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Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.1784/89

New Delhi this the 14<sup>th</sup> Day of November, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)  
Sh. C.J. Roy, Member (J)

Khazan Singh son of  
Shri Bani Singh,  
R/o Village & Post Office  
Daulatabad, District Gurgaon  
(Haryana).

...Applicant

(By Advocate Sh. K.L. Sharma)

Versus

1. Union of India through the  
Secretary to the Govt. of India,  
Ministry of Defence, South Block,  
New Delhi.
2. Engineer-in-Chief, Army Head-  
quarters, Kashmir House,  
New Delhi.
3. The Chief Engineer, Western  
Command, Chandimandir (Punjab).
4. Commandar Works Engineer, Air  
Force, Palam, Delhi Cantt.
5. Garrison Engineer (South),  
Air Force, Palam, Delhi  
Cantt.

...Respondents

(By Additional Standing Counsel Sh. M.K. Gupta)

ORDER

Hon'ble Mr. N.V. Krishnan:-

The applicant is a Pipe Fitter in the office of the Garrison Engineer (South), Air Force, Palam (respondent No.5) under the Ministry of Defence. He has challenged the part-II order No.27 dated 3.7.89 (Annexure A-1) passed by the 5th respondent. That order cancels an earlier order dated 19.5.86 (Annexure A-2) by which the applicant was promoted w.e.f.15.10.84 as Pipe Fitter H.S. Grade-II on probation for two years in the scale of Rs.330-480. It is contended that such cancellation has been done illegally

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and arbitrarily and that, therefore, it is liable to be set aside, being violative of Articles 14, 16 and 311 of the Constitution of India. It is contended that the applicant was duly promoted from the semi skilled post of Pipe Fitter to the highly skilled Grade-II post of Pipe Fitter by the Annexure A-2 order. He was being given increments on such promotion regularly for five years. It is thereafter that, suddenly, the impugned order was passed cancelling the promotion granted to him. He has thus been reverted without assigning any reasons and hence it is by way of penalty. Hence, he has prayed that the impugned Annexure A-1 order dated 3.7.89 should be quashed and the respondents should be directed not to make any recovery from his pay retrospectively.

2. The application has been opposed by the respondents. They have stated the circumstances in which the Annexure A-1 order had to be passed cancelling the earlier order of promotion dated 19.5.86. It is stated that the 4th respondent ordered certain promotions by his order dated 8.5.86 (Annexure R-2) in pursuance of the orders dated 4.7.85 of the second respondent, the Engineer-in-Chief, Army Headquarters. By this order certain persons were promoted. The applicant who is a scheduled caste candidate was also promoted to one of the vacancies reserved for scheduled castes. His name appears at serial No.65 of that list which shows that he is promoted from Pipe Fitter to Fitter Pipe H.S. Grade-II. Very soon thereafter, on 17.8.86 Sh. Har Dutt, a Fitter in the office of the Garrison Engineer (North) submitted a representation to the 4th respondent that he was senior to the applicant as a Pipe Fitter and belongs to the scheduled

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caste community and, therefore, he should be promoted. As these facts were found to be correct, it was decided to promote Har Dutt in place of the applicant and accordingly, an order dated 22.9.86 (Annexure R-3) was issued. This was in the nature of an amendment of the Annexure R-2 order. The amendment was to the effect that the name of the applicant and all entries against his name at serial No.65 of Annexure R-2 should be substituted by the name of Har Dutt. In other words, Har Dutt was promoted in place of Khazan Singh. However, the cancellation of the promotion of the applicant was not implemented by the 5th respondent due to oversight and when this was noticed it was given effect to only after the impugned Annexure A-1 order was passed. It is, therefore, stated that the reversion of the applicant is not by way of a penalty and, therefore, the question of Article 311 does not arise. The promotion ought to have been given right from the beginning to Har Dutt. A mistake was committed in this regard which was corrected on representation by Har Dutt. Therefore, the application has no merit.

3. We had some doubts about the various orders issued in this case which have their own format, being orders issued in the field formation of the Ministry of Defence. The matter has been clarified to our satisfaction by an additional affidavit filed by the respondents on 25.7.94. From that affidavit it is clear that what has been stated above represents the correct facts of the case.

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4. The applicant did not file any rejoinder to the reply filed by the respondents which is quite significant. In the circumstances, the explanation given by the respondents in the reply has to be taken as correct.

5. The learned counsel for the applicant has relied upon the judgement of the Supreme Court in State of Punjab vs. K.R. Erry and Sobhag Rai Mehta - 1973 SLJ SC 5 to contend that the order passed cannot stand scrutiny. This judgement has been cited in support of the contention that the orders could not have been passed without giving a reasonable opportunity to make his defence. We have seen that judgement. Those were cases where, on the retirement of certain officers, instead of giving them full pension, which was their due, a certain percentage was imposed as a cut and they were informed that though they were entitled to higher superannuation pension, Government was pleased to impose a cut of a certain percentage, since in the opinion of the Government, the service record was not satisfactory. It is in these circumstances that the Court found that the principle of audi alteram partem applies. That principle will not apply to the present case, which, obviously is in the nature of a correction of a mistake and does not either cast any stigma or impose any penalty on the applicant.

6. In the circumstances, we find that this application has no merit and it is, therefore, dismissed.

*C. J. Roy*  
(C.J. Roy)  
Member(J)

'Sanju'

*N.V. Krishnan*  
(N.V. Krishnan)  
Vice-Chairman(A)

*14/11/94*