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[OPEN COURT]

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 20th DAY OF DECEMBER, 2012)

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

ORIGINAL APPLICATION NO. 1037 OF 2007
(U/S 19, Administrative Tribunal Act, 1985)

Abdul Rahim, S/o Late Abdul Khalil, Helper-II Ticket No.259 N.E.
Railway Diesel Loco Shed Izatnagar Bareilly-243122.

.....Applicant

V E R S U S

1. Union of India through the General Manager, N.E. Railway Head Quarter Gorakhpur, U.P.
2. The Divisional Railway Manager, (D.R.M.) N.E. Railway Izatnagar Bareilly.
3. The Sr. Divisional Personnel Officer, N.E. Railway Izatnagar, Bareilly.
4. The Sr. Divisional Mechanical Engineer/Diesel N.E. railway, Izatnagar, Bareilly.
5. The Sr. Divisional Mechanical Engineer/Diesel N.E. Railway, Gonda, U.P.

.....Respondents

Advocates for the Applicant:-

Shri R. C. Pathak.

Advocate for the Respondents:-

Shri P. N. Rai.

ORDER

1. Ch By. Hon'ble Mr Sanjeev, Kaushik, Member J. T. Ch

The present Original Application has been filed under section

19 of the Administrative Tribunals Act, 1985 whereby applicant
impugned the orders dated 13.06.2006 & 01.06.2005 (Annexure-A-1

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& A-2) by which the applicant has been reverted from the post of Diesel Helper Khalashi in the pay scale of Rs.2650-4000/- to the post of Helper-II in the pay scale of Rs.2550-3200/-.

2. The applicant was given appointment on compassionate grounds as Khalashi due to demise of his father, actually he joined the services on 19.04.1993. Thereafter, the applicant appeared in the test conducted by respondent No.5 for the promotion to the post of Diesel Helper Khalashi in the pay scale of Rs.2650-4000/-. The respondents declared the result on 07.05.2002 wherein the applicant has been declared successful and accordingly, he was promoted as Diesel Helper Khalashi on 27.06.2002 in the pay scale of Rs.2650-3200/- (Annexure-A-4). It is averred that applicant moved an application for his mutual transfer with one Shri Sanjay Srivastava who was working as Diesel Helper-II, Diesel Shed, N.E.Railway, Izatnagar Bareilly (Annexure-A-5). Considering the application of the applicant respondents passed order, whereby the applicant was relieved to join his duties at new place of posting at Izzatnagar. He joined his duties on 21.10.2002. Thereafter, the applicant is getting regular pay on the promotional post in the pay scale of Rs.2650-4000/-. Subsequent to that it is averred that the respondents have passed the orders on 13.06.2006 & 01.06.2005 (Annexure-A-1 & A-2) whereby the applicant has been reverted and his pay has been re-

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fixed, both the orders have been impugned in this O.A.

3. Pursuant to notice respondents represented through Shri P. N. Rai, who filed Counter Affidavit, in which he averred that on the applicant's application for mutual transfer the applicant has been transferred on the post which was hold by Shri Sanjay Srivastava and when the order of transfer was issued it was not in the knowledge of the respondents that the applicant has already promoted to the higher pay scale i.e. 2650-4000/-, thereafter, when the above mistake came into the knowledge of the respondents then immediately the impugned order of reversion and re-fixation of pay has been passed.

4. The applicant has also filed Rejoinder Affidavit.

5. We have heard Shri R. C. Pathak, learned counsel for applicant and Shri P. N. Rai, learned counsel for respondents.

6. Shri Pathak, submitted that once the applicant has already been promoted to the post which carrying the higher pay scale then respondents cannot revert and re-fix his pay in the lower pay scale without even complying with the principle of natural justice, therefore, the impugned order is bad. In this regard he placed reliance on the following judgments:-

1. Union of India and Ors. Vs. C. N. Ponnappan
reported in (1996) 1 SCC 524.

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2. Scientific Advisor to Raksha Mantri and anr. Vs. V. M. Joseph reported as (1998) 5 SCC 305.

6. On the other hand, Shri Rai submitted that there is no need for issuing show cause notice to the applicant before passing the impugned order of reversion on the ground that once the applicant has already been mutually transferred then he will get the corresponding pay scale to the post to which he has been transferred.
7. We have considered the rival submissions and have gone through the pleadings available on record.
8. Admittedly, the applicant was promoted to the post of Diesel Helper Khalashi in the pay scale of Rs.2650-4000/- by order dated 27.06.2002. Subsequent to that he moved an application for his mutual transfer (with one Shri Sanjay Srivastava who was holding the post of Diesel Helper-II at Bareilly) his application was accepted and he was relieved vide order dated 19.10.2002 (Annexure-A-5) consequent to which he joined at Izzatnagar on 21.10.2002 and he was regularly given the pay in the same pay scale which he was getting prior to his transfer. We have repeatedly asked for production of the order by which the applicant has been reverted to the lower post and his pay has been re-fixed from pay scale of Rs.2650-4000/- to the pay scale of Rs.2550-3200/-, but neither the counsel for respondents nor the applicant has produced this.

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9. Admittedly, no notice has been issued to the applicant before passing the order of revision as well as before re-fixing his pay to the lower pay scale which is in violation of principle of natural justice. It is settled preposition of law that no adverse order can be passed without firstly issuing the notices to the person concerned. Reliance is placed on Hon'ble Supreme Court in the case of State of Orissa Vs. Binapani Dei AIR 1967 SC 1269 wherein their Lordships of the Hon'ble Apex Court has held as under:-

"9.....An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in a position of a judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the

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rule of law and importance thereof transcends the significance of a decision in any particular case."

"12. It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why April 16, 1907, should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even a administrative order which involves civil consequence, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence." No such steps were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State."

Sahara India (Firm), Lucknow Versus Commissioner of Income Tax, Central-I and another-(2008) 14 Supreme Court Cases 151; Harbanslal Sahnia and another Versus Indian Oil Corporation Limited and others-(2003) 2 Supreme Court Cases 107; Sidheshwar Sahakari Sakhar Karkhana Limited Versus Union of India and others-(2005) 3 Supreme Court Cases 369; and ABL International Limited and another Versus Export Credit Guarantee Corporation of India Limited and others-(2004) 3 Supreme Court Cases 553. All these decisions have a single underlying theme that even a pure administrative act that entails civil consequences shall be addressed with reasonableness and rules of natural justice would require a right of hearing by application of the principle of audi alteram partem. This fundamental breach partakes the character of violation of fundamental right. Principle of natural justice flow from rule which have been laid down by the Courts as being the minimum protection of the rights of the

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individual against the arbitrary precedence that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those right. These rules are intended to prevent such authority from doing injustice."

10. Considering the above facts, we are of the considered view that before passing the order of reversion and re-fixation of pay to a lower scale respondents have not given any notice to the applicant, therefore, the same cannot sustain in the eye of law and following the principle of *audi alteram partem* this Original Application is allowed and the impugned orders dated 13.06.2006 & 01.06.2005 (Annexure-A-1 & A-2) are set aside, and the matter is remitted back to the respondents to reconsider the entire matter. Since the applicant has already been promoted to the higher post, it is incumbent on the respondents to fix the pay of the applicant on the higher pay scale. In case the transfer of the applicant is contrary to the policy then, as once the applicant has already promoted and given the higher pay therefore, he will be granted the pay scale which he was drawing earlier. This case shall not be considered as a precedent for others.

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Member - A

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Member - J