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Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO. 425 of 1986.

Harakh Singh ... applicant.

Versus

District Manager, Telecom Ghaziabad  
and two others.

... Respondents.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

( Delivered by Hon'ble D.S.Misra)

In this application under Section 19 of the A.T. Act XIII of 1985, the applicant has challenged the reduction of his basic pay from Rs. 560/- to Rs. 420/- p.m. from the month of March, 1986 and further deduction of Rs. 200/- p.m. from his monthly salary.

2. The case of the applicant is that he joined the Telegraph Engineering Department of the Central Government in 1948 as a Class IV employee at Lucknow; that he was promoted to the post of Time Scale Clerk (Class III post) on 8.7.60 and later on was transferred to Moradabad; that the applicant was promoted as Officiating Lower Selection Grade Head Clerk in Telephone Revenue Accounts Unit Moradabad by an order dated 16.10.1975 (copy Annexure 1) that by an order dated 27.10.1975 (annexure-2) his salary was fixed at Rs. 425/- in the scale of pay of Rs. 425/-640/-; that the applicant continued to work as LSG clerk/Head Clerk from 1975 upto 1985

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when he was transferred vide order dated 21.1.1986 (annexure-3) from Moradabad to Ghaziabad; that the last basic pay drawn by the applicant at Moradbad was Rs.560/- p.m. and the total emoluments drawn by the applicant at Moradbad were Rs.1430/- (copy of LPC Annexure-4); that the applicant continued to draw the same basic pay of Rs.560/- p.m. and other allowances upto Feb.1986; that for the month of March,1986 his basic pay was reduced from Rs.560/- to Rs.420/- as basic pay (copy of pay certificate for the month of July,1986 annexure-6); that the respondents were also deducting Rs.200/- p.m. from the salary of the applicant without giving him any reason for such deduction; that no order reducing or varying the pay of the applicant or reverting the applicant to a lower post has been given to the applicant nor any reasons for reducing the salary of the applicant has been communicated to him; that the applicant/retiring on 30.9.1986 and he will be losing a sum of Rs.274/- p.m. towards his pension and he will also be losing a sum of Rs. 7000/- towards gratuity. The applicant has prayed for issue of direction to the respondents (a) to restore the pay scale of the applicant and not to make any deduction from his salary, (b) to refund the amount of deductions already made from the pay of the applicant from the month of March,1986, (c) to grant two increments as due to the applicant on 1.6.85 and 1.6.86 and (d) to grant the pension and gratuity to the applicant on the basis of the basic pay of the applicant at the rate of Rs.600/- p.m..

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3. In the reply, filed on behalf of the respondents, it is stated that the applicant was promoted as LSGclerk on local and ad hoc basis by the Divisional Engineering Telegraph Moradabad on divisional seniority basis and his pay was fixed in the basic<sup>scale</sup> pay of Rs.425- 640/-; that by a clerical mistake in the order of transfer, the applicant was wrongly given the designation of 'HCTRA Unit' that on his transfer to Ghaziabad he was not posted in the Supervisory Grade as alleged by the applicant but was posted as Construction Clerk in Construction Branch in the office of the Divisional Engineering Telegraph DivisionGhaziabad; that the last pay certificate issued to the applicant on his transfer from Moradabad to Ghaziabad, the basic pay of the applicant was shown at Rs.560/- p.m.; that the Divisional/Telegraph Moradabad discovered the mistake committed by the office in describing the applicant as ' HCTRA Unit' and immediately wrote a letter to the Divisional Engineer Telegraph Ghaziabad stating that substantive cadre of the applicant is was Tele-com Office Assistant, that as no incumbent posted by the Circle Office as Section Supervisor Sri Harakh Singh was appointed to officiate as the Section Supervisor by the Divisional Engineer Telegraph, Moradabad purely on local and temporary basis (copy of the letter is Annexure CA-1); that although this letter was received on 25th April, 1985 but the dealing assistant did not bring the said letter to the notice of the Divisional Engineer Telegraph Ghaziabad; that this fact came to the notice of the Divisional Engineer / Telegraph Ghaziabad only when the applicant's pensionary papers were being processed;

that immediately thereafter action was taken to fix the salary of the applicant in ~~his~~ substantive grade and deductions were ordered to recover the over payments of the pay and other allowances drawn by the applicant from 8th April, 1985 to 28.2.86 and the applicant was orally informed about the ~~same~~; that the ad hoc promotion of the applicant to LSGrade could be terminated at any time and the reversion of the applicant to his substantive post does not amount to reduction and does not constitute a codified penalty and there is no question of any opportunity of hearing being given to the applicant; that the applicant was due to cross the efficiency bar w.e.f. 1st July, 1980 at the stage of Rs.420/- which has since been crossed and after granting the increments on the 1st day of July, 1980 to 1st July, 1986, his pay has been fixed at Rs.492/- p.m.; that under the scheme for time-bound promotion, the case of the applicant has been sent to the circle office for sympathetic consideration and that the applicant will be getting his due pension and gratuity and the apprehension in the mind of the applicant is incorrect; that the various representations made by the applicant to the departmental authorities are pending consideration by the General Manager, Telegraph U.P. Circle Lucknow.

4. In the rejoinder-affidav-it, filed by the applicant, it is stated that the order of promotion of the applicant in the L.S. grade cadre does not indicate that the applicant was promoted on local and ad hoc basis; that on the date of his

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transfer from Moradabad to Ghaziabad, the applicant was working as HCTRA Unit and he was transferred to Ghaziabad in the same capacity; that the applicant was entitled to draw Rs.560/- p.m. as basic pay at Ghaziabad; that the applicant is not aware of any letter changing his status as LSGcadre officer; that the reduction of his salary and deduction from the salary was illegal, arbitrary and mala fide; that the applicant was due for the time-bound promotion on 30.11.1983 and his case for time-bound promotion was not processed as he was already promoted in the year 1975; that the applicant was promoted by the order of GMT Lucknow on an officiating basis and not on ad hoc basis; that it is wrong to say that the applicant was getting salary at the rate of Rs.492/- p.m. w.e.f. 1st July 1986 and that he had received his last pay on the date of his retirement at the rate of Rs.420/- p.m. only and no gratuity and pension had been paid to the applicant.

5. A supplementary counter-affidavit was filed on behalf of the respondents in which it is stated that the applicant was transferred by the General Manager, TeleCom, U.P. circle Lucknow, out of his parent division upon his involvement in CBI/CPE case; that on his transfer to another division, the applicant was taken on duty as Tele Com Office Assistant( in short TOA) in Ghaziabad Telegraph Engineering Division; that he was paid salary of LSG cadre on the basis of LPC received from DET Moradabad and upon detection of this discrepancy of over payment made to him, recovery from his salary was made; that in the order of transfer issued by the General Manager Tele Com, U.P. Circle Lucknow he was shown as Head Clerk TRA inadvertently and

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and the said mistake has since been reconciled vide corrigendum memo dated 23rd Jan.1987 issued (copy SCA-1) by GMT U.P., Circle Lucknow; that the applicant was posted as Construction Clerk in Ghaziabad Division and he never worked as LSG clerk and this fact is proved from a perusal of various applications filed by the applicant, in which he has described himself as TeleCom Office Assistant (photo copy available as SCAs 4,5,6,8,9,10,11,12,13,14,15,16 and 17).

6. In the supplementary rejoinder affidavit, filed by the applicant, it is stated that no case of CBI/CPE was pending against the applicant and that he was not involved in any such case; that the document annexure SCA-1 is a fabricated document, prepared after this application was filed before the tribunal; that the promotion of Office Assistant is regulated by Rule 272-A(I) of the Post and Telegraph Manual Vol.IV which lays down that promotion to the LSG cadre is to be made in order of seniority and that the applicant's promotion in the year 1975 was a regular promotion and it could not be changed after a lapse of 11 years; that the applicant was posted in the Supervisory grade even after his transfer to Ghaziabad and that respondents forced the applicant that unless he fills TOA against the designation in his pension papers, the same will not be entertained; that annexure SCAs 10 to 13 were prepared by the office of the respondents and all the entries have been made by that office and that he is not responsible for the same. The applicant filed photo copy of a memo dated 16.10.75  
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showing that transfer of Sri S.P.Sinha, LSG Clerk Moradabad Engineering Division to Aligarh Engineering Division and memo dated 16.1.1985 in which Sri Harakh Singh Head Clerk TRA Unit Moradabad was transferred and posted to ... Ghaziabad. Both these orders appear to have been issued from the office of G.M. Tele-Com Circle Lucknow.

7. We have heard the arguments of the learned counsel for the parties and have also gone through the documents on record. Learned counsel for the respondents' main contention is that if any overpayment made to a government servant is dis-allowed by audit, the Accounts Officer will recover the said amount despite any objections from the government servant concerned. The second contention of the learned counsel for the respondents is that the applicant was working as LSG clerk on a purely temporary and ad hoc basis in a local arrangements and he could have been reverted to his substantive post of Tele Com Office Assistant without being given any opportunity.

8. Learned counsel for the applicant contended that the act of the respondents in reducing his salary with effect from March, 1986 and making deductions from his salary was arbitrary and illegal; that the applicant's promotion from 1975 to 1986 was on a regular basis and that he could not be reduced to a lower post. The following case law was cited / on behalf of the applicant;

i) S.N.Misra and another Vs. B.L.Rastogi and others, reported in 1978 Lab.I.C.187. In

this case some railway employees were transferred under the scheme of the divisionalization of the administration necessitating readjustment of employees and in the process of such readjustment, some ministerial staff which had become surplus had been transferred to open line cadre on acceptance of option, <sup>that the</sup> it was held transfers being in the interest of administration, the transferred employees were entitled to carry their seniority in accordance with Art. 311 of the Constitution of India.

ii) Kanti Pd. Palival Vs. State of U.P. and others reported in 1981, U.P. Lab. I C. page 422, in this case, xxxxxxxx the order of termination of the service of a teacher, although the ground of termination was legal, it was held that it was in contravention of provisions of Regulation 4, as the teacher concerned was not given any opportunity of being heard before his termination order was issued.

iii) Dina Nath Sharma and another Vs. Director of Public Relation, H.P., Simla, reported ALR Vol. -16, 1977 page 567. In this case and two other related cases, it has been held that reversion of a government servant on the ground that the appointments were made by mistake without giving the government servant an opportunity of being heard, was violative of the principles of natural justice.

iv) Sayidul Rehman Vs. State of Bihar, AIR 1973 S.C. 239. In this case <sup>an order of</sup> dismissal of a teacher by the Managing Committee of the School was set aside by the President of the Board of Secondary Education, who also directed the Management to pay full salary, dearness allowance and increment from the date of his suspension till the date of reinstatement. The above order was modified on a representation of the Managing Committee without affording the teacher any opportunity of being heard. The Hon'ble Supreme Court has observed that the

unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue effecting the rights of rival contestants.

We are of the opinion that the above mentioned case law and the facts and circumstances of the case give adequate support to the case of the applicant, who continued to work in the higher scale of LSG post from 1975 to the year 1986. It is admitted that the applicant continued to draw salary in the higher scale of pay upto Feb. 1986; that even on his transfer from Moradabad to Ghaziabad the applicant continued to draw pay in the higher scale of pay upto Feb. 1986. It is admitted by the respondents that the reduction in his salary was w.e.f. March, 1986 on the alleged discovery of the fact that the applicant was working in LSG cadre in the Moradabad Division on a purely ad hoc basis and that he was not entitled to draw pay in the LSG cadre. Even after this discovery the DET Ghaziabad did not issue any order in writing giving reasons for reducing the salary of the applicant from Rs.560/- p.m. to Rs.420/- p.m. and making deductions of Rs.200/- p.m. as recovery for the alleged over payment made to him. It has been alleged by the respondents that the applicant was informed about it orally but in view of a specific denial made by the plaintiff in his rejoinder affidavit, it is not possible to place any reliance on the averments of the respondents that any reasons regarding reduction of his salary and deduction from his salary was given to the applicant. However, if for the sake of argument, it is

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accepted that such information was given, the act of reducing the salary and making deductions without giving an opportunity to the applicant was violative of the principles of natural justice and such an order can not be sustained in law.

9. We will now examine the matter of promotion, order dated 16.10.1985 (annexure-1) The order reads as follows:

"In accordance with GMT U.P.Circle Lucknow letter number STB/M-12/5/74/8 dt. 4.9.75, following transfer and posting/ arrangements in the cadre of LSG clerk, are made with effect from 18.10.1975 A/N

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(2) Sri. Harak Singh, Senior Most T.S. clerk TRA Unit Moradabad is hereby promoted as Offg. LSG clerk and posted in TRA Unit Moradabad vice Sri S.B. Sinha LSG clerk with effect from 20th October, 75 fore-noon. His pay will be fixed as per standing rules, orders in forces."

The order clearly states that the applicant was promoted on officiating basis. We are of the opinion that the contention of the respondents that the applicant was promoted on a purely temporary and ad hoc basis is not correct.

10. The respondents have filed copy of an order dated 23.1.1987 (annexure SCA1) which is in the nature of a corrigendum to the memo dt. 16.1.1985 by which the applicant was transferred from Moradabad division to Ghaziabad division and the only correction made by this order is, that the words " HCTRA Unit Moradabad" have been

*bf* *bf* was an illegal order and is therefore, set aside.

modified to the words 'Officiating Head clerk on purely local and temporary and adhoc basis.' This order has been issued long after the applicant had retired from service and long after reducing the salary of the applicant and making deductions from the salary of the applicant. This appears to be an after thought. Respondents have contended by filing photo copies of documents at Annexure SCA 10 to 15 that the applicant has himself admitted that he was working as Tele Com Office Assistant and not as Supervisory Officer and that therefore, he was not entitled to receive salary in the LSG cadre on his posting in the Ghaziabad division. The applicant has contended that he was forced to do so by the respondents to enable him to receive his pension and gratuity benefits. We are inclined to accept the contention of the applicant as the respondents have themselves admitted that the applicant was paid salary of LSG cadre upto Feb. 1986 even after his transfer from *BL* Moradabad to Ghaziabad ~~from~~ <sup>for</sup> the month of April, 1985 to Feb. 1986.

11. We have considered the matter in all respects and we are of the opinion that the applicant who was drawing salary in the LSG cadre for more than 10 years could not be reduced /reverted to a lower cadre without being given an opportunity of being heard. We are also of the opinion that the deduction from his salary could not be made without the applicant having been given opportunity of being heard in the matter. We accordingly hold that the order reducing the salary of the applicant from Rs.560/- p.m. to Rs.420/-p.m. and deduction of Rs.200/- p.m. from his salary w.e.f. March, 1986 *BL* was an illegal order and is therefore, set aside.

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Respondents are directed to restore the pay scale of the applicant and refund the amount deducted from the pay of the applicant from the month of March, 1986 on the ground of alleged over payments made to him from 8th April, 1985 to 28th Feb. 1986. We further direct that the applicant's request for grant of two increments in the LSG cadre and the request for grant of pension and gratuity in accordance with the increased salary may be considered by the respondents under the relevant rules.

The application is disposed of accordingly.  
Parties are directed to bear their own costs.

*Sharma* 30.6.87  
A.M.

*J. M. 30/6/87*

30.6.1987

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