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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

ORIGINAL APPLICATION NO.542 OF 2005

ALLAHABAD THIS THE 20<sup>th</sup> DAY OF OCTOBER 2006.

HON'BLE DR. G.C SRIVASTAVA, V.C  
HON'BLE MR. A.K. BHATNAGAR, J.M

Manan Sharma aged about 43 years, son of Shri Jagannath Sharma, R/o C/o Shri Bachanna Panda, House NO.87 Daraganj, Allahabad.

.....Applicant.

(By Advocate: Sri Rakesh Verma)

Versus.

- 1 Union of India through the Secretary, Ministry of Defence, North Block, New Delhi.
- 2 The Officer Incharge, A.O.C. Records, Army Headquarters Secunderabad.
- 3 The Commandant, Ordnance Depot, Fort. Allahabad.
- 4 The Personnel Officer (Civilian), Ordnance Depot, Fort, Allahabad.

.....Respondents.

(By Advocate: Sri Saumitra Singh)

O R D E R

By DR. G.C SRIVASTAVA, V.C

This O.A. has been filed against the order dated 5.5.2005 (Annexure A-1) whereby the re-classification of the applicant as Lister Driver has been cancelled and he has been sent back to the post of Black Smith Mate. Through this O.A., the applicant has prayed for the following relief(s):-

- "(i) To issue a writ, order or direction in the nature of certiorari quashing impugned order dated 5.5.2005 passed by the respondent NO.3 canceling the reclassification/promotion of the applicant to the post of Lister Driver and thereby reverting him to the post of Black Smith (Annexure A-1).
- (ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioner to continue on the post of Lister Driver and to pay him salary attached to that post regularly month to month".

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2. The undisputed facts of the case are that applicant who was holding the post of Black Smith Mate, was allowed to assume the duties of Lister Driver on acceptance of re-classification. This was done after his case was approved by a duly constituted Departmental Promotion Committee. The reclassification order was passed on 7.12.2004 (Annexure A-3). However by impugned order dated 5.5.2005 (Annexure A-1), the reclassification order was cancelled subsequent to amendment in reclassification rule on 3.5.2005 on the ground that it was contrary to recruitment Rules. The applicant has challenged this order on the ground that having been in the new post for six months, he had acquired legal vested right which cannot be taken away by making amendment in the Rule retrospectively. It has been alleged that Rule under which re-classification was being allowed was issued on 11.11.1998 and it has been cancelled after a lapse of about 16 years on 3.5.05 and the impugned order has been passed based on this cancellation. It has been averred that since this classification was done on 3.5.05, it cannot be applied retrospectively in his case as he had been allowed the benefit of reclassification on 4.12.2004.

3. The respondents in their counter reply stated that reclassification is not a promotion as the pay scales of both the posts i.e Black Smith Mate and Lister Driver are identical. It has been further clarified that reclassification from Black Smith Mate and Lister Driver was the result of an advertent mistake as the post of Lister Driver as per Recruitment Rules was to be filled up by promotion from Mazdoor and not by reclassification. When this fact came to the notice of the respondents on being pointed out by Directorate General of Ordnance Services (Annexure A 1 to the Counter Reply). The mistake was rectified and the reclassification order was canceled. It was submitted

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that since no loss has occurred to the applicant and reclassification post is not a promotional post, no illegality has been committed by the respondents by canceling the reclassification order without notice. It has also been stated that even the seniority of the applicant will be maintained.

4. We have heard the argument advanced by counsel for both the parties and have also gone through the pleadings.

5. The learned counsel for the applicant submitted that the applicant was appointed to the post of Lister Driver after a regular selection procedure was followed. His appointment could not be cancelled without affording him an opportunity of hearing. Learned counsel for the applicant cited the case of Desh Raj Singh Vs. District Magistrate, Banda and others (1998 (1) U.P.L.E.B.C 32 in support of his contention. Learned counsel for the applicant further cited the judgment of Apex Court in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others (1997 Supreme Court Cases (L&S) 1527) wherein the following observations have been made.

*"But a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.*

*"It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Article 14 and 16 of the Constitution".*

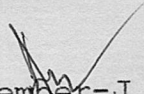
6. We have given careful consideration to these Rulings cited by learned counsel for the applicant. We find that the instant case is not exactly of promotion as it has not

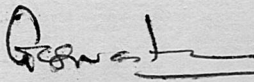
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resulted in better pay scale. It is merely change in the job in an equivalent rank. The fact is that there has been a guideline existing since 11<sup>th</sup> November 1988 under which reclassification was permissible when the grade of pay remains same. The procedure has been laid down in instruction issued on 11.11.1989 (Annexure A 2). These instructions clearly mention in para 2 that promotion and reclassification are two different categories through which selection by D.P.C. is to be made. It has also been clearly mentioned that reclassification is allowed if the grade of pay remains the same and results in better prospects, but this has to be done after it is cleared by the D.P.C. The applicant has not averred in what way he would have better prospects consequent to reclassification. Merely because certain change in the job content is allowed to be done through D.P.C. does not ipso facto make it a promotion. It is also clear from the letter written by the Directorate General of Ordnance Services that reclassification is to be allowed only if permitted under the recruitment Rules. Since this reclassification does not import any tangible benefit to the applicant, no illegality has been committed by the respondents by canceling the reclassification order without giving an opportunity to the applicant for hearing. In view of this, we do not find any ground for interference with the impugned order. The O.A. is accordingly dismissed.

No costs.

  
Member-J

  
Vice-Chairman.

Manish