

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(8)

O.A. No.
73/97
T.A. No.

199

DATE OF DECISION 10.12.1999

Subodh Kumar Srivastava

Petitioner

Mr. Rajendra Soni

Advocate for the Petitioner (s)

Versus

Union of India and Ors.

Respondent

Mr. M.Rafiq

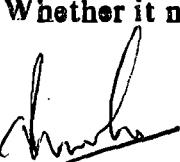
Advocate for the Respondent (s)

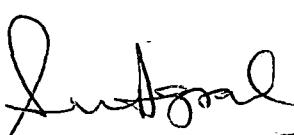
CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? yes
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 ?


(N.P.NAWANI)
Adm. Member


(S.K.AGARWAL)
Judl. Member

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 10.12.1995

OA 73/97

Subodh Kumar Srivastava, Inspecting Officer, Office of the Development Commissioner (Handicrafts), Sarpanch House, Tank Phatak, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Textiles, Central Secretariat, New Delhi.
2. Addl. Secretary and Development Commissioner (Handicrafts), West Block VII, R.K.Puram, New Delhi.
3. Development Commissioner (Handicrafts), West Block No.7, R.K.Puram, Sector-1, New Delhi.
4. Dy. Director (Adm.-I), office of the Development Commissioner (Handicrafts), Ministry of Textiles, West Block No.7, R.K.Puram, New Delhi.
5. Dy. Director (Handicrafts), O/o the Development Commissioner (Handicrafts), Sarpanch House, Tonk Phatak, Jaipur.
6. G.C.Kundu, Asstt.Director (Textiles), Southern Regional Office, o/o the Development Commissioner (Handicrafts), Shastri Bhawan, Madras.

... Respondents

CORAM:

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

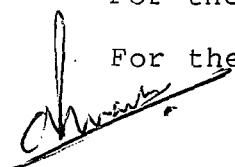
HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.Rajendra Soni

For the Respondents

... Mr.M.Rafiq



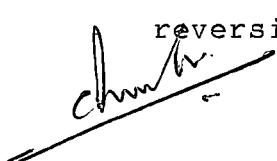
(10)

O R D E R

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

The applicant prays for quashing of the order dated 8/22.1.1997 (Annexure A-5), by which the applicant was reverted from the post of Assistant Director (Textiles) [for short, AD(T)], and order dated 25.6.1996 (Annexure A-4), by which respondent No.6 was allowed to withdraw his resignation and reinstated as AD(T).

2. The facts of this case as stated by the applicant are that the applicant was appointed on the post of Inspecting Officer on 15.2.1980 and in the final revised seniority list as on 1.6.1992 as notified vide circular dated 23.6.1992 (Annexure A-1), he was placed at Sl.No.6, whereas respondent No.6 (Shri Kundu) was at Sl.No.1. Shri Kundu was promoted as AD(T) w.e.f. 1.8.1988. He resigned on 19.1.1994, his resignation was accepted vide order dated 3.2.1994 effective from 18.4.1994 in term of Rule 26 of the CCS (Pension) Rules (for short, Pension Rules). The applicant was promoted to the post of AD(T) alongwith two officers vide order dated 12.5.1995 (Annexure A-3) with his name at Sl.No.3. The applicant was reverted back to the post of Inspecting Officer vide order dated 25.6.1996 without showing any cause while officers promoted with him continued to serve on the post of AD(T). Aggrieved by the said order of reversion and the order reinducting Shri Kundu after acceptance of his resignation which led to the reversion, the applicant filed an OA, registered as OA

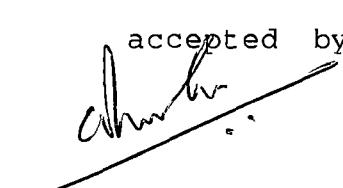


(1)

No.626/92 before this Bench of the Tribunal which vide its order dated 2.12.1996 directed the applicant to file an appeal against the order of his reversion, which he did (Annexure A-7). The said appeal was dismissed holding that the reversion of the applicant from the post he held on ad hoc basis and reinstatement of Shri Kundu was legal and not arbitrary and discriminatory.

3. The case of the applicant basically is that order of reinduction of Shri Kundu long after acceptance of his resignation is in violation of All India Handicrafts Board (Group B Posts under Plan Scheme for Pre-shipment Inspection & Certification of India items) Recruitment Rules, 1980 (for short, Rules of 1980) and schedule thereto as these have no provision of reinduction of any person on the post of AD(T). The said reinduction resulted in reversion of the applicant from the post of AD(T) which was illegal and in clear violation of Articles 14 and 16 of the Constitution of India.

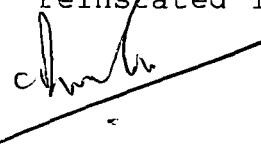
4. The official respondents have filed a reply contesting the averments made by the applicant. Relevant and important facts stated by them are that the applicant was promoted to the post of AD(T) alongwith two other Inspecting Officers purely on ad-hoc basis initially for a period of one year or till such time as the posts are filled up on regular basis, whichever was earlier and out of the three, the applicant was placed at Sl.No.3 being the junior most. Respondent No.6, Shri Kundu tendered his resignation vide letter dated 19.1.1994 which was accepted by the Development Commissioner (handicrafts) [for



short, DC(H)] w.e.f. 18.4.1994 vide order dated 3.2.1994 (Annexure R-1). Subsequently, Shri Kundu made an appeal dated 31.3.1994 (Annexure R-2), which was forwarded vide Annexure R-3, to DC(H) for withdrawal of resignation, was examined and his request was not acceded to. Thereafter, Shri Kundu made an appeal to Secretary (Textiles), whereupon the case was re-examined in consultation with Department of Personnel & Training (for short, DOPT), which advised as under :-

"A resignation become effect (sic becomes effective) when it is accepted and the officer is relieved of his duties. When the resignation has not become effective and the officer wishes to withdraw it, it is open to the authority which accepted the resignation to accept the request or to refuse the same for withdrawal. In the instant cas, resignation has not become effective on the date when the individual requested for withdrawal of the same."

Meanwhile, Shri Kundu had filed an Original Application before the Bombay Bench of this Tribunal & since it was pending, no further action was taken. Shri Kundu later withdrew his Application which was allowed by the Tribunal and on receipt of Shri Kundu's letter dated 7.6.1996 unconditionally withdrawing his OA, the matter was again examined in consultation with DOPT. Shri Kundu was allowed to be reinstated in the post of AD(T) with DOPT in the Government of



(13)

India agreeing for relaxation of Rule 26(4)(iii). The order of Shri Kundu's reinstatement was accordingly issued on 25.6.1996 (Annexure A-4). Consequently, the applicant being the junior most ad hoc promotee, had to be reverted as there was no post of AD(T) available for permitting him to continue at that level. It was, therefore, contended on behalf of official respondents that in the facts and circumstances of the case, the reversion of the applicant was perfectly legal and justified.

5. Reply has also been filed by respondent No.6, Shri G.C. Kundu, which is on record. It is more or less on the lines of the reply of the official respondents. He has stated that he had joined the office of DC(H) in May, 1979, much earlier than the applicant's joining on 15.2.1980. He was promoted to the post of AD(T) & took over charge on 30.6.1988 and not on 1.8.1988 as stated by the applicant. He did submit his resignation letter on 19.1.1994 for acceptance w.e.f. 18.4.1994. He subsequently submitted his withdrawal of his resignation letter on 31.1.1994 which was very much within the stipulated time period and satisfying the conditions under rule 26 of the Pension Rules. The very use of word "reinstated" is indicative of respondents having followed correct & lawful procedure. Reversion of the applicant was an administrative necessity, he being junior & there is absolutely no hostile discrimination and arbitrariness.

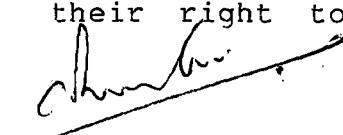
6. A rejoinder has also been filed by the applicant which is on record and has been perused by us.

[Handwritten signature]

(14)

7. We have heard the learned counsel for the parties and have carefully perused the records.

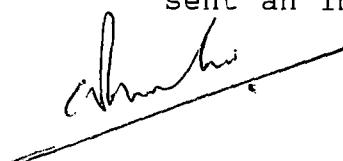
8. There are two aspects to this case and the third aspect is the linkage between the first two. The first is regarding the reversion of the applicant. We have given our anxious thoughts to this issue and are of the view that there are no reasons for us to interfere with the order in view of the fact that the order dated 12.5.1995 (Annexure A-3) appointing three Inspecting Officers to the post of AD(T) very clearly stated that the appointments are in purely ad hoc capacity and that above ad hoc appointments will not confer on the three officers promoted any preferential claim/treatment regarding their regular appointment/seniority in the post of AD(T) and their eligibility for promotion to the higher grade. None of the three officers, including the applicant, promoted to the post of AD(T) had, therefore, any right to hold that post. The applicant's contention that there is no provision for re-induction in the Rules of 1980 and, therefore, Shri Kundu could not have been re-induced as AD(T) is not tenable since Shri Kundu was re-instated and there was also no question of violation of Articles 14 and 16 of the Indian Constitution. The law is quite clear with regard to permissibility of reversion from short term ad hoc promotions. The second aspect of the case related to resignation and its subsequent withdrawal by respondent No.6, Shri Kundu. On going through the records, we are satisfied that the respondents were within their right to condone the delay in consideration of the



withdrawal request and in reinstating Shri Kundu in the post of AD(T). In fact, letter of withdrawal of resignation was sent on 31.1.1994 to the DC(H) and was delivered in that office on 1.2.1994 (Annexure A-3, A-5 to 7 to the reply of respondent No.6, Shri Kundu). The same letter was also sent through proper channel. Respondent No.6 had submitted his letter of resignation on 19.1.1994 to be made effective from 18.4.1994, whereas he had sent his withdrawal request as early as 31.1.1994. The request was not canceled on the first occasion but when respondent No.6 made an appeal to Secretary to Government of India, Department of Textiles, his case was considered sympathetically. It appears that further delay in processing was essentially due to respondent No.6 filing an OA in the Bombay Bench of this Tribunal and subsequently withdrawing it. In the circumstances, Shri Kundu should not be made to suffer for the so called delay. In any case, the request for withdrawal of resignation of Shri Kundu was ultimately considered favourably in relaxation of Rule 26(4)(iii) of the Pension Rules by the competent authority. It will be relevant to reproduce following extracts from the note of the DOPT (Pension & PG) dated 6.6.1996 (Annexure R-4) :-

"Development Commissioner (Handicrafts)'s note on pp 40-45 ante may please seen.

Shri Kundu had on 19.1.1994 submitted the notice of his resignation to become effective on expiry of 3 months on health grounds. On 31.1.94, he is stated to have sent an intimation withdrawing the resignation. The



(16)

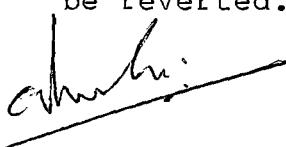
letter intimation was apparently received in the organisation on 1.2.94 (i.e. 12 days from the notice).

There is enough justification for acceptance of the request for withdrawal of resignation. If the case had been handled sympathetically and in accordance with the rules, the present reference to Deptt. of Pension also for relaxation of Rule 26(4)(iii) of CCS (Pension) Rules would not have been necessary. Shri Kundu appears to have been put to unnecessary harassment for more than 2 years. - - - - .

We may convey our agreement to the relaxation of Rule 26(4)(iii) so as to enable Min. of Textiles to consider the request of Shri Kundu for withdrawal of his resignation.

The case could have been decided straightway in Oct. 1994 when the advice of DOPT was received by them."

The linkage between the above two issues is the reversion of the applicant consequent upon the reinstatement of respondent No.6, Shri Kundu. We agree with the contention of the official respondents that in the absence of any other vacancy at the level of AD(T), it was the administrative exigency and necessity that the junior most ad hoc appontee is reverted to make way for the senior and regular AD(T). The applicant being the junior most of the three Inspecting Officers who were promoted on ad hoc basis had, therefore, to be reverted.



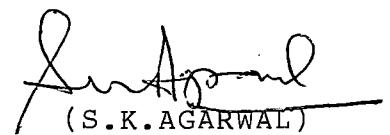
(17)

9. In view of above, the Original Application has no merit and we accordingly dismiss it with no order as to costs.



(N.P. NAWANI)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)