

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A. NO. 832, 1997

Hon'ble Mr. R.K. Upadhyaya, Administrative Member :-

For consideration please.

I agree
Ch. B. Upadhyaya
29.4.03

JK
(J.K. KAUSHIK)
JUDICIAL MEMBER
29/04/2003

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

CIRCUIT COURT AT GWALIOR

Original Application No. 832/1997

Jabalpur, this the 01st day of May 2003

Hon'ble Shri R.K. Upadhyaya -- Member (Admnv.).
Hon'ble Shri J.K. Kaushik -- Member (Judicial).

Raj Bahadur Rathore, S/o. Shri
Amar Chand Rathore, Aged ; 35 years,
Occupation : Service as Lower Division
Clerk in the office of Narcotics
Commissioner of India, 19, The Mal-
Road, Morar, Gwalior, R/o. Baijal Kothi,
Morar (MP).

... Applicant

(By Advocate - Shri S.C. Sharma)

V e r s u s

1. Union of India through the
Secretary to Govt. of India,
Ministry of Finance & Revenue,
New Delhi.
2. Narcotics Commissioner of
India, 19, The Mal-Road, Morar,
Gwalior, 474 006 (MP).
3. Deputy Narcotics Commissioner,
Rajasthan, Kota (Rajasthan).

... Respondents

(By Advocate - Shri P.N. Kelkar)

O R D E R

By J.K. Kaushik, Member (Judicial) :-

Shri Raj Bahadur Rathore has filed this original application under Section 19 of the Administrative Tribunals Act and has sought for the following reliefs :

"a) That, the order dated 3-3-1997 passed by the Deputy Narcotics Commissioner, Kota (Rajasthan) Ann : A/13 be kindly declared illegal and unconstitutional and be kindly quashed and the applicant be declared exonerated of the charges framed against him.

b) That, the order of the Narcotics Commissioner, Government of India dated 11/12/5-1997 Ann:A/15 be kindly modified to the extent that the order regarding confirmation of the findings of the enquiring officer for finding the applicant guilty

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and order of punishment awarded on that basis vide order dated 03/03/1997 of the Deputy Narcotics Commissioner, Kota (Rajasthan) (Ann : A/13) be kindly set-aside and the applicant be kindly ordered to be reinstated on the post of Sub-Inspector which he had been holding when the enquiry was contemplated and started against him.

- c) That, the applicant be kindly ordered and declared entitled to back wages (Salary & other allowances) of the post of Sub-Inspector from the date, he was suspended till the date of reinstatement on the said post, after adjustment of salary and allowances of the post of Lower Division Clerk, on which post he has been reinstated, as per order of the Narcotics Commissioner, of India vide order dated 10-5-1997 (Ann:A/15).
- d) Any other relief which may be found in the interest of the applicant in view of the facts and circumstances of the case be kindly granted. Costs be awarded."

for

2. Shorn of superfluities, the necessary facts/ resolving the controversy involved in this application are that the applicant was initially appointed as a Lower Division Clerk in the year 1983, after facing due selection in the respondent Department. He was subsequently promoted as Sub Inspector on 06/09/1995 after facing the requisite selection. The applicant was deputed to work in the flying team of the Department under one Shri Dinesh Pangarkar while working at Kota. The team was assigned the task of measuring/ the field of village Rajpura. There/ certain complaints in the matter and preliminary enquiry was conducted. The applicant was placed under suspension on 22/04/1996 which was followed by service of the charge sheet dated 30/04/1996 alleging the charges mentioned in Annexure A/6-A. Soon thereafter the applicant was reverted vide order dated 31/05/1996 (Annexure A/7) which was followed by another suspension order dated 13/06/1996.

3. The applicant has further averred that the applicant was made victim in as much as the/ complaint was fabricated and one of the material witness is not examined but the enquiry officer found the charges against the applicant as proved. He submitted a representation against the findings of the enquiry officer. The disciplinary authority implemen-

and order of punishment awarded on that basis vide order dated 03/03/1997 of the Deputy Narcotics Commissioner, Kota (Rajasthan) (Ann : A/13) be kindly set-aside and the applicant be kindly ordered to be reinstated on the post of Sub-Inspector which he had been holding when the enquiry was contemplated and started against him.

- c) That, the applicant be kindly ordered and declared entitled to back wages (Salary & other allowances) of the post of Sub-Inspector from the date, he was suspended till the date of reinstatement on the said post, after adjustment of salary and allowances of the post of Lower Division Clerk, on which post he has been reinstated, as per order of the Narcotics Commissioner, of India vide order dated 10-5-1997 (Ann:A/15).
- d) Any other relief which may be found in the interest of the applicant in view of the facts and circumstances of the case be kindly granted. Costs be awarded."

2. Shorn of superfluities, the necessary facts /resolving the controversy involved in this application are that the applicant was initially appointed as a Lower Division Clerk in the year 1983, after facing due selection in the respondent Department. He was subsequently promoted as Sub Inspector on 06/09/1995 after facing the requisite selection. The applicant was deputed to work in the flying team of the Department under one Shri Dinesh Pangarkar while working at Kota. The team was assigned the task of measuring/ the field of village Rajpura. There/ certain complaints in the matter and preliminary enquiry was conducted. The applicant was placed under suspension on 22/04/1996 which was followed by service of the charge sheet dated 30/04/1996 allearing the charges mentioned in Annexure A/6-A. Soon thereafter the applicant was reverted vide order dated 31/05/1996 (Annexure A/7) which was followed by another suspension order dated 13/06/1996.

3. The applicant has further averred that the applicant was of the whole episode very made victim/in as much as the/complaint was fabricated and one of the material witness is not examined but the enquiry officer found the charges against the applicant as proved. He submitted a representation against the findings of the enquiry officer. The disciplinary authority inflicted the



penalty of removal from service vide order dated 03/03/1997 (Annexure A/13) against which an appeal was preferred which came to be partly allowed vide order dated 11/12-05-1997 (Annexure A/15). In the appeal, the punishment of removal from service has been reduced to that of reversion to the post of LDC and he was ordered to be reinstated on the post of LDC with further benefits for the intervening period.

4. The applicant has based his claim primarily on the ground that the very basis of the enquiry being fabricated and concocted and the treatment given to the applicant by reverting him pending enquiry and punishing him by treating the complaint as proved are illegal, arbitrary and unjust. The applicant is legally entitled to be exonerated from charges and due to the illegality in the enquiry charges/have been proved.

5. The respondents have filed a detailed counter reply and have countered the averments made in the original application. However the general details regarding the enquiry proceedings are not in dispute.

6. We have heard the learned counsel for the parties at a considerable length and have bestowed our earnest consideration to the arguments, pleadings and records of the case. The respondents have been fair enough to equipus with the original records of disciplinary proceedings.

7. The learned counsel for the applicant has carried us to that the various documents especially the complaints and indicated/ the complaints were fabricated. He has also laid emphasis on the point of discrimination in as much as he has emphatically submitted that 4 persons were involved but the applicant alone has been made/escapegoat and chosen for victimisation. He



has also stressed that the very enquiry was not conducted according to the rules in as much as the material witness was not allowed to be produced in support of the defence and this position is evident from the appellate order also. The learned counsel for the applicant with a great force at his command has submitted that this case is of no evidence and it would be proper for this Tribunal to carry out the judicial review of the orders passed by the respondents.

8. On the contrary the learned counsel for the respondents has endeavoured to repel the contentions raised by the learned counsel for the applicant and has tried to make the clean breast ^{of} /the factual aspect of the matter as regards the allegation of fabrication of the complaints. However he has pointed out a very relevant and vital factor involved in this matter and drawn our attention to the order dated 31st May 1996 (Annexure A/7) vide which the applicant was ordered to be reverted to the post of Lower Division Clerk, he being on probation for 2 years. Thus the applicant was reverted under the law relating to the person appointed or promoted on probation basis and this order of reversion has not been challenged by the applicant either in this application or in any other case. He has rightly submitted that the applicant has finally been inflicted the penalty of reversion to the post of Lower Division Clerk, and thus even if the complete disciplinary proceedings are presumed to be a nullity still the applicant would get nothing, since he was an LDC and is an LDC and the penalty order has no way affected him.

9. On the other hand the learned counsel for the applicant was at difficulty to controvert the aforesaid position contended by the learned counsel for the respondents. The learned counsel for the applicant has unsuccessfully tried to persuade us with the submission that the order of reversion

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(Annexure A/6) gets merged in the disciplinary authorities which further has merged in the final order passed by the appellate authority and thus there was no necessity or requirement for challenging the earlier ^{order} or reversion. He has further contended that it was rather a case of double jeopardy. However he could not countenance his submission and was unable to reply the direct query made in this connection by the Bench. However he submitted that the respondents have no right to revert the applicant vide Annexure A/6 since he was appointed after due selection .

10. We have given our considerable thought to the very attractive and laudable contentions made on behalf of the parties. It is admitted that the order dated 31st May 1996 has not been challenged and the applicant was reverted under the law relating to the probationer. The submission of the learned counsel for the applicant that this order got merged in the order passed in the disciplinary proceedings cannot have our concurrence since it is an independent matter and such order could be passed even in the normal course i.e. when there was no disciplinary case against the applicant. Since the applicant was Lower Division Clerk from the year 1996 and onwards and he has continued as Lower Division Clerk since the removal order also was modified and he is deemed to have been continued as Lower Division Clerk with all benefits, the complete disciplinary proceedings held against him has not at all adversely affected him. His position and status remained as Lower Division Clerk despite penalty imposed and it would be only an academic exercise if the decision making process in the present case is examined. Thus we are not inclined to carry out such a futile exercise.

11. We enter a caveat with the respondents as well as the applicant in this case. The respondents especially 2nd respondent should take judicial notice of the rules and avoid

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passing of such futile orders. On the other hand the applicant also should not indulge in unwarranted and futile litigations which lead to nowhere.

12. The upshot of the aforesaid discussion is that the original application merits rejection and the same is hereby dismissed. However in the peculiar facts and circumstances of the case the parties are directed to bear their own costs.

JK Kaushik
(J.K. KAUSHIK)
MEMBER (J)

R. Upadhyaya
(R.K. UPADHYAYA)
MEMBER (A)

पूर्णिमा से और/वा. जबलपुर, दि.
यतिलिपि या. जबलपुर
(1) राविल, रा.
(2) आकेश्वर, रा.
(3) प्रत्याशी, रा.
(4) गंगापाल, रा.
के काउंसल S C Shinde, Adv. G W
के काउंसल P N Kelkar, Adv.
सूचना एवं आवश्यक कार्यकारी देख
उप राजसभा
21/5/03

JK Kaushik