RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THE 6th DAY OF JANUARY 1999

CORAM : HON'BLE MR. S.L.JAIN, J.M.

HON'BLE MR. G.RAMAKRISHNAN, A.M.

O.A.No. 1544 of 1992

O.A.No. 100 of 1993

M.C. Srivastava, Office Superintndent,
Central Government Health Scheme, Allahabad.
S/o Late Sri C.B.P. Srivastava,
R/o 177/6C Rajroopp6r, Allahabad-3.

.... Applicant

C/A Shri A.N. Srivastava, Adv.

Versus

1. The Union of India through the Secretary,
Ministry of Health and Family Welfare, Nirman Bhawan,
New Delhi.

2. The Dire-ctor, Medical and Health Services,
Central Govt. Health Scheme,
Nirman Bhawan, New Delhi.

3. The Additional Director,
Central Govt. Health Scheme,
7, Liddle Road, Allahabad.

..... Respondents

Km. Sadhna Srivastava, Advocate.

S.L.J

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

We proceed to decide O.A.No.1544/92 and O.A.No. 100/93 together for the reason that in both the O.As. the parties are same and in O.A.No.1544/92 the relief to quash the order dated 20.8.92 passed by respondent no.3 is sought while in O.A.No.100/93 the said order dated 20.8.92 was modified vide order dated 18.1.93 and hence relief to quash the order dated 18.1.93 is sought.

2. Both the O.As are under section 19 of the Administrative Tribunal Act 1985 for the relief as under:-

O.A.No.1544/92 :-

(1) To quash the order dated 20.8.92 passed by respondent no.3.
(2) To maintain the status-quo ante as on 4.8.92 and
(3) Cost of the petition.

O.A.No.100/93:-

To quash the order dated 18.1.93 reverting the applicant to the post of U.D.C. from fore-noon of 18.1.93 and further directed that he be paid his salary for the post of Office Superintendent with effect from 18.1.93.

3. There is no dispute between the parties in respect of the following facts:

(i) Th applicant who was workigg as U.D.C., was promoted after departmental promotions committee as Office Superintendent and an order to the same effect was passed on 4.8.92.

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(ii) On 20.8.92 the respndent no.3 Additional Director, Central Government Health Schome, Allahabad modified the promotion retrospectively to ad-hoc promotion.

(iii) On 18.1.93 the said order was further modified and the applicant was reverted to the post of U.D.C.

4. The applicant's case , in brief, is that the Additional Director, Central Government Health Scheme, Allahabad who has modified the order of promotion as without applying the principles of natural justice, passed the order dated 20.8.92. The subsequent order dated 18.1.93 is also challenged on the same grouds along with malafides. The applicant alleges that the post of Office Superintendent is a single post in the said office and hence roster number does not apply to the same.

5. The respondents have not denied the said allegations and stated that the post being single, no roster number does apply and they have moved the superior authorities to reserve the same post. As no response was from the superior authorities, hence the said orders are passed. While D.P.C. was to be performed the applicant was U.D.C. did not put the correct dateas before the D.P.C. which resulted the appointment of the applicant as Office Superintendent when the said facts were correctly brought to the notice of the respondent no.3, the above said orders are passed. Hence prayed for dismissal of the O.A. with costs.

6. The applicant has placed on record the fact that at Allahabad there is one post of Office Superintendent

which is a non selection post (Notification No.12018/37/85-RR/CGHS-1/CGHS(P) Government of India, Ministry of Health and Family Welfare). The learned counsel for the applicant relied on A.I.R. 1967 SC 1269 State of Orissa v. Dr.(Miss) Boenapani Baby and otbrs for the proposition that even administrative orders which involved civil consequences have to be passed consistantly with the rules of natural justice. We agree to the said proposition of law and come to a conclusion that when the applicant was appointed as Office Superintendent vide order dated 4.8.92 subsequent order dated 20.8.92 by which he was ~~discriminated~~ designated to be ad hoc office superintendent is passed without following the principles of natural justice. Such an order cannot be allowed to stand.

7. The learned counsel for the applicant relied on 1992(2) All India Service Journal 420 Sri Jai Narain v. Central Chandigarh/Administrative Tribunal, Chandigarh following the decision of the Apex Court in Chandra Shekhar Paswan State of Behar and others reported in 1988 SCC (L & S) 516 and 1988(2) SCC 214. The Apex Court has enunciated the law in this behalf in the following trms:-

> "17. It is quite clear after the decision in Devdasan case that no reservation could be made under Article 16(4) so as to create a monopoly. Otherwise, it would render the guarantee of equal opportunity contained in Articles 16(1) and 16(2) wholly meaningless and illusory. These principles unmistakably lead us to the conclusion that if there is only one post in the cadre there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacncy in respect of that post. A reservation which would come under Article 16(4)

presupposes the availability of at least more than one post in that cadre."

8. As there being one post question of applying the roster number does not arise. The applicant being senior most U.D.C. and even the D.P.C. has approved his promotion he was posted as Office Superintendent and further orders dated 20.8.92 and 18.1.93 are in violation of principles of natural justice, hence liable to be quashed.

9. In the result both the O.As. are allowed, order dated 20.8.92 passed by respondent no.3 is quashed, status-quo ante as on 4.8.92 in respect of applicant's regular promotion on the post of Office Superintendent is restored, order dated 18.1.93 reverting the applicant to the post of U.D.C. clerk with effect from 18.1.93 is quashed. The applicant is entitled to cost of the litigation which is assessed to Rs.1300/- (Rs.500 and Rs.500/- each O.A. as legal practitioner's fee, Rs.150/- for each O.A. as other expenses.) The amount of the cost shall be paid within one month of service of the copy of the order.

Sd/-
member (A)

Sd/-
member (J)

22/1/96