currency period was not over.

8. It is a settled principle of law that even promotion by mistake or oversight may be corrected by observance of principles of natural justice. In the instant case, ~~the~~ admittedly the applicant was reverted all of a sudden without following the principles of natural justice. No show cause ~~xxx~~ opportunity of hearing was given to him before passing

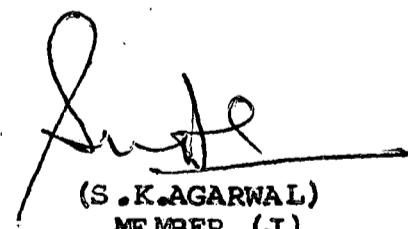
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the impugned order of reversion. In X Laxmi Chand v. Union of India, 1998 (37) ATC 599, OA 2569/92, decided on 31.12.97 by this Tribunal, it was held that if the government employee, who was promoted earlier, was reverted subsequently on the ground that he had been promoted by mistake, order involves civil consequences and such an order cannot be passed without applying the principle of audi alteram partem and party should be given an opportunity to make his case before an adverse decision is taken. Admittedly, in this case no opportunity of hearing/show cause was given to the applicant before passing the impugned order. Therefore, the impugned order which involves civil consequences is liable to be set aside on this count alone.

9. We, therefore, allow this OA and set aside the order of reversion dated 6.9.96. However, this ~~x~~ order shall not preclude the respondent department to pass an order of reversion against the applicant after giving an opportunity to show cause/after following the principles of natural justice. No order as to costs.


(N.P. NAWANI)

MEMBER (A)


(S.K. AGARWAL)

MEMBER (J)