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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO. 95 of 1994
T.A. NO.

DATE OF DECISION 6.3.1997

Shri D.K. Das

(PETITIONER(S))

Shri M.K. Choudhury

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Shri S. Ali, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N. BARUAH, VICE-CHAIRMAN
THE HON'BLE SHRI G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

D. Baruah

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.95 of 1994

Date of decision: This the 6th day of March 1997

The Hon'ble Justice Shri D.N. Baruah, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Administrative Member

Shri Dhirendra Kumar Das,
Staff No.03145,
Telecom District Engineer,
Silchar.

.....Applicant

By Advocate Shri M.K. Choudhury.

- versus -

1. Union of India, represented by the Secretary to the Government of India, Ministry of Telecommunication, New Delhi.
2. The Director General, Department of Telecommunication, STG-I Section, New Delhi.
3. The Chief General Manager, Assam Telecom Circle, Guwahati.
4. The Area Director (Telecom), Department of Telecommunication, Guwahati.

.....Respondents

By Advocate Shri S. Ali, Sr. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

The applicant is an employee in the Telecommunication Department under the Ministry of Communication. In 1964, he was appointed Assistant Engineer in the said Department and was posted at Silchar. He served in that capacity till 1991 when he was promoted to the grade of Senior Assistant Engineer. However, by an order dated 27.1.1992 he was reverted to the original post of Assistant Engineer. He submitted representations against the order of reversion and the authorities after considering his representations again promoted him to the post of Senior Assistant Engineer on 26.8.1993 on regular basis. He continued to serve in that capacity for sometime. Meanwhile, by an order

dated 13.7.1993, the applicant was promoted to the Junior Time Scale of the Indian Telecom Service Group 'A' purely on ad hoc basis. Some other Senior Engineers had also been promoted by that order. Some of those engineers were junior to the applicant. He was later on posted by a subsequent order dated 24.8.1993 as Telecom District Engineer. He continued to serve as ad hoc Telecom District Engineer for a period of 9 months. Thereafter, by Annexure-6 order dated 16.5.1994 the applicant was reverted to his substantive grade of Senior Assistant Engineer with immediate effect and posted him as Senior Assistant Engineer(RRD) in the office of the Telecom District Engineer, Silchar, against the existing vacancy, by cancelling the promotion and posting order dated 4.8.1993 and 24.8.1993 respectively. The applicant was directed to hand over charge to the District Engineer. Feeling aggrieved by the impugned Annexure-6 order dated 16.5.1994, reverting him to the substantive post of Senior Assistant Engineer, the applicant approached this Tribunal by filing the present application and this Tribunal issued show cause notice and also passed an interim order on 20.5.1994 suspending Annexure-6 order. On the strength of the aforesaid interim order the applicant is still continuing in the said post. Thereafter, the application was admitted. The respondents entered appearance and filed written statement controverting the averments made by the applicant in his application, more specifically in paragraph 10 of the written statement, where the respondents have interalia stated as follows:

"That with regard to Statements made in paragraph 4.6 of the application the Respondents beg to state that the Charge Sheet having been served on the applicant the Charge Officer came under the purview of Rule 11(4) of C.C.S. Rule which demand for reversion of adhoc promotion. Moreover, the applicant has not completed one year service in that grade. As per Rules it became absolutely necessary to revert the applicant from the adhoc promoted grade and in reverting the applicant there was no malafide intention whatsoever behind the move. The status of the other Group 'B' officers who were promoted alongwith the applicant are not comparable. The case of the applicant has to be reviewed in isolation." (Emphasis supplied)

2. The respondents have not produced the records. We have heard both sides. Mr M.K. Choudhury, learned counsel for the applicant, submits that the Annexure-6 order was in violation of the provisions contained in Article 311(2) of the Constitution. Besides, it was arbitrary, unfair and unreasonable. He further submits that similarly situated officers, some of them being junior to the applicant, were not disturbed, but the applicant was reverted by way of punishment and without giving the protection of Article 311. According to Mr Choudhury, in such a case, an opportunity ought to have been given to show cause why he ought not to be reverted. But, in this case, most arbitrarily, the authorities denied this opportunity in violation of Article 311(2). Mr S. Ali, learned Sr. C.G.S.C., on the other hand has strongly supported the action of the respondents. According to him the applicant was chargesheeted in connection with certain case, details of which, however, have not been spelt out either in the written statement or in any other document. Mr Ali is also not in a position to show in what case he was chargesheeted. Only the number of the case has been cited in the written statement without giving details. Nor the case records have been produced by the respondents to show the nature of the case. Mr Ali has submitted that as per Rule 11(4) aforesaid when an ad hoc officer is chargesheeted then automatically he is required to be reverted. Mr Ali refuted the allegation that the action of the respondents was actuated by any malafide intention. The respondents acted in conformity with the rules and, therefore, no interference from this Tribunal is called for.

3. On the rival contentions of the counsel for the parties it is now to be seen whether the Annexure-6 order dated 16.5.1994 can sustain in law.

4. The law regarding reversion of ad hoc appointment is well settled. In P.L. Dhingra -vs- Union of India, 1958 S.C.R. 828, the Supreme Court held thus:

"(1) Article 311 of the Constitution of India makes no distinction between permanent and temporary posts and extends its protection equally to all government servants holding permanent or temporary posts or officiating in any of them.

(2) The protection of Article 311 is available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise.

(3) If the termination of service or reduction in rank is not by way of punishment, Article 311(2) is not attracted. To determine whether the termination or the reduction is by way of punishment one has to consider whether the servant has the right to hold the post from which he has been either removed or reduced. In the case of a probationary or officiating appointment to a permanent or temporary post there is no such right. This does not mean, however, that the termination of service or reduction in rank of a servant who has no right to the post can never be dismissal or removal or reduction by way of punishment. If government expressly chooses to penalise the servant for mis-conduct, negligence, inefficiency or the like by inflicting on him the punishment of dismissal, removal or reduction, the requirements of Article 311 must be complied with. Besides, the reduction of rank in violation of Articles 14 and 16 cannot also be sustained. If one officer is booked to the exclusion of others for reduction of rank, in that case also the provisions of Article 311 will apply."

In State of Uttar Pradesh and others -vs- Saughar Singh, reported in 1974 SLJ 474, the Supreme Court held that it was always necessary when an ad hoc or temporary employee is reverted to the substantive post to see whether reversion entails any penal consequence or not. Justice Mathew in the said judgment, speaking for the Bench, observed thus:

"The complaint, we must say, is one which has to be sustained. No possible explanation in this extreme form of discrimination has been shown to us. Indeed, it appears from the judgment of the third learned Judge who heard the petition of the High Court that in answer to a question put by him, the standing counsel appearing for the State clearly stated that the order of reversion was a result of the adverse entry made in the appellant's confidential character roll. If this statement of the learned standing counsel has to be accepted, it is impossible to resist the suggestion that the respondent's order of reversion was really an order of punishment in disguise in which event the order must be struck down for non-compliance with the requirements of Article 311 of the Constitution."

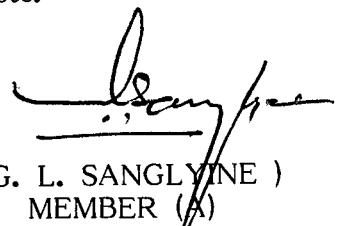
Similarly, the Apex Court, in Regional Manager and another -vs- Pawan Kumar Dubey, reported in 1976 SLJ 387, after having noticed its earlier

judgment in State of Uttar Pradesh and others -vs- Saughar Singh when reversion is by way of punishment, provisions of Article 311(2) must be complied with. We quote the observation of the Apex Court here:

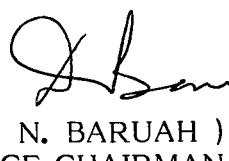
"Government servant reverted from the officiating appointment on the ground of adverse entry in the character roll while the juniors were retained - Government servant's representation against the last adverse entry pending with the Government - Allegations no administrative reasons for reversion were not controverted in the counter affidavit filed by the Government - Reversion can not be said to be 'Devoid of an element of punishment' hence illegal without complying the provisions of Art. 311(2)."

5. In the present case the impugned reversion of the applicant was not for any administrative reason. Atleast, the learned Sr. C.G.S.C. has not urged in that manner. Mr M.K. Choudhury has pointed out that there is no reference in the written statement in that regard. The reversion was surely on the ground that a chargesheet was filed against him, details of which are not known to us. Therefore, we have no hesitation to say that it was by way of punishment. In that view of the matter, following the decisions of the Apex Court as well as the decision of the Principal Bench, Central Administrative Tribunal, in Dhian Singh -vs- The Lt. Governor, Delhi Administration and others, reported in 1987(4) SLJ 950, we are of the opinion that the order of reversion cannot sustain and we quash the same.

6. Accordingly the application is allowed. However, considering the entire facts and circumstances of the case we make no order as to costs.



(G. L. SANGLYNE)
MEMBER (A)



(D. N. BARUAH)
VICE-CHAIRMAN