

[RESERVED]

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ORIGINAL APPLICATION NO.1582/05

Dated this the 1st day of April, 2011.

CORAM:

HON'BLE SHRI S.N. SHUKLA, MEMBER (A)

HON'BLE SHRI SANJEEV KAUSHIK, MEMBER (J)

1. Anil Kumar Saxena,
S/o Late Brij Basi Lal
R/o Mohalla Gadarpura,
P.O., Bisauli, District Badaun.
2. Brij Lal Pali,
S/o Late Deep Chand
Near A.R.T.O. Office, D.M. Road,
Civil Lines, Badaun.
3. Ram Chandra S/o Late Jabir
Singh, R/o Kalawati Ligh House,
Nekpur, Civil Lines, Badaun ... Applicants
(By Advocate Shri M.K. Upadyaya)

Versus

1. Union of India through Defence Secretary,
(Posts), Department of Posts, India,
Ministry of Communications & Information,
Technology, "Dak-Bhawan" Sansad Marg,
New Delhi 110 001.
 2. Chief Post Master General,
U.P. Circle, Hazaratganj,
Lucknow, 226001.
 3. Post Master General,
Bareilly Region,
Bareilly.
 4. Senior Supdt. of Post Offices,
Bareilly Division,
Bareilly.
 5. Superintendent of Post Offices,
Badaun Division,
Badaun.
 6. Superintendent,
Postal Stores, "Depot"
Raurpur Garden,
Bareilly.
- Respondents.

(Respondents by Shri Dharmendra Tiwari holding brief of Shri Saurabh Srivastava, Counsel for the Union of India.)

ORDER

PER MR. SANJEEV KAUSHIK, MEMBER (J):

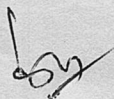
By way of the instant Original Application filed under Section 19 of the Administrative Tribunal's Act, the applicant has impugned the order dated 13.12.2005 passed by the respondent No.3 in pursuance to the order dated 5.12.2005 issued by the respondent No.2, whereby the applicants have been reverted from the cadre and grade of Higher Selection Grade I (HSG -I) and Higher Selection Grade II (HSG-II) to the cadre and Grade of Lower Selection Grade (LSG) with immediate effect (Annexure A.1).

2. The brief facts of the case are that the applicant herein were initially recruited as Postal Assistant, in the year 1974 and 1975. After completing 16 years of continuous and satisfactory service they were upgrade in the next higher grade of lower selection grade (LSG) in the pay scale of Rs. 1400-2300 E.B. (PR) under T.B.O.P./Scheme designated as P.A.L.S.G/TBOP w.e.f. 1st of August 1990 , 7th January 1991 vide order dated 25.7.1990, copy annexed as Annexure A.4. After completing 26 years of service the applicants were given second upgradation/placement in the scale of of Rs.5000-8000 under Biennial Cadre Review (BCR in short) vide order dated 15.1.2002 w.e.f. 1st July, 2000 and 1st January, 2001 and 1st January, 2001 respectively (Annexure A.5). In terms of D.G. (Posts), New Delhi instructions dated 2.6.1986 and 28th July, 2003 which was circulated by Respondent No.2 on 30th July 1986 and 31st July 2003 a Departmental Promotion Committee was convened on 13th December, 2004 Respondent No.4 issued promotion orders in pursuance to the D.P.C. recommendations whereby the applicants were promoted as

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Supervisory post of LSG (N.B.) w.e.f. 16th November, 1995, 1st Feb. 1996, and 14th June 1996 respectively. Thereafter, Chief Post Master General (U.P.) Circle, Lucknow i.e. No.2 issued order on 2nd June 2005 whereby promoted 80 officials including the applicants on upgraded post and HSG.II (N.B.) from L.S.G. (NB) in the establishment of Badaun Division. The name of the applicants find place at Sr. No. 68, 70 and 73 in the above stated order. Copy annexed as Annexure A.6. The applicants were further promoted in the higher selection Grade I, on regular basis in the pay scale of Rs. 6500-200-10500/- by the competent authority vide their order dated 6th May 2005 and they also assumed their charge of the said post. The above stated promotion was subject to completion of probation period of two years which are liable to be extended. (copy Annexed as Annexure A.7). Accordingly, the applicants were also issued posting orders on 16th of June 2005 (Annexure A.8) and the applicants were relieved from their duty to join the new place of posting on 23rd June 2005 and 28.6.2005 and 23rd June 2005 respectively Annexure A.9. It is submitted that the applicants were promoted on regular basis after judging their suitability by the Departmental Promotion Committee and thereafter the applicants were given upgradation as well as promotion in terms of the service rules applicable to them. On 5th December, 2005, Respondent No.2 passed impugned order dated 13.12.2005 Annexure A.I whereby the applicants were reverted from the grade of HSG.II and HSG. I to the grade of lower selection grade (L.S.G). The applicant impugned this order by way of the instant Original Application alleging therein that the impugned order has been passed without issuing Show Cause Notice and without affording any opportunity of hearing to the applicant therefore, the same is in violation of Article 14 and 311 (2) of the Constitution of India.

2. Upon notice the respondents filed detailed counter affidavit and contested the claim of the applicant. The respondents have submitted that



the applicant has wrongly been promoted to the higher post and when the above stated mistake came into the knowledge of the respondents then immediately their promotions were reviewed and the impugned order was passed by rectifying there mistake. Therefore, there is no need for issuance of any Show Cause Notice before rectifying any mistake.

3. We have heard Shri M.K. Upadyaya, learned counsel for the applicant and Shri Dharmendra Tiwari holding brief of Shri Saurabh Srivastava and perused the record.

4. Learned Counsel for the applicant has vehemently argued that the impugned order has been passed in violation of well established principle of natural justice as no Show Cause Notice whatsoever has been given to the applicant before passing the impugned order of reversion. He submitted that the applicants were promoted by the Departmental Promotion Committee after judging their suitability. They were promoted and posted as HSG.I & HSG.II respectively and they were also given the Higher Grade. They were performing their duty to the entire satisfaction of their superiors and suddenly the impugned order have been passed whereby they have been reverted from H.S.G.I & H.S.G.II to LSG (NB) which is in violation of Article 14 of the Constitution of India. He placed reliance upon a recent judgement passed by the Hon'ble Apex Court in the case of *Prakash Ratan Sinha vs. State of Bihar and Ors.* reported in 2010 SCC (L&S) 443 and argued that the Hon'ble Supreme Court held that the respondents authority are bound to issue Show Cause Notice before passing any adverse order. On the other hand, Shri Dharmendra Tiwari, Counsel for the respondents have stated that what has been averred in the Counter Affidavit.

5. We have considered the rival submissions and perused the record. The solitary contention of the Counsel for the Applicant is that they have been reverted without issuing Show Cause Notice which is violation of



well established principle of *audi alteram partem* and hence the impugned order is liable to be set aside. From the bare perusal of the record and the impugned order Annexure A.I it is clear that before passing the impugned order no Show Cause notice has been issued to the applicants. Even the averments made by the applicant in the Original Application in para 13 and 16 to this effect has not been denied by the respondents in their Counter Affidavit. Therefore, the respondents have admitted this fact that no Show Cause Notice or opportunity of hearing has been granted to the applicant before passing the order of reversion. It is well established principle of law that no order which is having civil consequences can be passed without affording an opportunity of hearing to the affected person. Therefore, without going into the merit of the case and only on this short count alone, the impugned order i.e. Annexure A.I is liable to be set aside.

6. We have also perused the judgement cited by the learned counsel for the applicant in the case of ***Prakash Ratan Sinha vs. State of Bihar and Ors (supra)*** in which it is held as under:

“22. In our view, these are all disputed facts and the respondents without affording an opportunity of hearing, could not have taken any administrative decision unilaterally. Therefore, the Division Bench of the High Court is not justified in concluding that under the “useless formality theory” the rules of natural justice need not have been followed by the respondents.”

The reliance is also placed in the case of *Canara Bank vs. Debasis Das* 2003 (4) SCC 557 the Hon'ble Apex Court has held in para 19 ***Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.*** The Hon'ble Apex Court has elaborated the expression “civil consequence” by observing that it “encompasses infraction of not merely property or

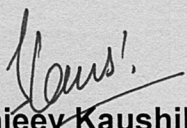
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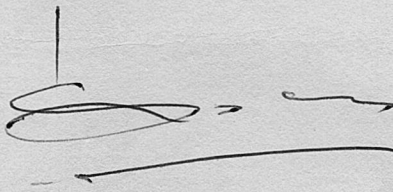
personal rights but of civil liberties, material deprivations and non-pecuniary damages." It is also held that "in its wide umbrella comes everything that affects a citizen in his civil life."

Subsequently also the Hon'ble Apex Court has reiterated the same in Sahara India (Firm), Lucknow Versus Commissioner of Income Tax, Central-I and another-(2008) 14 Supreme Court Cases 151; Harbanslal Sahnia and another Versus ~~Civil Writ Petition No.7992 of 2010~~ Indian Oil Corporation Limited and others-(2003) 2 Supreme Court Cases 107; Sidheshwar Sahakari Sakhar Karkhana Limited Versus Union of India and others-(2005) 3 Supreme Court Cases 369; and ABL International Limited and another Versus Export Credit Guarantee Corporation of India Limited and others-(2004) 3 Supreme Court Cases 553. All these decisions have a single underlying theme that even a pure administrative act that entails civil consequences shall be addressed with reasonableness and rules of natural justice would require a right of hearing by application of the principle of *audi alteram partem*. This fundamental breach partakes the character of violation of fundamental right.

7. In view of the above authoritative settled preposition of law, coupled with the facts of the instant case that no Show Cause Notice was issued before passing the impugned orders. We have no hesitation to quash the impugned order (Annexure A.I) with liberty to the Respondents to pass fresh order after complying with the principles of natural justice as observed above.

8. The O.A. is thus, allowed. No order as to costs.


(Sanjeev Kaushik)
Member (J)


(S.N. Shukla)
Member (A)

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