

(2001) 08 DEL CK 0236

In the Delhi High Court

Case No : Civil Writ Petition No. 6799 of 1999

Shri Ashok Kumar Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-08-2001

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2002) 61 DRJ 43

Hon'ble Judges : Sharda Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Ms Shyamla Pappu and Ms Meenu Mainee, for the Appellant; Mr. V.S.R. Krishna, for the Respondent

Final Decision : Allowed

Judgement

Khan, J.—Petitioner was regularly promoted to the post of Assistant Engineer (Group-B) by order dated 10.7.96 subject to the condition that "he was not undergoing any punishment in D&AR/Vig". His promotion was later converted into "ad hoc" on noticing that he was facing a prosecution case at the time of his empanelment in Group-B service. It was accordingly made clear to him by letter dated 23.8.1999 that his promotion was purely on ad hoc basis and until further orders. He was subsequently reverted by order dated 6.9.1999 to the post of Chief Bridge Inspector (Group-C).

2. He challenged this as OA 1989/99 before CAT, New Delhi on the plea that his substantive promotion had vested certain rights in him which could not be taken away without enquiry and hearing to him. His petition was opposed by respondents on the plea that he was erroneously promoted due to wrong clearance by vigilance and that once this mistake was discovered, it was rectified by reverting him. Reliance in support was placed on two Supreme court judgments in *Bal Kishan Vs. Delhi Administration* and *Another*, and *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, to show that respondents were competent to rectify the mistake. Tribunal dismissed his OA by impugned order

dated 5.11.1999 holding that since his promotion was subject to the condition of his not undergoing any punishment in D&AR/Vig case, no right accrued to him to sustain that promotion. He has not filed this petition top question Tribunal order and his case is that the could not be reverted to Group-C post save otherwise in due course of law.

3. Learned counsel for petitioner Ms. Shyamla Pappu cited several judgments to show that rights inhering in petitioner by promotion could not be taken away arbitrarily and without an enquiry and that too when the prosecution against him had not resulted in any punishment.

4. Mr. Krishna, learned counsel for respondents, on the other hand, pointed out that DPC which had promoted him to the post of Assistant Engineer had failed to adopt the sealed cover procedure which was otherwise to be followed in such cases necessarily and had wrongly promoted him. According to him, non-adoption of this procedure vitiated his promotion entitling respondents to revert him to Group-C post. No other point was urged or canvassed by him.

5. There is no dispute that petitioner was promoted to the post of Assistant Engineer (Group-B) substantively on the recommendation of DPC. It is true that his promotion was subject to the condition that he should not have been facing any punishment in D&AR/Vig. case, but, that condition, did not stipulate that his promotion was liable to be set at naught if he was found facing any such enquiry/investigation. It is well settled that an employee cannot be deprived of his promotion merely because of pendency of some enquiry or investigation against him. That Hon''ble Supreme Court had provided for adoption of sealed cover procedure to safeguard interest of employees seeking promotion, facing disciplinary action and awaiting punishment. But failure to adopt such procedure was not fatal where an employee was promoted in ignorance or overlooking this. As such respondents were not justified to revert petitioner to Group-C post straight away because their DPC had failed to adopt the requisite procedure. It was understandable if he was imposed any punishment meanwhile. But that was not the case and if respondents wanted to revert him necessarily, they were under an obligation to follow the procedure established by law and to satisfy the requirements of Article 311. It is not in dispute that petitioner was vested with certain valuable rights on his promotion and these could not be taken away at his back and without an inquiry in time with mandate of Article 311. Respondents failure to do so renders their order of reversion unsustainable. Tribunal, Therefore, was in error in taking the view that they had rectified the mistake. We accordingly allow this petition and quash the reversion order dated 6.9.1999 passed by respondents against petitioner. We are, however, informed that he was still holding the post of assistant Engineer (Group-B) pursuant to interim stay orders obtained by him. As such, there was no need to direct his reinstatement to the promoted post.