

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 1278 of 2001

....., this the 29th day of August 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

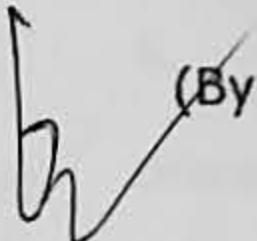
Jamil Ahmad,
S/o. Muttoor,
R/o. Income Tx Colony,
Mowaia Saranath,
Varanasi

... Applicant.

(By Advocate Mr. S.K. Dey)

versus

1. Union of India through the Secretary, Ministry of Finance, Central Board of Direct Taxes, New Delhi.
2. The Chief Income Tax Commissioner, Lucknow.
3. The Income Tax Commissioner, Varanasi.
4. The Dy. Commissioner, Income Tax, Lucknow.
5. Shiv Kumar working as Peon under Joint Commissioner, Income Tax Range III, Varanasi (U.P.) ... Respondents.

 (By Advocate Mr. R.C. Shukla for Shri S. Singh)

ORDER
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

The following questions arise in this case:

- (a) Whether the promotion of the applicant from the post of Chowkidar to Daftry is as per the Recruitment Rules?
- (b) If promotion is not as per the Rules, whether the Department has the power to right the wrong by reverting the individual to the post of Chowkidar?
- (c) If reversion is resorted to, whether show cause notice is required?

2. The facts Capsule: The following are the career details of the applicant:

Sl No.	Post with scale	Date	Remarks
1	Chowkidar 2550-3200	03/04/91	
2	Daftry 2610-3540	04/09/01	After approval by Chief Comm'r
3	Chowkidar 2550 – 3200	29/10/01	Reversion by Commissioner

3. The applicant had qualified the departmental test for promotion to the post of L.D.C.

4. The grievance of the applicant is that when his promotion was in accordance with the order dated 29-08-2001 passed by the Chief

b/w

Commissioner of Income tax, reversion by an authority below the Chief Commissioner of Income Tax, that too without any show cause notice is illegal. He has, therefore, requested for quashing of the following orders:-

- (a) Order dated 04-10-2001 – passed by the Chief Commissioner of Income tax, advising the Commissioner, Varanasi to revert the applicant from the post of Daftry to his earlier post of Chowkidar as in respect of Chowkidars, neither vigilance clearance was obtained nor performance report.
- (b) Order dated 29-10-2001 – passed by the Commissioner of Income tax, in pursuance of the above order of the Chief Commissioner, reverting the applicant to the post of Chowkidar.

5. Respondents have contested the O.A. According to them, the post of Daftry is filled up by promotion from the post of peon only vide Recruitment rules. In fact provision exists for filling up of the post of peons from amongst certain group D employees and it is thereafter that such persons are considered for promotion to the post of Daftry. Again, in so far as order dated 29-08-2001 is concerned, there has been one more employee by name Jamil Ahmed, working as staff car driver at Varanasi and by mistake his name has been included for promotion to the post of Daftry.

6. A perusal of the Recruitment Rules clearly shows that item No. 2 relates to the post of Daftry and Column No. 12 indicates that the post of Daftry is filled up by promotion of peons with two years experience.

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Admittedly, separate seniority for peons exists. There is no reference to Chowkidar to be considered for promotion to the post of Daftry. Instead, in respect of item No. 5, which relates to peons, 25% of the posts are filled up by transfer of Group D employees of the Income Tax Department specified in item 6, in column 1. (As the Recruitment Rules annexed as CA 1 is incomplete it could not be verified as to whether item 6 includes Chowkidar. Subject to verification, this is presumed) Thus, promotion of the applicant to the post of Daftry is not in accordance with the Rules.

7. The next question is whether to rectify the error, the respondents have the power to revert the person promoted? It has been held in the case of *Maharashtra State Seeds Corp. Ltd. v. Hariprasad Drupadrao Jadhao*, (2006) 3 SCC 690, as under:

"19. In Indian Council of Agricultural Research v. T.K. Suryanarayan (1997) 6 SCC 766, a promotion granted by mistake in ignorance of the service rules was held to be capable of being rectified, stating:

"Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules."

8. Thus, it was this power that has been invoked by the Respondents in this case.

9. Again, the further question is whether any show cause notice is a prerequisite while invoking such promotion? General Rule, as enunciated by the Apex Court in the case of ***Mohinder Singh Gill v. Chief Election Commr. (1978) 1 SCC 405*** (civil consequences undoubtedly cover infraction of not merely property or personal rights but of the civil liberties, material deprivation and non-pecuniary damages) preceded by ***State of Orissa v. Dr. Binapani Dei (1967) SCR 625***, (even if an administrative action involves civil consequences it must observe the rules of natural justice) and followed in ***S.L. Kapoor v Jagmohan (1980) 4 SCC 379*** (a separate showing of prejudice caused is not necessary and the non-observance of natural justice is in itself a prejudice caused) is that principles of natural justice should be followed. However, certain exceptions have been carved out from the above general proposition. As for example, where requirement of educational qualifications prescribed in the Recruitment Rules is not fulfilled and a person has been appointed to the post, cancellation of the appointment without show cause was held to be not illegal. See ***State of M.P. v. Shyama Pardhi (1996) 7 SCC 118***. In this case, the persons not possessing the prerequisite qualifications prescribed by the statutory rules, were wrongly selected. They have completed their training and were appointed as Auxiliary Nurse-cum-Midwife. Their services were terminated without giving any prior notice. Holding it to be illegal, the termination was challenged before the Service Tribunal and the order of termination was set aside as the principle of natural justice was not followed. The Apex Court had



found in an appeal that the original petitioners did not possess the prerequisite qualifications viz. 10 + 2 with Physics, Chemistry and Biology as subjects. The rules specifically provided that qualification as condition for appointment to the post. Since the prescribed qualifications had not been satisfied, the appointment and training was per se illegal and, therefore, the Tribunal was not right in directing their reinstatement. Similarly, in a very recent case of ***Mohd. Sartaj v. State of U.P., (2006) 2 SCC 315*** where cancellation of appointment was made within a very short span of time, it was held that non observance of principles of natural justice would not make the order of cancellation of appointment as illegal.

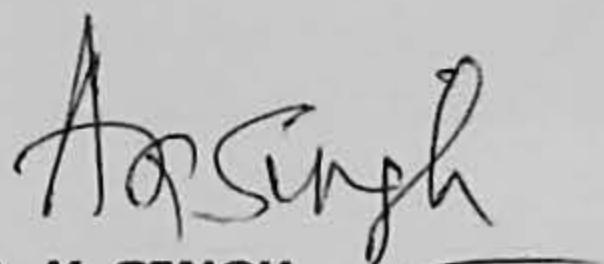
10. Viewed from the above, it would be seen that there is no provision in the Recruitment rules for promotion of Chowkidar to the post of Daftry and as such, as held in the case of ICAR vs T.K. Suryanarayan (supra) and followed in the case of Maharashtra State Seeds Corp. Ltd. v. Hariprasad Drupadrao Jadhao (supra) erroneous promotions can be rectified and since in this case also as withdrawal of the promotion order was within a short span, as in the case of Mohd. Sartaj (supra), non issue of show cause notice does not make the impugned order invalid.

11. Lastly, the applicant has challenged that the order of promotion having been approved by the Chief Commissioner, Commissioner cannot issue the cancellation order. This contention is based on misconception. First, Chief



Commissioner approved the promotion (of course, the order itself was erroneous, as it is not the applicant whose name was approved for promotion but another employee with the same name but working as staff car driver) and the promotion order was issued only by the Commissioner of Income tax. As such, Commissioner has all authority to pass the impugned order.

12. In view of the above as no case is made out by the applicant, the **OA is dismissed** but under the circumstances, there shall be no orders as to costs.



A K SINGH

ADMINISTRATIVE MEMBER



K B S RAJAN

JUDICIAL MEMBER