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Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-3086/2004

New Delhi this the 13<sup>th</sup> day of April, 2006.

Hon'ble Mr. Shanker Raju, Member(J)  
Hon'ble Mrs. Chitra Chopra, Member(A)

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Shri S.C. Kapoor aged about 55 years,  
S/o late Shri G.M. Kapoor,  
R/o. 16/400, Lodhi Colony,  
New Delhi-110013.

..... Applicant

(through Mrs. P.K. Gupta, Advocate)

Versus

1. Union of India,  
Through  
The Defense Secretary,  
Ministry of Defense,  
South Block,  
New Delhi-110011.

2. The JS (Trg) & OAO,  
A2 (B)  
Ministry of Defense,  
'E' Block,  
New Delhi-110011.

..... Respondents

(through Mr. Padma Kumar proxy for Ms. Sangeeta Tomar, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

By an order dated 22.12.2004 in pursuance of directions of this Court in O.A. 476/2003 dated 22.7.2004 on reinstatement Shri T.L. Verma was taken on strength as a Photographic Officer and vide simultaneously through a show cause notice the applicant was reverted to his substantive post of Senior Photographer.

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2. Applicant would contend on a decision of the Apex Court in Delhi Administration vs. Wanda 1997 11 SCC 488 that in similar situation the court has directed creation of supernumerary posts. However, it is fairly stated that there is an observation of Apex Court not to treat the ratio as precedent.

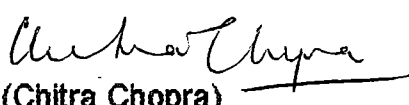
3. Learned counsel stated that the respondents by an order dated 23.11.2004 on the representation of the applicant regarding creation of a supernumerary post on temporary basis recommended reversion of the applicant to be stalled till 30.4.2005 in the wake of the Regional Director, AFFPD retiring and availability of a chain vacancy to accommodate the applicant as Chief Photographer. However, same is yet to be finalized.

4. In the light of the fact that the trite law is that one against whose vacancy a person is promoted if comes back on reinstatement by the court would have to be restored back to the original position on the substantive post held by him. However, another angle which have to be probed into is the equity and legitimate expectation of a person who without any rider had been promoted by the respondents as transpired from the perusal of the DPC record that the applicant having continued with promotion though does not acquire any indefeasible right against the rules but equity his case as has already been recommended to be sympathetically considered to accommodate him in a chain vacancy.

5. In the result for the foregoing reason, O.A. is disposed of with the direction to the respondents to take a final decision on their notice dated

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23.11.2004 within a period of two months from the date of receipt of a copy  
of this order. No costs.

  
(Chitra Chopra)  
Member (A)

S. Raju  
(Shanker Raju)  
Member (J)

Lg/