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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1157/2003

New Delhi, this the 21st day of March, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHALMAN
HON BLE SHRI S.K.NAIK, MEMBER (A)

Shri J.L. Sharma
Formerly A.C.P.
r/o C-02/185
Yamuna Vihar
Delhi. ... Applicant

(By Advocate: Sh. H.S. Paul)

Versus

1. Union of India
through Secretary
Ministry of Home Affairs
Central Secretariat
New Delhi.
2. Lt. Governor
Govt. of N.C.T.
Delhi.
3. Directorate of Vigilance
Govt. of N.C.T. of Delhi
Old Secretariat
Delhi. ... Respondents

(By Advocate: Sh. Vijay Pandita)

O R D E R

Justice V.S. Aggarwal:-

The short and the only question agitated before us was as to whether the Administrator, Delhi was competent to dismiss the applicant Shri J.L. Sharma from service.

2. Some of the facts which are not in dispute can conveniently be delineated. The applicant was an Inspector in Delhi Police. At that time, he was governed by the provisions of Delhi Police Act and the Rules framed therein. He was promoted as Assistant Commissioner of Police purely on ad hoc and emergent basis for a period of six months vide order dated 4.5.1993 which reads:

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"Lt. Governor, Government of the National Capital Territory of Delhi is pleased to promote following Inspectors of Delhi Police to the post of Assistant Commissioner of Police in terms of Rule 24 (i) of DANTPS Rules on purely adhoc and emergent basis for a period of six months with immediate effect:-

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7. Jhaman Lal. No.D-1/278 ...
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3. After expiry of six months, though the approval of the Central Government under the Delhi Andaman and Nicobar Islands Police Service Rules (in short DANTPS) was necessary, it was not obtained.

4. The applicant along with similarly other persons continued to hold the ad hoc appointments.

5. It appears that when no Departmental Promotion Committee meeting was held to fill the vacancies pertaining to the year 1992 onwards and the existing vacancies were being filled up on ad hoc basis by the Lt. Governor/Administrator, Delhi, one Shri Nem Datt Bhardwaj and Others who were also Inspectors in Delhi Police filed OA 528/98 in the Principal Bench of this Tribunal. They challenged the ad hoc appointments made by the Lt. Governor/Administrator to the posts of ACP. The said application was disposed of holding that action of the

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Lt. Governor in promoting Inspectors to the posts of Assistant Commissioner of Police upto 6.6.1995 was within the jurisdiction. It was further held that continuance of the said ad hoc appointments beyond the period stipulated in the promotion orders was not in order. The Tribunal further held that after coming into force of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Police Service Rules, 1995 on 3.12.1995, the Administrator/Lt. Governor do not enjoy the powers of making appointments.

6. It appears that in compliance of the directions of this Tribunal, as we were informed, that a Departmental Promotion Committee meeting was held and so far as the applicant was concerned, recommendations pertaining to him had been kept in a sealed cover. We were also informed that the Delhi High Court had stayed the reversion of the applicant.

7. The Departmental inquiry had been initiated against the applicant with respect to the following Articles of Charge.

ARTICLE-I

That the said Shri J.L.Sharma while functioning as Asstt. Commissioner of Police, East Zone/PCR during the period 1.6.93 to 31.5.94 committed gross misconduct in as much as he maliciously abused his official position by issuing show cause notice for censure to the staff of the East Zone/PCR on flimsy grounds and filed the same after taking illegal gratification from the concerned police personnel through his personal staff.

ARTICLE-II

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That the said Shri J.L.Sharma while functioning in the aforesaid capacity during the relevant period has committed gross misconduct in as much as he suppressed the report of checking officer. Inspector R.S.Chauhan dated 22.11.93 with malafide intention and ulterior motive.

ARTICLE-III

That the said Shri J.L.Sharma while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as he sanctioned the Casual Leave in the staff after taking money from them.

ARTICLE-IV

That the said Shri J.L.Sharma while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as he shown undue favour to the absentees after getting money from them

ARTICLE-V

That the said Shri J.L.Sharma while functioning in the aforesaid capacity during the relevant period committed gross misconduct in as much as he violated the norms for selection of staff after a period of 21 days fixed by DCP/PCR and also shown undue favour to some of the selected police personnel after taking money from them."

8. Report of the inquiry officer was not in favour of the applicant. Resultantly, the Lt. Governor dismissed him from service. He preferred an appeal which has also been dismissed. In appeal, the applicant had raised the plea that the Lt. Governor was not competent to dismiss him from service but it had been rejected. It is the same contention which is being floated afresh.

9. At the outset, it must be stated that the disciplinary proceedings had been initiated against the applicant as Assistant Commissioner of Police

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under Rule 14 of the CCS (CCA) Rules 1965 (for short Rules) and not treating him as Inspector of Delhi Police.

10. The Delhi, Andaman and Nicobar Islands Police Service Rules, 1971 had been framed in exercise of the powers under Article 309 of the Constitution. Rule 2(c) defines the "Duty Post" specified in the Schedule and includes a temporary post carrying the same designation as any of the posts which is identical to that attached to Grade-II of the Service. Rule 2(d) defines the "Members of the Service" to be a person appointed in a substantive capacity. Under Rule 24 of the Rules of 1971, if at any time the Central Government is of the opinion that the number of the officers available in the list referred to in Sub-rule (4) of Rule 15 for appointments to duty posts is not adequate having regard to the vacancies in such posts, it can direct the Committee to consider the case of the officers who have officiated for a period of not less than three years in any of the cadres mentioned in Rule 5. Rule 24 reads:

SELECTION FOR OFFICIATING APPOINTMENT:

If at any time the Central Government is of the opinion that the number of officers available in the list referred to in Sub-rule (4) of rule 15 for appointments to duty posts is not adequate having regard to the vacancies in such posts, it may direct the committee to consider the case of officers who have officiated for a period of not less than three years in any of the cadres mentioned in clause (b) of Sub-rule (1) of rule 5 selection for inclusion in the list shall be based on merit and suitability in all respects for officiating appointments to duty posts

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with due regard to seniority. The provisions of sub-rules (3) and (4) of rule 14 and rule 15 shall apply mutatis mutandis in the preparation of the selection list under this rule."

11. It appears that in the order issued there were inadvertent mistakes because the appointment seemingly had been made under Sub-rule (3) to Rule 25 of the said Rules of 1971.

12. It is these rules which we have reproduced above. which permit appointment to a duty post by making a local arrangement for a period not exceeding six months. These rules were suitably amended in the year 1991 with which we are presently not concerned.

13. However, on 9.10.1995, in exercise of the powers conferred under Article 309 of the Constitution and in supersession of the Rules of 1971, except as respects things done or omitted to be done before such supersession, the new rules had been enforced. Under these rules, Rule 2(a) defines the "Appointing Authority". It reads:

"(a) "Appointing Authority" in relation to any grade means the authority empowered under the Central Civil Services (Classifications, Control and Appeal) Rules, 1965, to make appointment to that Grade;"

14. The powers to appointment in the cadre and the service, now vest with the Central Government as would be apparent from the perusal of the Rule 4 of the Rules of 1995. Subsequently, in the year 1998, the said rules even have been amended but the power of the Central Government remains the same.



15. It is on the strength of these facts that the learned counsel for the applicant had contended that when the order in question which is impugned was passed, the Lt. Governor is ceased to be the disciplinary or the appointing authority and therefore, the said order must be set aside. He strongly relied upon the decision of this Tribunal in the matter of Nem Datt Bhardwaj (supra) [in OA No.528/98]. A perusal of the said order passed by this Tribunal reveals that this Tribunal held that promotion orders beyond 1995 could not be passed by the Lt. Governor because the Lt. Governor after the Rules of 1995, had ceased to have the power to make officiating appointment. These findings made by this Tribunal are not material because herein we are concerned with the question as to whether under the CCS (CCA) Rules ibid, the Administrator/Lt. Governor would be or did have the power to dismiss the applicant or not.

16. Rule 12 of the CCS (CCA) Rules tells us as to who is the disciplinary authority. Under Sub rule (1) to Rule 12, the President can impose any of the penalties specified under Rule 11 on any Government servant but subject to Sub Rule (4) to Rule 12. Sub Rule 2 reads as under:

"(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on-

(a) a member of a Central Civil Service other than the General Central Service, by the Appointing Authority or

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the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President:

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the Appointing Authority or the authority specified in the Schedule in this behalf.

17. In other words, powers even can be delegated and seemingly in the Scheduled Part-II with respect to the DANIPS Gr.II Officers, Joint Secretary, Ministry Home Affairs is the person who has been described as the appointing authority.

18. Rule 2(a) of the CCS (CCA) Rules also defines the "Appointing Authority". It reads as under:

"(a) "Appointing authority", in relation to a Government servant, means-

(i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or

(iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or

(iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post.

whichever authority is the highest authority;"

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19. So far as Rule 12 is concerned, it reveals that appointing authority has the power to dismiss the person. Rule 2(a) clearly prescribes that an authority which is empowered to make the appointments is an appointing authority and the authority which appointed the Government servant is also an appointing authority. However, Rule 2(a) defining the "Appointing Authority" by stating "whichever authority is the highest authority"

20. Herein the Lt. Governor did appoint the applicant. But we are of the considered opinion that Central Government would be the highest authority of the authorities mentioned under Rule 2(a) of CCS (CCA) Rules. The Joint Secretary is only having certain delegated powers to him and is acting on behalf of the Central Government only. If he had been so appointed or mentioned otherwise, the plea of the respondents could succeed. In the present case since after the rules of 1995 and thereafter by the Rules of 1998, it is the Central Government who is the appointing authority empowered to dismiss a person from DANIPS, we are of the considered opinion that Lt. Governor was not competent to pass the said order.

21. Once the order passed is not valid, even after dismissal of the appeal, the invalidity will not cure the defect.

22. For these reasons, we allow the present application and quash the impugned order. But we make it clear that appointing authority referred to above

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may, if deemed appropriate, in accordance with law pass a fresh order. This should preferably be done within three months. The applicant will continue to be under suspension for this period.

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(S.K.Naik)
Member (A)

Agarwal

(V.S. Aggarwal)
Chairman

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