

(V)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi this the 31st day of March, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

(1) O.A. NO. 489/2003

Shri K.S. Anand
S/o late Shri Kartar Singh
Assistant Engineer (Civil)
Current Duty Charge
Irrigation and Flood Control Department
Govt. of N.C.T. of Delhi
R/o 21-A.S.G. Pocket
Dilshad Garden
Delhi. Applicant

(By Advocate Shri B.S. Mainee)

v.

Govt of N.C.T. of Delhi: Through

1. The Chief Secretary
Govt. of N.C.T. of Delhi
5 Sham Nath Marg
Delhi-110054.
2. The Secretary
Irrigation and Flood Control Department
Govt. of N.C.T. of Delhi
5/9 Underhill Road
Delhi.
3. The Chief Engineer (I & F)
Govt. of N.C.T. of Delhi
4th Floor, I.S.B.T.
Kashmeri Gate
Delhi. Respondents

(By Shri Ajesh Luthra, Advocate)

(2) O.A. NO. 490/2003

Shri Ram Kishan
S/o late Shri Tarif Singh
Assistant Engineer (Civil)
Current Duty Charge
Irrigation and Flood Control Department
Govt. of N.C.T. of Delhi
R/o E-30 Jiwan Park
Delhi-110059. Applicant

(By Advocate Shri B.S. Mainee)

v.

Govt of N.C.T. of Delhi:Through

1. The Chief Secretary
Govt. of N.C.T. of Delhi
5 Sham Nath Marg
Delhi-110054.
2. The Secretary
Irrigation and Flood Control Department
Govt. of N.C.T. of Delhi
5/9 Underhill Road
Delhi.
3. The Chief Engineer (I & F)
Govt. of N.C.T. of Delhi
4th Floor, I.S.B.T.
Kashmeri Gate
Delhi.

Respondents

(By Shri Ajesh Luthra, Advocate)

(1) O.A.NO.501/2003

Shri S.S.Chawala
S/o late Shri H.S.Chawala
R/o 80/23A, Malviya Nagar
New Delhi-110017. Applicant

(By Advocate Shri G.D.Gupta, with
Shri K.P.Sunder Rao, Advocate)

vs.

1. The Chief Secretary
Govt. of N.C.T. of Delhi
I.P.Estate
New Delhi-110002.
2. The Secretary
Irrigation and Flood Control Department
Govt. of N.C.T. of Delhi
5/9 Underhill Road
Delhi.

Respondents

(By Shri Ajesh Luthra, Advocate)

(1) O.A.NO.502/2003

Shri Paras Ram
S/o Shri Hardiware Lal
R/o C-22, Shivaji Park
Delhi-110026. Applicant

(By Advocate Shri G.D.Gupta with
Shri K.P.Sunder Rao, Advocate)

vs. [redacted]

1. The Chief Secretary
Govt. of N.C.T. of Delhi
I.P. Estate
New Delhi-110002.
2. The Secretary
Irrigation and Flood Control Department
Govt. of N.C.T. of Delhi
5/9 Underhill Road
Delhi. Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

When duty is to act fairly, it is difficult to lay down rigidity in approach. It may be possible to be rigid when written law so prohibits or directs otherwise. Just as the pick and shovel is no longer suitable for winning of coal, so also the procedure of mandamus and certiorari. One has to prove equal to the challenge. Facts of the case cannot take a hind seat.

2. The applicants are working as Assistant Engineers and Executive Engineers on current duty charge. The basic facts in all the 4 applications are identical, therefore, we are taking the facts from OA No. 501/2003 in the case of S.S.Chawala vs. The Chief Secretary and others.

3. The applicant was appointed as Junior Engineer on regular basis on 13.8.1965. He was appointed as Assistant Engineer on current duty

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charge on basis of his seniority on 24.9.1979. He was promoted as Assistant Engineer on regular basis on 13.10.1980. He was given the current duty charge of Executive Engineer on 4.10.1996. According to the applicant, it was based on his seniority. The applicant contends that in the year 1997, he was considered for promotion for the post of Executive Engineer, but due to inadequate number of vacancies, he was not promoted.

4. On 18.3.1998, he was issued a charge-sheet alleging certain irregularities which was replied. An inquiry officer was appointed who had inquired into the assertions.

5. The applicant had earlier filed OA No.281/2003. He was seeking a direction for regular promotion as Executive Engineer asserting that the same had been withheld on account of departmental proceedings and that he has since been exonerated. This Tribunal had disposed of the matter that the case of the applicant should be considered and a decision taken as to if the inquiry officer's report has to be accepted or not. It was further directed that the disciplinary authority should consider and pass appropriate orders within a period of 4 months. It was mentioned that nothing said therein could be taken

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to be an expression of opinion on the merits of the matter.

6. Applicant's assertion is that he had been working on current duty charge since the year 1996. By virtue of the impugned order, he had been reverted to the post of Assistant Engineer without any valid reasons and perhaps because of the filing of the earlier application referred to above. He seeks quashing of the order of 27.2.2003.

7. Identical are the facts in OA No.502/2003 in the case of Paros Ram v. Govt. of NCT of Delhi and another. In OA No.489/2003 in the case of K.S. Anand v. Govt. of NCT of Delhi and ors. and OA No.490/2003 in the case of Ram Krishan v. Govt. of NCT of Delhi and others also the applicants therein had been working on current duty charge for many years. Vide the same order referred to above, they have been reverted. They assert that the enquiry report had been received and the applicants in these two applications had been exonerated. The disciplinary authority has recorded a note of disagreement. Thereafter, the present order has been passed withdrawing current duty charge of the higher post.

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8. During the course of submissions, the plea of the applicants has been that they had been working and looking after the duties of the higher posts on current duty charge for many years. Vide the order that has been so passed, current duty charge has been withdrawn from the applicants only while their juniors have been allowed to so continue.

9. The plea of the respondents which was vehemently urged was that this is not a case of reversion from the post and there is no enforceable right with respect to current duty charge.

10. The learned counsel for the applicants have strongly relied upon a decision of the Supreme Court in the case of **State of Uttar Pradesh and ors. v. Sughar Singh**, 1974(1) S.L.R. 435. In para 23, the Supreme Court while dealing with reversion to the substantive post of Head Constable observed:-

"23. In the instant case we have no doubt in our mind that the peculiar circumstance that from out of a group of about 200 officers most of whom are junior to the respondent, the respondent alone has been reverted to the substantive post of Head Constable makes it absolutely clear that there was no administrative reason for this reversion. In fact there was no suggestion at any time made on behalf of the appellant that the post had been abolished or that the respondent was, for administrative reasons, required to go back to his own post of Head Constable. This

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circumstance only corroborates what the learned standing counsel for the State admitted before the High Court that the foundation of the order of reversion is the adverse entry made in his character roll. In this view of the matter, we have no doubt that the order was passed by way of punishment, though all outward indicia show the order to be a mere order of reversion. Even if it were not so, we have no doubt that the order would be liable to be quashed on the ground of contravention of Articles 14 and 16 of the Constitution."

Reliance further was being placed on a Full Bench decision of this Tribunal in the case of **L.M.Medar v. Union of India & Ors.**, 2001 (1) ATJ 5. In the said case of L.M.Medar, there was an ad hoc promotion that had been effected which had continued from time to time in spells. There were small breaks that were given. Disciplinary proceedings were pending. The Full Bench held that persons as such could not be reverted.

11. Both these decisions referred to above have little application in the facts of the present cases. The reason being that current duty charge is something totally different from a person who has been promoted. We partly accept the contention of the respondents that normally current duty charge does not confer any right on a person when it is given to him to discharge the duties of a higher post for the time being.

12. However, it cannot be taken to be an absolute rule. Each case has its own facts. We

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have noticed above that the applicants had been given the current duty charge and they continued to discharge those functions for more than six years. To state, therefore, that withdrawal of such an order does not confer any legal right in the peculiar facts of these particular cases would not be correct.

13. The applicants as referred to above and is rementioned at the risk of repetition continued to function on current duty charge for many years. In the case of S.S.Chawala, the current duty charge had been given since the year 1996. The department never thought it appropriate to withdraw the same and allowed him to continue to discharge those duties. In normal circumstances, current duty charge can only be given for temporary period. The department had consciously allowed the applicants to discharge the duties of current charge of the higher posts. The disciplinary proceedings against the applicants in OA No.501/2003 and OA No.502/2003 started in the year 1998 when the charge-sheet is said to have been served. At that time also, it was not thought appropriate that the current duty charge should be withdrawn. Till date admittedly, no penalty had been imposed on the applicants and departmental proceedings are stated to be pending. Though contradictory statements are forthcoming at the bar with respect to the result of the enquiry

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regarding which we are not expressing any opinion, vide impugned order the current duty charge of the applicants has been withdrawn while their juniors have been allowed to discharge the function. In the case of S.S.Chawala, it was demonstrated vide Annexure A-2 that his juniors have been allowed to continue on the current duty charge.

14. When such are the facts and the applicants have been allowed to continue to work on the current duty charge for many years and no penalty has been imposed despite disciplinary proceedings pending for the last so many years and juniors are allowed to continue, in the peculiar facts, there was no just ground to pass the impugned orders.

15. For these reasons, we allow the present applications and quash the impugned orders. However, we make it clear that nothing said herein should be taken as a reflection on the rights of the respondents to impose any penalty in the departmental proceedings pending against the applicants. In case any penalty is imposed, the respondents would be well within their rights to withdraw the current duty charge from the applicants. We make it further clear that nothing said herein should be taken as an expression of opinion pertaining to the merit of the disciplinary

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proceedings which are said to be pending. No costs.

Announced.

(V. K. Majotra)
Member (A)
/sns/

(V. S. Aggarwal)
Chairman