Central Administrative Tribunal
Principal Bench, New Delhi.

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OA-2454/2004

New Delhi this the 29th day of August, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Sh. Surbir Singh,
S/o sh. Jhabar Singh,
R/o B-32, Greater Kailash-I,
New Delhi-48. .... Applicant
(through Sh. Surinder Singh, Advocate)

Versus

1. National Capital Territory of Delhi through
   the Chief Secretary,
   Delhi Administration,
   Delhi.
2. The Chief Engineer,
   Flood Control and Drainage
   Division VI, ISBT,
   Delhi.
3. The Executive Engineer,
   Flood Control and Drainage
   Division VI, Government of
   Delhi, Gur Mandi, Delhi. .... Respondents

(through Sh. S.Q. Kazim, Advocate)

ORDER

By virtue of this application, applicant impugns respondents' order dated 12.12.2003 whereby his date of appointment has been altered from 1.9.1993 to 4.1.1999. Applicant seeks change of date of temporary status to 1.9.1993 and change of regularization from work charged Establishment to a regular post.

2. Brief factual matrix transpires that applicant was appointed on daily wages as Motor Driver and was brought to work charged Establishment w.e.f. 5.7.1985 and was terminated on 31.3.1987. Earlier OA-541/1987 filed by the applicant before the Tribunal was disposed of on 5.6.1990 by directing the respondents to reinstate the applicant and to pay him the minimum salary of the pay scale available to regularly appointed Motor Drivers w.e.f. 1.11.1988. Applicant was reinstated but for consideration of regularization as Motor Driver,

he was medically examined and was found colour blind, which resulted in dispensation of his services. This order was assailed in OA-1021/1995, which was dismissed by an order dated 2.6.1995.

3. Applicant thereafter filed another OA-859/1996 claiming for accord of suitable job with consequential benefits, which was decided on 3.4.1997 and taking cognizance of the fact that applicant had worked for more than 11 years as Motor Driver, liberty was given to him to make a representation. Review Application No. 222/1997 filed against this order was turned down on 29.9.1997.

4. A Writ Petition No. 5267/97 was preferred by the applicant before the Hon'ble High Court of Delhi in which notices had been issued on 22.4.2002. Having regard to the Directorate General of Works Circular dated 25.6.1993 where mustor roll worker, who is not eligible for regularization in the category in which he his working, it is decided that the mustor roll workers be considered for regularization in lower category subject to an undertaking not to claim regularization on higher post. Though it transpired that by an order dated 28.11.1995 that applicant has been offered an alternate job of Mechanic but the same was accepted subject to certain conditions and ultimately on acceptance in 1998, applicant joined on 4.1.1999.

5. When the respondents before the High Court in Writ Petition furnished information in pursuance of an order dated 22.4.2002 as to whether the services of the applicant can be regularized and from what date, an order passed on 29.4.2002 disposed of the Writ Petition on the instructions received from the respondents that the applicant can be regularized as Beldar.

6. By an Office Order dated 28.6.2002, in compliance of the decision of Hon'ble High Court of Delhi, applicant was accorded temporary status as Beldar

w.e.f. 1.9.1993 and by an order dated 12.12.2003 he was regularized on work charged Establishment.

7. However, the above order was altered on a corrigendum postponing the date of grant of temporary status to 4.1.1999 instead of 1.9.1993.

8. Learned counsel of the applicant contends that once the applicant has been offered the alternative post of Beldar and accorded temporary status w.e.f. 1.9.1993, as per the directions of the Hon'ble High Court dated 29.4.2002, he should have been regularized rather brought to work charged Establishment.

9. In the above view of the matter, it is stated that order passed regularizing the applicant on work charged Establishment is in defiance of the order of Hon'ble High Court. It is stated in this backdrop, that by an order dated 16.2.2004 in CM No. 8291/2003 in WP(C) 5267/97 filed before the Hon'ble High Court of Delhi, liberty has been accorded to the applicant to assail his remedy as per law.

10. Learned counsel further contended that once civil consequences ensue upon the applicant, corrigendum, depriving of right to be heard, is in violation of principles of natural justice.

11. On the other hand, respondents' counsel vehemently opposed the contentions and stated that applicant had only joined on offer of alternate job on 4.1.1999. As such, inadvertently the temporary status was accorded to him from 1.9.1993, which was corrected by way of corrigendum.

12. As regards regularization, it is stated that regularization against the post of Beldar has not been taken up as the applicant is junior-most Beldar in the seniority list of Beldar.

13. I have carefully considered the rival contentions of the parties and perused the material placed on record.

14. I may like to observe that once before the Hon'ble High Court of Delhi on the basis of Circular dated 25.6.1993 and statement made by the respondents, applicant has been offered the services as Beldar and accorded temporary status from 1.9.1993, the same could not have been altered by way of corrigendum before affording an opportunity to the applicant.

15. If there was an inadvertent error in the order passed on 28.6.2002, which has been corrected on 12.12.2003 i.e. after more than one and a half year, especially when the issue of regularization of the applicant was taken and the applicant has been regularized on work charged basis is not tenable in law.

16. The pith and substance of the circular is non-eligibility of a mustor roll worker in a lower post when an undertaking to the effect that he would not stake any claim for regularization on higher post is made, the intention of the High Court of Delhi and the directions would not have construed grant of regularization on work charged Establishment. Be that as it may, the postponement of date of temporary status has an effect of altering the seniority of applicant for regularization and accordingly the stand of the respondents not to regularize the applicant, being the junior most, by not affording an opportunity to the applicant is not tenable.

17. To have his say before the corrigendum is issued, I am of the considered view on ensuing civil consequences, non-following the principles of natural justice vitiates action of the respondents. Recently, the Apex Court in **Canara Bank Vs. V.K. Awasthy** (2005(2) SLJ SC 463) on the issue of principles of natural justice, the following observations have been made:-

> "7. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of

justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its from

8. the expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

9. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It say that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to made his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Bcooper v. Wandsworth Board of Works, **1963(143) ER 414,** the principle was thus stated:

> "Even god did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

10. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and Administrative Authority while making an order

affecting those rights. These rules are intended to prevent such authority from doing injustice.

11. What is meant by the term `principles of natural justice' is not easy to determine.' Lord Summer (then Hamilton, L.J) in Ray v. Local Government Board, (1914) 1 KB 160 at p.199:83 LJKB 86, described the phrase as sadly lacking in precision. In General Council of Medical Education and Registration of U.K. v. Sanckman, 1943 AC 627 : 1948 (2) All ER 337, Lord Wright observed that it was not desirable to attempt `to force it into any procusteam bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give `a full and fair opportunity' to every party of being heard.

12. Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice, 1911 AC 179 : 80 LJKB 796, where Lord Loreburn, L.C. observed as follows:

> "Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that indoing either must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial....The Board is in the nature of the arbitral Tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view." To the same effect are the observations of Earl of Selbourne, LO in Spackman v. Plumstead District Board of Works, 1985 (10) AC 229 : 54 LJMC 81, where the learned and noble Lord Chancellor observed as follows:

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a Judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some

other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statue if there were anything of that sort done contrary to the essence of justice".

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase `justice should not only be done, but should be seen to be done'.

13. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression `civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

18. If one has regard to the above, the act of the respondents offends not only principles of natural justice but also the dictum of the Apex Court.

19. In the result, for the forgoing reasons, OA is partly allowed. Impugned order is set aside. Respondents are directed to afford an opportunity to the applicant before taking any adverse action against him and also to reconsider the issue of regularization of the applicant against a regular post. This shall be done within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)

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