

(2011) 06 DEL CK 0084
In the Delhi High Court
Case No : Writ Petition (C) 3976 of 2011

V.P. Singh

APPELLANT

Vs

MTNL and Others

RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

Citation : (2011) 06 DEL CK 0084

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Bani Singh, for the Appellant; Nidhi Minocha, for Ruchi G. Narula, for MTNL, for the Respondent

Judgement

Dipak Misra, C.J.—Heard Mr. Bani Singh, learned Counsel for the Petitioner and Ms. Nidhi Minocha, learned Counsel for the Respondent.

2. The Petitioner was working on the post of Divisional Engineer on the basis of local officiating promotion under the Respondent- Mahanagar Telephone Nigam Limited (MTNL) since 30th June, 2006. He was reverted to his substantive post, i.e., Sub-Divisional Engineer (SDE) by order dated 2nd July, 2010 with effect from 8th December, 2009. It was contended before the tribunal that he could not have been reverted without a proper departmental enquiry and culmination of the same in a punishment. On behalf of the Respondent, FR 9(19) was pressed into service. That apart, it was contended that the term of the officiation on the promotional post expired on 7th December, 2009 and, therefore, the Petitioner had no vested right to continue. Additionally, it was urged that the disciplinary proceeding had already been initiated against him but no charge sheet had been framed.

3. It is submitted by the learned Counsel for the Petitioner that there was no justification to revert him when others were continued. That apart, two grounds that were urged before the tribunal have also been reiterated before us. Learned Counsel for the Respondent supported the order passed by the tribunal. In this

context, we may usefully refer to FR 9(19), which reads as follows:

9.(19) Officiate - A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Central Government may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

4. It is settled position in law that when someone officiates on a promotional post, he really does not have a right to the promotional post. The officiation is granted on the basis of an arrangement. No right accrues in favour of an incumbent.

5. We will be failing in our duty if we do not refer to the Office Memorandum No. 11012/9/86-Estt.(A) dated 24th December, 1986 issued by the Department of Personnel and Training (DOP&T). The said Office Memorandum reads as follows:

(4) Procedure to be followed when disciplinary proceeding is initiated against a Government servant officiating in a higher post on a d 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 proceeding 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 proceedings 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.

6. Relying on the aforesaid Office Memorandum, it is contended that even if a departmental proceeding is contemplated, an incumbent holding the promotional post on the officiating basis cannot be reverted. We do not find the same is inhered in the said Office Memorandum. Paragraph 4(ii) on which immense emphasis has been placed is only a guideline and it does not bar the authority to quash an order of reversion. That apart, it is a qualifying one. It lays a postulate that a person, who is holding an officiating post, need not be reverted only on the ground that a disciplinary proceeding has been initiated against him. The Office Memorandum makes two categories of distinction. On a perusal of the order of reversion, it transpires that it has been done after expiry of the period. In the absence of a vested right, in our considered opinion, the order of reversion

really cannot be found fault with.

7. Be it noted, such a reversion does not tantamount for punishment and hence no enquiry in that regard is imperative. At this juncture, we have been apprised that the Petitioner's juniors are still working on officiating basis. As the same was not pleaded in the petition, liberty is granted to the Petitioner to apprise the department in this regard, which shall pass a reasoned order.

8. With the aforesaid modification in the order of the tribunal, the writ petition stands disposed of without any order as to costs.