

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Dated: 31.3.95

Original Application No: 753 of 1994

Vinod Behari Singh,  
S/O Shri Siya Pati Singh,  
Working as Typist, Hindi Cell 1  
B.R.D. Air Force Station, Chakeri,  
Kanpur, R/O 158 B Khewara Azad Nagar,  
Kanpur.

.... Applicant.

By Advocate Shri R.P.Singh

Versus

1. Union of India through the Secretary,  
Ministry of Defence, New Delhi.
2. The Officer 1/C Personnel Air H.Q.,  
Vayu Bhawan, New Delhi - 110 001.
3. The Officer 1/C Hindi Cell H.Q. Maintenance  
Command Indian Air Force, Nagpur-440007.
4. The Commanding Officer B.R.D. Air Force,  
Chakeri, Kanpur - 08.

.... Respondents.

By Advocate Shri N.B.Singh.

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C O R A M

Hon'ble Mr. T.L.Verma, Member-J  
Hon'ble Mr. S.Dayal, Member-A

O R D E R

By Hon'ble Mr. T.L.Verma, Member-J

The applicant was initially appointed  
as Luscar under the control of the Commanding  
Officer B.R.D. Air Force Chakeri, Kanpur. One  
vacancy of Hindi Typist was released by Air

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Head Quarters (V.B.) vide their letter No. A.I.R. HQ/23030/293/PC-3 dated 8.7.93 wherein eligible employee from Group 'D' was to be promoted. Selection was to be made through a departmental examination confined to such Class IV employees who fulfil the requirement of minimum educational qualification, <sup>i.e.</sup> Matriculation or equivalent and subject to the condition <sup>50 years</sup> of the maximum age limit and 5 years experience in Class IV post.

2. Six departmental candidates including the applicant applied for the post. The Selection Board held the test of eligible candidates. Such of those, who qualified in the Hindi written test, Hindi Typing test, were called for interview. The Board, thereafter, prepared merit list (Annexure A-4) and placed the applicant at Sl. No. 1 by virtue of his having secured the highest marks. He was, accordingly, selected and appointed as Hindi Typeist w.e.f. 17.1.94 in the scale of pay of Rs. 950-1500/- vide order (Annexure A-5). Another order (Annexure A-7) was passed on 2.2.94 whereby his pay in the scale of Rs. 950-1500/- was fixed at Rs. 950/- and he was authorised to draw D.A., HRA, CCA etc. as admissible and he was also allotted pass No. CSP/694. His name was ordered to be struck off the strength of Group 'D' w.e.f. the date of his appointment.

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3. It is stated that one Smt. Laxmi Devi sent a representation to the Air M. Chief of the Staff alleging that her husband who is working as Luscar and is senior to the applicant has been wrongly superceded. The Air M. Head Quarter, on a consideration of the representation filed by Smt. Laxmi Devi Wife of Shri N.P.Tripathi, Luscar, ordered that the applicant be reverted as Luscar and Shri N.P.Tripathi Luscar be considered for the promotion of Hindi Typest and issued further directions to hold inquiry and initiate disciplinary action against the persons responsible for wrong selection of candidate by order dated 11.4.94 (Annexure A-1). The impugned order, whereby the applicant has been ordered to be reverted to the post of Luscar, has been assailed on the ground that the same is illegal, void and against the principle of natural justice, and hence, filed this application for quashing order No. 5901/8/1/PC dated 11.4.94 whereby he has been ordered to be reverted to the post of Luscar and <sup>for</sup> issuing direction to the respondents to allow the applicant <sup>to continue</sup> on the post of Hindi Typest to which he has been promoted.

4. The claim of the applicant has been resisted by the respondents. In the written reply filed on behalf of the respondents, it has

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been stated that according to the guidelines issued, promotion to the post of Hindi Typist was to be made not on the basis of securing highest marks but on the basis of seniority and that by mistake, the applicant who is admittedly, junior to Shri Tripathi was promoted by mistake. The order reverting him was passed to rectify the administrative error committed in promoting the applicant.

5. We have heard the learned counsels for the parties and perused the record. Guidelines issued for making the appointment against the post of Hindi Typist have been filed by the applicant as well as the respondents and have been marked as Annexure A-2 and CA-1 respectively. It is not disputed that the applicant fulfils the eligibility conditions for promotion to the post of Hindi Typist. From the guidelines (Annexure A-2) and CA-1) it is clear that promotion to the post of Hindi Typist was to be made by selection by a duly constituted Selection Board. From terms of reference (Annexure-A-3) the candidate(s) are required to appear at the written test in Hindi, Hindi Typing Test and the candidates who are declared successful in written/Typing test will appear for interview before the Board. The Board was required to



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recommend a suitable person for appointment/  
promotion as Hindi Typist. So, we are of  
the view that the Post of Hindi Typist was a  
selection post and to be filled up on  
promotion from among the Class IV employees.  
That being so, the merit would supercede  
seniority. In that view of the matter, the  
appointment of the applicant by promotion  
nonwithstanding seniority of Shri N.P.Tripathi  
in our opinion, cannot be faulted.

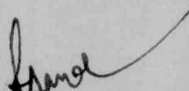
6. The learned counsel for the respondents  
stressed that the impugned order cannot be  
interfered with because the appointment of the  
applicant was made on the <sup>basis of the</sup> examination in which  
number of irregularities were committed, which  
has completely vitiated the examination. We  
are unable to accept this contention because  
the learned counsel has not been able to show  
anything as may have then a ~~semblance~~ of  
irregularity in the  
/conducting of the examination. Not only that the  
applicant has annexed note given by Group  
Captain Commanding Officer (Annexure A-10)  
in which it has been stated that the selection  
made by an independent Board was just and  
fair and that the candidate who secured  
maximum marks was given appointment to the  
post of Hindi Typist.

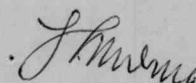
7. In addition to the above, counsel for the applicant has referred to the decision of the Supreme Court in Shrawan Kumar Jha & Ors. Vs. State of Bihare reported in 1991 SCC (L & S) 1078 and has urged that the applicant was entitled to opportunity of hearing before cancelling his appointment and reverting him to the post of Luscar. The applicants in the case before the Supreme Court were appointed as Assistant Teachers by the District Superintendent Education Dhanbad. The appointments, however, were cancelled by the Deputy Development Commissioner. The order, cancelling the appointment was questioned before the Supreme Court. The Supreme Court in the said case held that the appellants should have been given an opportunity of hearing before cancelling their appointments. As no opportunity was given, the order cancelling the appointments was quashed. In the instant case also, the appointment/promotion of the applicant has been cancelled without giving an opportunity of hearing to him. It is well settled that no order to the detriment of the applicant could be passed without complying the Rule of natural justice.



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8. In view of the above, we set aside the impugned order reverting the applicant to the post of Luscar. The applicant is entitled to pay and allowances for the entire period from the date of his promotion. The respondents are therefore, directed to pay the arrear of pay and allowances to the applicant if he has not been paid the same during the pendency of this application. There will be no order as to costs.

  
Member-A

  
Member-B

/jw/