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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 30.6.2000

OA 95/2000

1. C.P.Sharma, Chief Supervisor, SDOT Office, Hindaun.
2. Brijmohan Lal Sharma, Chief Telephone Supervisor, Sawai Madhopur.
3. Radhey Lal Chauhan, Chief Telephone Supervisor, JTO Office, Hindaun.

... Applicants

Versus

1. Union of India through Secretary, Department of Telecom, Sanchar Bhawan, Sansad Marg, New Delhi.
2. Chief General Manager, Telecom Rajasthan Circle, Jaipur.
3. General Manager, Telecom District, Ajmer.
4. Telecom District Manager, Sawaimadhopur.

... Respondents

CORAM:

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

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

For the Applicant

... Mr.P.N.Jati

For the Respondents

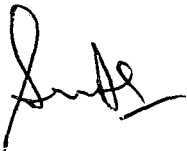
... Mr.Hemant Gupta, proxy counsel for
Mr.M.Rafiq

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 applicants make a prayer to quash and set aside the order dated 21.2.2000 alongwith the order dated 30.12.99, circulated on 18.2.2000.

2. In brief the facts of the case, as stated by the applicants, are that applicants were working under Telecom District Manager Sawai Madhopur, on the post of Chief Telephone Supervisor w.e.f. 28.9.95. Since then they have been working sincerely and with no complaint but without any reason and rhyme respondent No.4 issued order dated 21.2.2000, by which the applicants alongwith others are to be reverted. It is stated that orders of the respondents are arbitrary, illegal, unjust and also against the principles of natural justice. It is further stated that the applicants were promoted on the recommendations of the DPC as per rules vide order dated 31.12.97 w.e.f. 28.9.95 and pay fixation of the applicants was also made accordingly. It is also stated that no opportunity was given to the applicants to represent their case before issuing the impugned order dated 21.2.2000. Therefore, the applicants have filed this OA for the relief as mentioned above.



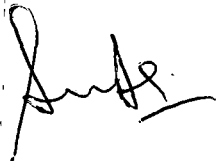
3. Reply was filed. In the reply it is stated that on the basis of the seniority in BCR, one Shri S.M.Jain was promoted to Grade-IV vide GMT (E), jaipur, office order dated 28.9.95, which was challenged by certain officials of the department and Principal Bench of the Central Administrative Tribunal vide its order dated 7.7.92 directed that promotion to 10% posts in the scale of Rs.2000-3200 would have to be based on seniority in the basic cadre subject to fulfilment of other conditions of BCR i.e. those who are regular employees as on 1.1.90 and had completed 26 years of service in the basic grade (including higher grades). It is stated that the respondent department filed SLP against the said order before Hon'ble the Supreme Court of India and Hon'ble the Supreme Court vide its judgement dated 9.9.93 upheld the order of the Principal Bench of Central Administrative Tribunal, New Delhi. Therefore, in view of the order passed by the Principal Bench, which was upheld by Hon'ble the Supreme Court, it was decided that promotion to Grade-IV may be given from amongst the officials in Grade-III on the basis of their seniority in basic cadre. Accordingly, the order dated 13.12.95 was issued. It is stated that consequent to the order dated 13.12.95, some of the officials, already promoted in Grade-IV, become ineligible and were facing reversion. Therefore, it was decided that those promoted officials who will be rendered ineligible for promotion to Grade-IV in pursuance of the order dated 13.12.95 may be protected from reversion by creating as many supernumerary posts as required from person to person basis. It is pertinent to mention here that Shri S.M.Jain (applicant in OA 86/2000) was also to be reverted consequent to DOT New Delhi order dated 13.12.95, as he was junior-most amongst the officials in Grade-III on the basis of his seniority in the basic cadre. But he was protected from reversion and regulated by giving promotion to all officials of Grade-III who were senior to Shri S.M.Jain on the basis of their seniority in the basic cadre. The applicants, including 12 others, were accordingly promoted w.e.f. 28.9.95 by TDM Sawai Madhopur but now the applicants, including others, have been reverted from Grade-IV to Grade-III vide TDM Sawai Madhopur order dated 21.2.2000, which was perfectly legal and justified. It is stated that the applicants were promoted to regulate the promotion of Shri S.M.Jain and to protect his reversion without availability of post by creating as many supernumerary posts as required from person to person basis. It is, therefore, denied that the order of reversion is in any manner arbitrary, illegal and unjustified and the principles of natural justice are not applicable in the facts and circumstances of the present case and this OA having no merits is liable to be dismissed.

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

5. This Tribunal vide order dated 6.3.2000 directed the respondents not to operate the impugned order dated 21.2.2000 qua the applicant, which is continuing.


6. The order of promotion makes it clear that on the advise of review DPC, duly constituted for the purpose, the applicants including others were promoted notionally from Grade-III to Grade-IV vide order dated 31.12.97 w.e.f. 13.12.95. On the perusal of the order of promotion it does not appear that promotion of the applicants including others was on adhoc basis or it was a stop-gap arrangement for some time only. It is not the case of the respondents that the applicants were promoted by mistake or the applicants including others were promoted erroneously. The case of the respondents is only this, that the applicants including others were promoted only to protect the reversion of Shri S.M.Jain. Admittedly, the applicants including others, who were promoted, are senior to Shri S.M.Jain.

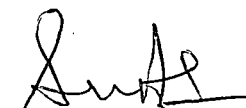
7. The learned counsel for the applicants submits that no opportunity to show-cause was given before passing the impugned order of reversion, to which the learned counsel for the respondents has not denied. Admittedly, the respondents, before issuing the impugned order of reversion, have not given any opportunity to show-cause or opportunity of hearing to the applicants and others, who have been reverted by the impugned order dated 21.2.2000. In Laxmi Chand v. Union of India and others, 1998 (37) ATC 599, it was held that if order involves civil consequences and has been issued without affording any opportunity to the applicant, such an order cannot be passed without comply with the principle of audi alteram partem. Meaning thereby, party should be given an opportunity to beat his case before an adverse decision is taken. In this case, the applicant was promoted as Assistant Store Keeper. Subsequently reverted on the ground that he had been promoted by mistake. It was held that the order involves civil consequences and such an order cannot be passed without comply the principle of audi alteram partem. In Dhirendra Kumar v. Union of India and others, SLJ 1997 (3) 204, it was held by the Guwahati Bench of the Central Administrative Tribunal that the applicant, who was promoted in the year 1991 but after nine months he was reverted without inquiry, held - reversion was in violation of Article-311(2) of the Constitution Of India.

 8. In view of the settled legal position and facts and circumstances of this case and the reasonings given by us, as above, we are of the considered opinion that reversion of the applicants, including others,

vide impugned order dated 21.2.2000 was arbitrary, illegal and in violation of Articles-14 and 16 of the Constitution of India. Therefore, the impugned order of reversion dated 21.2.2000 is liable to be quashed and set aside.

9. We, therefore, allow this OA and quash and set aside the impugned orders dated 30.12.99 and 21.2.2000. No order as to costs.


(N.P.NAWANI)
MEMBER (A)


(S.K.AGARWAL)
MEMBER (J)