

# Open Court

Central Administrative Tribunal, Allahabad  
Bench, Allahabad

O.A. No. 330/00207/2021,  
O.A.No. 330/00211/2021,  
O.A. No.330/00212/2021 and  
O.A. No. 330/00272/2021

This the 15th day of July, 2021.

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)**  
**Hon'ble Mr. Devendra Chaudhry, Member (A)**

**O.A. No.330/00207/2021**

Sandeep Gupta and 50 others      Applicants

By Advocate: Sri Jaswant Singh  
and Sri P.K. Pandey

Versus

Union of India and others	Respondent
---------------------------	------------

By Advocate: Sri M.K. Sharma

**O.A. No.330/00211/2021**

Manoj Kumar Srivastava and 31 others  
Applicants

By Advocate: Sri Shyamal Narain

Versus

Union of India and others

Respondent

By Advocate: Sri Chakrapani Vatsyayan

**O.A. No.330/00212/2021**

Satish Kumar and 9 others

Applicants

By Advocate: Sri Pradeep Chandra, Senior  
Advocate assisted by  
Sri Dharmendra Tiwari

Versus

Union of India and others

Respondent

By Advocate: Sri Chakrapani Vatsyayan

**O.A. No.330/00272/2021**

Rakesh Kumar Patel and 35 others

Applicants

By Advocate: Sri Shyamal Narain

Versus

Union of India and others

Respondent

By Advocate: Sri M.K. Sharma

**ORDER ON INTERIM RELIEF**

**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)**

Heard Mr. Shyamal Narain, Advocate for the original applicants and Ld. Senior Advocate Sri Pradeep Chandra assisted by Sri Dharmendra Tiwari, Sri Jaswant Singh for the applicants and Ld. ASGI Sri S.P. Singh, assisted by Shri Chakrapani Vatsyayan for the respondents, on the prayer for interim relief. Perused the record.

2. The relevant facts in brief are that all the applicants are promote Inspectors, who had initially joined the respondents' department as Stenographers/Lower/Upper Division Clerks etc. All of them were promoted to the post of Inspectors in different years vide different establishment orders, passed in different years, the details whereof have been mentioned in the O.As.

3. The case of the applicants is that all of a sudden, the respondents department issued the impugned order dated 19.2.2021 (Annexure A-1), whereby the applicants were reverted to their prepromoted posts.

4. The main contention of Id. Counsel for the applicants for challenging the impugned order is that the applicants were not given any opportunity of hearing by the respondents before passing the impugned orders and they all have been demoted without even issuing any notice to them. Hence, it has been prayed that the impugned order be quashed. As an interim relief, prayer has been made to stay the operation of impugned orders during pendency of the instant O.As. Reliance has been placed on the judgments rendered by Hon'ble Apex

Court in **Ram Ujarey Vs. Union of India, 1999 (1) Apex Court J 0432 (SC)**, Hon'ble Allahabad High Court in **Writ A- No. 7114 of 2013 (Raj Bahadur Singh and others Vs. State of U.P. Thru Principal Secretary & Ors) decided on 10.1.2014** and Hon'ble Jammu High Court in **Rajeev Sharma Vs. State and Ors, 2008 (1) JKJ 7, decided on 21<sup>st</sup> November, 2007.**

5. Ld. Counsel for the respondents has vehemently opposed the prayer for interim relief by contending that as the main relief and interim relief are the same in all these O.As, interim relief cannot be granted at this stage when the pleadings are yet to be completed and when some new respondents have been impleaded today. The further submission of Id. Counsel for the respondents is that the applicants cannot avail the benefits of any case laws cited above because the facts are entirely different.

6. In the short counter affidavit, filed by the respondents against the prayer for interim relief, it has been stated that consequent to cadre restructuring order dated 19.7.2001, 382 posts of Inspectors were upgraded to the post of Superintendent by the then Cadre Control

Authority, Allahabad. Almost same scenario existed in Cadre Control Zone, Mumbai and whether these posts were to be abolished or available for vacancy, attracted a lot of controversy. During the period between 13.12.2002 to 22.11.2017, 382 upgraded posts were taken as vacancies and DPC/ Review DPC were conducted to afford a large number of promotions from ministerial grade to inspector grade.

7. As controversy has arisen with regard to vacancy of these posts, cases were filed before different Benches of CAT. In one of such cases, the Central Administrative Tribunal, Mumbai Bench, vide order dated 6.6.2007, held that upgraded posts are abolished posts, therefore, no vacancy was available for promotion to those posts. The judgment of CAT, Mumbai Bench was upheld by Hon'ble High Court of Bombay, vide judgment dated 28.10.2013 and 16.1.2014.

8. As the issue of upgraded posts was similar in both Lucknow and Mumbai zone, the CBEC took cognizance of Court's order and issued direction dated 24.10.2016 to Lucknow zone for corrective DPC. The government of India implemented the

judgment of Hon'ble Mumbai High Court. Pan-India, wherever such discrepancies had occurred, including Lucknow zone. As a result, the CBEC reassessed the whole matter and ordered for review of all DPCs conducted from 6.12.2002 onwards. Finally, after the Review DPC's, the impugned orders were passed.

9. Learned counsel for the respondents in the short counter reply has referred the relevant DOPT OM, to contend that when a person is promoted, no notice is given to him. Similarly, when a promotion is found to have been made without observance of procedure or due to any other infirmities with reference to standing instructions of DoPT, the same DoPT OM provides for re-visiting such promotions by conducting review DPC of original DPCs, without affording any opportunity of personal hearing or showing cause to the affected person(s). Since executive instructions of Government of India on promotions as well as demotions do not provides for a mechanism of showing cause or affording an opportunity of personal hearing before proceeding to nullify/modify/change any promotion already

affected on the recommendations of DPC, therefore, the question of grant of opportunity of hearing to the applicant does not arise in the instant case. Moreso, this submission is duly supported by the judicial pronouncement of Hon'ble Madhya Pradesh High Courts' order dated 30.1.2006 in **Munna Lal Yadav Vs. Dr. Hari Singh Gour and another**).

10. It is next contended by Id. Counsel for the respondents that the department has only complied with the Central Administrative Tribunal, Mumbai's Judgment dated 6.6.2007 passed in O.A. No.454/2006 followed by Mumbai High Court judgment dated 28.10.2013 in Writ Petition No. 298 followed by Government/CBEC directions dated 24.10.2016, that 382 upgraded posts of Inspectors calculated subsequent to cadre restructuring 2001 are not 'vacancies', hence corrective measures by way of review DPC be taken.

11. It is next contended that, these directions were further followed by Central Administrative Tribunal Allahabad in interim order dated 5.7.2018 (Azim Ahmed and Anuj Gupta) and in Central Administrative Tribunal, New Delhi's interim order dated 4.5.2018 (Saulesh Kumar) directing the

department to take action on Government letter dated 24.10.2016.

12. The further contention of respondents' counsel is that the applicants have already availed the unentitled salary and post since the year 2002. Even the, department has been humane to adjust them to maximum possible extent by not reverting anyone from Inspector to Ministerial cadre, which fact itself has been admitted by the original applicants in para 4.24 of O.A. No. 207/2021. Thus, the department has only followed the directions of the judiciary issued by this Hon'ble Tribunal vide interim order dated 5.7.2018 and order dated 4.5.2018, passed by this Hon'ble Tribunal directing CCA Lucknow to comply with the direction issued by Central Board Excise and Customs dated 24.10.2016 for fixation of seniority.

13. On the aforesaid grounds, it has been prayed that the prayer for interim stay of the impugned orders be rejected.

14. We have given out thoughtful consideration to rival contentions of Id. Counsel for the parties and perused the record.

15. A perusal of the relief clause in the O.As shows that the main relief sought by the applicants in all these O.As is to quash and set aside the impugned Establishment order No. 1/A/CCSC/11/2021 dated 19.2.2021, Establishment order No. 1/A/CCSC/12/2021 dated 19.2.2021, Establishment order No. 1/A/CCSC/13/2021 dated 19.2.2021 (Annexure No. 1,2 and 3 in the O.As in compilation No.1), whereas, as interim relief, it has been prayed that during the pendency of the present O.A., the operation of the aforesaid impugned Establishment order No. 1/A/CCSC/11/2021 dated 19.2.2021, Establishment order No. 1/A/CCSC/12/2021 dated 19.2.2021, Establishment order No. 1/A/CCSC/13/2021 dated 19.2.2021 (Annexure No. 1,2 and 3 to the O.As in compilation No.1) be stayed.

16. Thus, it is very clear that the main relief and interim relief, sought by the applicants are the same.

17. The legal position in this regard (when the main relief and interim relief are same) has been

well settled by the Hon'ble Apex Court in a catena of judgments.

18. In **Pradeep Kumar Arora and others Vs. State of U.P. and others 2005 (2) ESC page 809**, the Hon'ble Supreme Court after citing its several earlier judgments, has held that ***"A Court of law should not pass any interim order which amounts to a final relief. Whenever, the interim relief is similar to the main relief, then there is no case for grant of interim relief"***.

19. In **Born Standard Company Ltd. and others Vs. Deenbandhu Majumdar and another, AIR 1995, Supreme Court page 1499**, the Hon'ble Supreme Court has deprecated the practice of grant of interim relief, which amounts to final relief. According to the Hon'ble Apex Court, it should be granted only in exceptional circumstances, where the damage cannot be repaired for the reason that if no relief for continuance in service is granted and ultimately the claim of applicant is found to be acceptable, the damage cannot be repaired by granting him all those monetary benefits which he would have received, had he continued in service. If loss can be repaired or the loss can be satisfied by

giving back wages etc., no interim relief should be granted.

20. The same view has been reiterated by the Hon'ble Apex Court in the case of **Indian School Certificate Examination Vs. Isha Mittal and another (2000) 7 SCC page 521** by observing that "Actually the relief which the court could have granted finally, has been granted by means of interim order. Therefore, the matter was remanded to High Court for passing a fresh order.

21. In wake of the above cited judgments, at this stage, there does not appear any good ground to grant interim relief. None of the applicants is out of service, admittedly, they are still working in the department in the same cadre and are getting their salary. Hence, no irreparable loss is going to be caused to them to make their case exceptional.

22. Interim relief and main relief being the same in all the OAs, the prayer for interim relief is rejected.

23. List on 16<sup>th</sup> September, 2021 before Registrar's court for completion of pleadings.

24. A copy of this order be kept on the files of all the connected OAs.

25. Hon'ble Mr. Devendra Chaudhry, Member  
(Administrative) has consented to this order during  
virtual hearing.

**(Devendra Chaudhry)**  
**Member (A)**

**(Justice Vijay Lakshmi)**  
**Member (J)**

**HLS/-**

O.A. No. 330/00207/2021  
O.A.No. 330/00211/2021  
O.A. No.330/00212/2021 and  
O.A. No. 330/00272/2021