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Central Administrative Tribunal, Principal Bench

Original Application No.1947 of 2003

New Delhi, this the 8th day of August, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K. Naik, Member (A)

Yogesh Kumar Joshi
S/o Shri N.L. Joshi
R/o A-86, Rama Park,
Najafgarh Road,
Delhi-59

.... Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi,
through its Chief Secretary
Players Building,
I.P. Estate,
New Delhi.
2. Directorate of Information
and Publicity,
through its Director
Govt. of NCT of Delhi,
Block No. IX,
Old Secretariat,
Delhi-54

.... Respondents

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant was appointed as a regular/substantive Dark Room Assistant. He was promoted as Lab. Assistant in April, 1995 on substantive/regular basis. On 15.1.2001, on the recommendations of the departmental promotion committee, the applicant was promoted to the post of Photographer on regular/substantive basis. The period of probation was fixed as two years. At this stage, it is relevant to mention that under the recruitment rules, the period of probation is two years.

2. By virtue of the impugned order dated 10.7.2003, the applicant has been reverted to the post of Lab.

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Assistant with immediate effect.

3. Applicant assails the said order alleging:

(a) he was promoted after convening a regular departmental promotion committee meeting. The maximum period of probation is two years and after completion of the same, he is deemed to have been confirmed; and

(b) once the applicant is deemed to have been confirmed, he cannot be reverted except in accordance with law and procedure prescribed and, therefore, the impugned order should be quashed.

4. In support of his claim, learned counsel for the applicant has drawn our attention to the decision of the apex court in the case of State of Uttar Pradesh vs. Sughar Singh, AIR 1974 SC 423 and also to the subsequent decision in the case of Wasim Beg vs. State of Uttar Pradesh & ors., JT 1998(2) S.C. 354.

5. Before mentioning further into this controversy, we deem it necessary to state some of the facts from the record. The applicant was placed on probation on 15.1.2001 and the said order reads:

"On the recommendations of the D.P.C. meeting held by Secretary (PR) on 11.01.2001, Shri Yogesh Kumar Joshi, Lab. Asstt. is promoted to the post of Photographer in the pay scale of Rs.4500-125-7000 on regular basis with immediate effect. He is hereby appointed on probation for a period of two



years.

Shri Joshi will continue to perform his present duties also in addition to the duties assigned to him as Photographer till further orders."

6. On 10.3.2003, an order was passed extending the period of probation from 15.1.2001. Subsequently on 10.7.2003, the following order had been passed:

"Consequent upon the decision of the Hon'ble CAT in the matter of Shri Sakhi Chand Vs. Union of India & Others in OA No.2378/2001 dated 27.9.02, he is to be reinstated immediately. Since there is no vacancy of Photographer, Shri Yogesh Kumar Joshi, Photographer, on probation, is hereby reverted to the post of Lab. Asstt. with immediate effect.

Sd/-
(Faizi O Hashmi)
Director"

The sequence of events clearly show that reversion of the applicant to the post of Lab. Assistant is in pursuance of an order passed by this Tribunal in the case of one Sakhi Chand in O.A.2378/2001.

7. As referred to above, learned counsel for the applicant contended that applicant had been reduced in rank and has relied upon the decision in the case of State of U.P. vs. Sughar Singh (supra).

8. The settled principle in law is that the judgement pronounced by the apex court binds all in terms of Article 141 of the Constitution but the ratio deci dendi of the judgement binds ^{on} _^ the facts in which a particular finding had been arrived at, then it would be confined to those particular facts.

9. The case of Sughar Singh was that he was a

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permanent Head Constable in U.P. Police Force. He was deputed for training as a cadet Sub-Inspector. He was appointed as an officiating Platoon Commander. While working as such, he was served with a notice by the Senior Superintendent of Police, Kanpur, in which he was asked to show cause as to why the adverse entry should not be entered in his character roll. He was reverted subsequently. The said order of reversion was challenged. It was these facts which prompted the Supreme Court to hold:

"13. Since we are concerned in this case with a case of reversion, we propose to confine our attention to the different circumstances in which an order of reversion may be made. An order of reversion is in its immediate effect bound always to be a reduction in rank. Even a reversion from a higher but temporary or officiating rank to lower substantive rank is in a sense a reduction. But such orders of reversion are not always reduction in rank within the meaning of Article 311. If the officer is promoted substantively to a higher post or rank, and if he is afterwards reverted to the lower post or rank which he held before, it is a "reduction in rank" in the technical sense in which the expression is used in Article 311. The real test in all such cases is to ascertain if the officer concerned has a right to the post from which he is reverted. If he has a right to the post then a reversion is a punishment and cannot be ordered except in compliance with the provisions of Art. 311. If on the other hand, the officer concerned has no right to the post, he can be reverted without attracting the provisions of Article 311. But even in this case, he cannot be reverted in a manner which will show conclusively that the intention was to punish him. The order itself may expressly state that the officer concerned is being reverted by way of punishment. In fact the order may in various other ways cast a stigma on the officer concerned. In all such cases, the order is to be taken as a punishment. Sometimes again, the order of reversion may bring upon the officer certain penal consequences like forfeiture of pay and allowances or loss of seniority in the subordinate rank or the stoppage or postponement of future chances of promotion: in such cases also the government servant must be regarded as having been punished and his reversion to the substantive rank must be treated as a reduction in rank. In such a case article 311 will

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be attracted."

10. It is obvious from aforesaid that the facts before the Supreme Court in the case of Sughar Singh were totally different. It had little application in the present case. In the present case before us, one Sakhi Chand, in pursuance of a decision of this Tribunal, has been reinstated. The respondents noted that there was no vacancy of Photographer. The applicant who had since been promoted, necessarily had to be reverted. It is not the case of the applicant pleaded that there is any other person junior to him who as a result of the aforesaid, has to be reverted. These are the exigencies of service and, therefore, the said plea must fail.

11. For the disposal of the present application, we need not dwell into the controversy about deemed confirmation. Reasons are obvious. Herein the applicant has not been reverted as a result of any punishment. Strictly Article 311 of the Constitution will not be attracted in the facts we have already referred to above. The respondents necessarily had to obey the orders of the Tribunal and it is in this backdrop that the applicant had to be reverted to the post of Lab. Assistant.

12. Resultantly, the present application being without merit must fail and is dismissed *in limine*

S.K. Naik
(S.K. Naik)
Member (A).

V.S. Aggarwal
(V.S. Aggarwal)
Chairman.