

(2013) 08 DEL CK 0411

Delhi High Court

Case No: Writ Petition (C) 4437 of 2012

Union of India and Others

APPELLANT

Vs

A.K. Rastogi

RESPONDENT

Date of Decision: Aug. 5, 2013

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19, 20, 21, 21(1), 21(2)

Hon'ble Judges: V. Kameswar Rao, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: R.V. Sinha, Mr. R.N. Singh and Mr. A.S. Singh, for the Appellant; G.S. Lobana, for the Respondent

Final Decision: Allowed

Judgement

V. Kameswar Rao, J.

The present writ petition has been filed by Union of India and four of its functionaries challenging the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated October 19, 2011 in Original Application No. 3533/2010 and order dated April 19, 2012 in Review Application No. 65/2012 in Original Application No. 3533/2010 whereby the Tribunal had allowed the Original Application filed by the respondent No. 1 and dismissed the Review Application filed by the petitioners herein. The Original Application No. 3533/2010 was filed by the respondent seeking the following reliefs:-

a) That the impugned order dt. 17.11.2008, of the Chief General Manager, Uttranchal Telecom. Circle, Dehradun, denying promotional benefits of departmental proceedings, which finally led to dropping of charges, in equitable manner, with the promotional benefits continuously granted to his juniors, being discriminatory and not legally maintainable, may kindly be ordered to be set-aside by this Hon'ble Tribunal.

(b) That the intervening period of his reversion from the post of Divisional Engineer to Sub-Divisional Officer from 18.3.2004 to 07.11.2005, may kindly be ordered to be counted towards benefits of higher post of Divisional Engineer with all consequential benefits with continuous promotion in the higher post from 09.03.2001 until date of his retirement on 30.04.2006.

(c) The Respondent No. 4, the Chief General Manager, Uttranchal Telecom Circle, B.S.N.L., Dehradun, may kindly be directed to allow applicant time-bound Junior Administrative Selection in the scale of Rs. 17500-400-22300 w.e.f. October, 2004, with all consequential arrears. That refixation of his pension and all other retiral dues may be reassessed after fixation of his pay in the said selection grade as per the rules.

(d) That respondents may kindly be directed to pay interest @ 12% p.a. on the arrears of pay and allowances and other retiral dues after allowing his benefits of officiation in the higher post of Divisional Engineer from 08.11.2005 till date of its payments. He may also be granted such interest for his placement in the selection grade of Rs. 17500-400-22300, from due date, i.e. the date from which his representation for grant of selection grade remained unsettled by the respondent authorities."

2. Some of the relevant facts are, the petitioner No. 4 Chief General Manager, Uttaranchal issued orders of 12 persons including the respondent promoting them from TES Group "B" to Senior Time Scale (STS) Indian Telecom Service Group "A" vide order dated March 09, 2001 on purely local officiating basis.

3. That while officiating in Senior Time Scale of Indian Telecom Service Group "A" a charge sheet was issued to the respondent under Rule 14 of the CCS (CCA) Rules, 1965 on March 17, 2004. In view of the said charge sheet the respondent was reverted to his substantive post in TES, Group "B" on March 18, 2004.

4. Based on the inquiry report submitted by the Inquiry Officer, the disciplinary authority dropped the charges against the respondent in terms of his order dated September 26, 2005. That subsequently vide order dated November 08, 2005 the respondent was again promoted the respondent to Senior Time Scale of Indian Telecom Service Group "A" on officiating basis.

5. The respondent retired on superannuation on April 30, 2006.

6. Be it noted that in terms of BSNL" scheme the respondent was granted promotion from Sub-Divisional Engineer to Senior Sub-Divisional Engineer in the pay scale of Rs. 13,000-18,250 vide order dated October 22, 2005.

7. The respondent filed an Original Application seeking the reliefs which have been referred above. It is seen from the reliefs, his claim primarily been that in view of the dropping of charges, he is entitled to promotional benefits continuously granted to his juniors. On that premise he has also sought for a further promotion in a time

bound manner to the junior administrative grade with effect from October 2004. In so far as the prayer "c" is concerned the same was rejected by the Tribunal in terms of para 8 of the impugned order.

8. The petitioners herein contested the claim of the respondent seeking promotional benefits because of dropping of charges on the ground that the respondent was holding promotion on local officiating basis and as such was temporary. The said promotions are being made by heads of each circle who have been delegated with powers to make such promotions. According to them as a charge sheet was issued to the respondent he was reverted to Group "B" post of a Sub-Divisional Engineer. They would further state that others who were not facing such charge sheets continued to officiate as Divisional Engineers.

9. Be it noted that the respondent has not challenged his reversion to the post of Sub-Divisional Engineer vide order dated March 18, 2004. The Tribunal in para 7 and 9 holds as under:-

7. It is trite law that merely because the charges are framed against the employee, no punishment in the form of reversion can be imposed but the concerned employee in the relevant post at the relevant period of time would face the charges. The reversion as such from the post of Divisional Engineer to SDE is punitive in nature. Without granting the applicant an opportunity such an order could not have been passed. That too, when the juniors of the applicant were continuing in the local officiating arrangement in the higher post, the applicant being senior cannot be reverted only on the ground of charges having been framed against him. The reversion of the applicant to a lower post in our opinion is an erroneous decision and not legally sustainable. The applicant could have been proceeded in the disciplinary case even in the post which he was then occupying at that point of time. There is no guidelines to show that the employees can be reverted to a lower post when such employee is facing a charge memo in a disciplinary proceeding It is in this context that the applicants period of reversion need to be appropriately regularized by the respondents and admissible difference of pay and allowances needs to be paid to him.

9. Considering the totality of facts and circumstances of the case, we are of the considered view that the impugned order by which the applicant was reverted to a lower grade from his higher officiating post in Grade-A is liable to be quashed and set aside. We order accordingly. In the result, the applicant would be entitled to get difference of pay and allowances between the higher Group-A post and the post to which he was reverted for the period from 18.03.2004 to 7.11.2005. Consequently, he would be entitled to get admissible increments and revision of his pension as per law since he retired on 30.04.2006.

10. We have heard the learned counsel for the parties. It is seen that the promotion to the post of STS of Indian Telecom Service Group "A" was on officiating basis. The

same does not confer any right to an incumbent to hold the post. It is an accepted position that a charge sheet was issued to the respondent. On reversion to the substantive grade of SDE the respondent does not raise an issue nor challenges the same in judicial forum. The same attained finality. He continued on the post of Sub-Divisional Engineer i.e. his substantive grade for almost 11 months.

11. On dropping of the charges, by the Disciplinary Authority, the respondent was not only been granted promotion from Sub-Divisional Engineer to Senior Sub-Divisional Engineer he was also granted promotion to Senior Time Scale of Indian Telecom Service Group "A" on October 22, 2005 and November 08, 2005 respectively.

12. The Tribunal in effect held the reversion of the respondent from the post of Divisional Engineer i.e. Senior Time Scale of Indian Telecom Service Group "A" to Sub-Divisional Engineer TES Group "B" as punitive, as he was not granted an opportunity of hearing, more so when persons junior of the respondent were continuing on local officiating basis. We are of the view that in effect the Tribunal has held respondent's reversion as illegal. The Tribunal could not have gone into the aspect of reversion of the respondent effected in the year 2004 in an Original Application filed by the petitioner only in the year 2010. The aspect of reversion apart from attainting finality, was beyond the period of limitation. Reference is made to SLP No. 7956/2011 decided on March 11, 2011 D.C.S. Negi v. Union of India wherein the Supreme Court has held as under:-

Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed u/s 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:- 21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made; (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order related; and (b) no proceedings for the redressal of such grievance had been commenced before

the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later. (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed u/s 21(3). In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant.

13. Regrettably the Tribunal granted relief notwithstanding the aforesaid position of law. Hence we are of the view that the relief granted by the Tribunal is untenable. We allow the present writ petition and set aside order dated October 19, 2011 in Original Application No. 3533/2010 and order dated April 19, 2012 in Review Application No. 65/2012 in Original Application No. 3533/2010 and consequently dismiss the Original Application No. 3533/2010 filed by the respondent before the Tribunal. No costs.