

M.A. Beg Vs. Union of India, Through Its Secretary, Ministry of Information and Broadcasting and Another

M.A. Beg Vs. Union of India, Through Its Secretary, Ministry of Information and Broadcasting and Another

SooperKanoon Citation : sooperkanoon.com/1115264

Court : Central Administrative Tribunal CAT Principal Bench New Delhi

Decided On : Nov-08-2012

Judge : The Honourable Mr. G. George Paracken, Member (J) & the Honourable Mrs. Manjulika Gautam, Member (a)

Appeal No. : O.A. 4594 of 2011, M.A.3464 of 2011

Appellant : M.A. Beg

Respondent : Union of India, Through Its Secretary, Ministry of Information and Broadcasting and Another

Advocate for Def. : Shri. A.K. Trivedi

Judgement :

G. George Paracken:

This Original Application has been filed by the applicant aggrieved by the Annexure A-5 Office Order dated 27.10.2003 wherein it has been stated that consequent upon the revocation of his suspension by the 1st respondent, namely, the Ministry of Information and Broadcasting vide its order dated 06.10.2003, he assumed the post of Producer Grade-II in the officer of the 2nd Respondent, namely, the Directorate General, Doordarshan, w.e.f. 08.10.2003.

2. The facts of this case are that while working as Producer Grade-II in substantive capacity, the applicant was promoted to the post of Assistant Controller of Programmes (ACP for short) on 28.06.1999 on ad hoc basis along with other similarly placed persons purely on administrative requirement. While continuing in the said post, he was placed under suspension with effect from 05.01.2002, due to his alleged involvement in a criminal case. However, according to him, his order of suspension was revoked w.e.f. 06.10.2003 and he was allowed to continue as ACP. But by the impugned Office Order dated 27.10.2003, the 2nd respondent stated that the applicant, on revocation of his suspension, assumed charge of PG-II w.e.f. 08.10.2003 (FN). According to him, the aforesaid order is factually and legally unsustainable, as he, on his own, never assumed the charge of PG-II or before issuing the said order, he was not given any show cause notice or the respondents have passed any formal order reverting to his substantive post of PG-II. Moreover, his juniors have been allowed to continue in the higher post. Further, according to him, the aforesaid action of the 2nd respondent is wholly illegal, arbitrary and against the relevant instructions of the Govt. of India on the subject. He has, therefore, made the first representation against the aforesaid action of the respondents on 23.11.2003 inviting their attention to the Govt. of India O.M. dated 24.12.1986 wherein it has been stated that if the ad hoc appointment has been made purely for administrative reasons and if one has held such appointment for more than a year, one need not be reverted. He has also stated that as he did not retain a copy of the said representation, the same has not been filed with the present O.A. As the respondents have not responded to the aforesaid representation, he made the 2nd Annexure A-6 representation dated 23.05.2007. Since the respondents again did not respond to the aforesaid representation also, he made repeated representations on 03.02.2010, 14.06.2010, 10.09.2010, 19.07.2011, 20.07.2011 and 13.12.2011. However, so far, the respondents have not considered any of them and the applicant still continues to work in the lower post. He has, therefore, filed this O.A seeking the following reliefs:

(a) Declare the action of the respondents as unjust, illegal, arbitrary, discriminatory and violative of the principles of natural justice, against the rules and law on the subject in reverting the applicant from the post of ACP to the lower post of Producer Grade-II without passing any order, without assigning any reason,

without issuing any show cause notice and without affording any opportunity of hearing.

(b) Direct the respondents to pass an order for restoration of his post of Assistant Controller of Programs w.e.f. 27.10.2003 with all consequential benefits accruing therefrom.

(c) Direct the respondents to grant the benefit of MACP to the applicant in the grade pay of Rs.5400/- and Rs.6600/- from the date of its due alongwith arrears with interest.

(d) Any other relief which this Honble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. In support of the aforesaid reliefs, the applicant submitted that no disciplinary proceedings had been initiated against him or any criminal cases are pending against him so far. He has, therefore argued that his reversion to the post of Producer Grade-II was illegal, unjust and arbitrary. He has also stated that in identical circumstances, another person Shri K.R. Beena filed OA 965/2003 before the Ernakulam Bench of this Tribunal and vide order dated 21.07.2006 the Tribunal held that the applicant therein was entitled to continue in the Junior Time Scale to which he was promoted on ad hoc basis and his case is exactly similar. The operative part of the said order reads as under:

7. That the applicant was working as a Programme Executive and she was promoted by order dated 25.7.2003 on adhoc basis along with other eligible Programme Executives, and that she assumed the charge of the post on 6.8.2003, are not disputed. The question arising for consideration is whether the subsequent order of reversion issued by Annexure A2 order dated 25.11.2003 is in accordance with the rules. The respondents have contended that the reversion and termination of adhoc promotion was in view of the fact that disciplinary proceedings had been initiated and that such action is in accordance with the CCS (CCA) Rules. The applicant has contested the rule position as well as the basis of issuance of the charge memo. We shall look into these two aspects. On the first count, the applicability of CCS (CCA) Rules in such a situation, the respondents have not

pointed out any specific rule nor is there any such rule to that effect. Purportedly they are relying on the Government of India instruction No.4 under; Rule 11 of the CCS (CCA) Rules as contained in the Government of India, Department of Personnel and Training OM No.11012/9/86-Estt.(A) dated 24.12.1986 reported in Swamys Hand Book of Compilations of CCS (CCA) Rules, pages 16-17:

Government of India instructions

(4) Disciplinary proceedings against an employee appointed to a higher post on ad-hoc basis - The question whether a Government servant appointed to a higher post on ad-hoc basis should be allowed to continue in the ad-hoc appointment when a disciplinary proceedings is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases :-

(i) Where an appointment has been made purely on ad-hoc basis against a short-term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.

(ii) Where the appointment was required to be made on ad-hoc basis purely for administrative reasons (other than against a short term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, he need not be reverted to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case.

8. It can be seen from a reading of the above that the instruction distinguishes appointments on adhoc basis against short-term vacancies or leave vacancies and appointment for administrative reasons against other kinds of vacancies. The

respondents have contended that the case of the applicant falls under the first category (i) whereas on the facts produced before us we are of the view that the applicants case falls under (ii) above in which the appointments are made purely for administrative reasons against other than short-term or leave vacancies. The wording in the order in Annexure A-1 would confirm this point of view, as the promotions have been ordered till the regular incumbents become available and there is nothing in these orders to indicate that the appointment was purely made against leave or short-term vacancies. The subsequent development brought to our notice in the rejoinder and also during the arguments that the adhoc appointees from 1999 onwards are still continuing and that the DPCs are not being convened regularly in this office and only adhoc promotions are made in the various categories of the JTS, which submissions from the applicants side have not been controverted by the respondents either in the reply statement or in the pleading, further lend support to the view taken by us. We therefore hold that the applicants promotion on adhoc basis is governed by clause (ii) of the above mentioned Government of India instructions and it does not require the promotee to be reverted to the lower post on the ground that disciplinary proceedings have been initiated and the impugned action is not in accordance with Rules.

9. The second point is regarding the validity or legality of the disciplinary proceedings itself. The CBI report enclosed along with the applicants rejoinder has not been controverted by the respondents. A mere statement in the reply statement saying that the charges were based on the report of the Vigilance Unit cannot lend credence to this submission of the respondents. On the other hand, we are inclined to agree with the applicants contention in this regard that if the Vigilance Unit had given such a report and a charge memo has been issued on that basis on 25.7.2003 it could not have given vigilance clearance to the applicant for being considered for promotion at the same time as the promotion order states clearly that the Ministry of Information and Broadcasting had cleared the promotions on the same date i.e. 25.7.2003. Further even if the charge memo has been rightly issued on 25.7.2003, the applicant had given a detailed reply to the same and the respondents have not taken any further action till date on the matter which amounts to gross indifference and amounts to total denial of justice, violative of procedure and the time limits prescribed under the CCS (CCA) Rules

for conducting enquiry. Since the merit of the disciplinary proceedings and the charges is not the subject matter of this O.A. we do not wish to make any pronouncement on the same and it is for the respondents to take further action on the proceedings initiated. Here we are concerned with the legality of the proceedings to the extent of its application for determining the legality of the impugned order. Once the finding given above that the CCS (CCA) Rules do not provide for any such action to be initiated to revert the applicant from the post held by him on the ground that a minor penalty charge memorandum has been issued, the correctness of the charge memo as such becomes irrelevant and immaterial. There are also several instructions of the Government of India to the effect that during the pendency of disciplinary proceedings for minor penalty, adhoc promotions can be considered based on the facts and circumstances of each case.

10. Therefore in the totality of the facts and circumstances of the case we hold that the applicant is entitled to continue in the Junior Time Scale to which she was promoted by the Annexure A-1 order. We set aside Annexure A-2 order reverting the applicant. However, it is made clear that these directions do not bar the respondents from finalizing the disciplinary proceedings initiated by the charge memorandum dated 25.7.2003 which shall be finalized after taking into consideration the representation of the applicant in Annexure A-4 and following due procedure prescribed under the Rules. The O.A. is allowed. No costs.

MA 3464/2011

4. The applicant has also filed MA 3464/2011 seeking condonation of delay in filing the present O.A. He has stated that during the period he was working as Assistant Controller of Programmes w.e.f. 28.06.1999 at DDK Dibrugarh, he was placed under suspension w.e.f. 05.01.2002 due to his involvement in a criminal case but his suspension was revoked w.e.f. 06.10.2003 but he continued to work as ACP even after revocation of the suspension. He joined duties at the office of DG, Doordarshan, New Delhi on 08.10.2003 as ACP but suddenly the respondents issued the impugned Order dated 27.10.2003 stating that consequent upon the revocation of his suspension order vide order dated 06.10.2003, he

assumed the charge of the post of PG-II in the Directorate w.e.f. 08.10.2003 and transferred him at DDK, Bhopal with immediate effect. According to him, the aforesaid order was passed in colourable exercise of the administrative power as neither any reversion order nor any justification for reversion was given. On the other hand, he was singled out amongst the 87 officers without any rhyme and reason and his juniors are still continuing in the higher post. He has, therefore, submitted the representation dated 23.11.2003 requesting the respondents to restore his position and status as ACP with full salary and other service benefits. He has further stated that the respondents have verbally informed him that his services will be restored but no written orders were given to him. Thereafter, he was proceeded departmentally and an inquiry was held against him, along with one Shri T.K. Dass on identical charges but in both the cases, charges were held not proved by the Inquiry Officer. However, the CVC advised for imposition of major penalty but the disciplinary authority has exonerated Shri T.K. Dass but imposed major penalty of reduction to a lower stage for a period of three years upon him, vide order dated 22.10.2009. He submitted another representation dated 03.02.2010 requesting the respondents to restore his status as ACP with full salary and other service benefits followed by yet another representation dated 14.06.2010. Even though the respondents have passed an order dated 09.07.2010 treating the period of suspension as wholly unjustified with full pay and allowances for the period of suspension and the said period has been treated as on duty for all purposes, the case of the applicant for restoration of his post was not considered. He has, therefore, made further representations on 10.09.2010, 19.07.2011, 20.07.2011 and 13.12.2011 but so far no action was taken. His further submission is that he is due for retirement on 31.03.2013 and since there was no response from the respondents, he has approached this Tribunal in the present O.A.

5. He has also relied upon the judgment of the Honble Supreme Court in State of Bihar Vs. Kameswar Prasad (SC SLJ 2000 (1) 478) wherein it has been held that the Court can condone the delay in approaching it as technicalities of law cannot be a ground to ignore substantial justice and undo illegalities.

6. The respondents have taken a Preliminary Objection that this O.A. is time barred and the applicant, in his application for condonation of delay, has not given any satisfactory reason for filing this O.A. at a belated stage. They have pointed out that while the order under challenge in the OA is dated 27.10.2003, the applicant has filed this O.A only in December, 2011. They have also stated that the applicant was promoted on ad hoc basis to the post of ACP but after the revocation of his suspension, they have issued orders to the effect that he has assumed the charge of the lower post of PG-II. They have also stated that the applicant was promoted purely on ad hoc basis and the same would not confer any right or privilege for continued appointment on ad hoc basis or regular appointment in that grade.

7. We have heard the learned counsel for the applicant Shri A.K. Trivedi and the learned counsel for the respondents Shri Rajeev Sharma. As submitted by the respondents, the order under challenge in this OA has been passed by the respondents way back on 27.10.2003. By the said order, after his suspension period was over, he was allowed to join only against his substantive post of PG-II, even though he was holding the higher post of ACP on ad hoc basis prior to his suspension. The applicant has filed an application for condonation of delay but he has not given any good or sufficient reason to condone the delay of over eight years in filing this Original Application. Section 21 of the Administrative Tribunals Act, 1985 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 relates; 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.

8. Recently, the Apex Court in the case of D.C.S. Negi Vs. Union of India (SLP (Civil) CC No. 3709/2011) has also held as under:

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 under Section 21(3).

9. Further, the Apex Court in *Jai Dev Gupta Vs. State of Himachal Pradesh and Anr.* (1999 (1) AISLJ SC 110) held that continued representations do not keep the limitation alive. The relevant part of the said judgment reads as under:

2. Learned Counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May, 1989. We do not think that such an excuse can be advanced to claim the difference in backwages from the year 1971. In *Administrator of Union Territory of Daman and Diu v. R. D. Valand*, 1995 Supp (4) SCC 593, this Court while setting aside an order of Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned Counsel for the appellant that the difference in backwages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in backwages by one year.

10. In the above facts and circumstances of the case, we are satisfied that this case is a badly delayed one and, therefore, it cannot be entertained on the ground of limitation. Accordingly, this OA is dismissed without going into the merits of the case. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com