

RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 19 day of 2, 2010

Present:

HON'BLE MR. A. K. GAUR, MEMBER- J

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER- A.

ORIGINAL APPLICATION NO. 305 OF 2007.

Navi Hussain, S/o Late Mohd. Hussain, R/o Mohalla Brahmpur,
P.S. Kotwali, District Badaun, presently working as a Helper
Khalasi II, under Sr. Section Engineer (Works), Badaun.

.....Applicant.

V E R S U S

1. Union of India through the General Manager, N.E. Railway,
Head Quarter, Gorakhpur.
2. The Divisional Railway Manager, N.E Railway Izatnagar,
Bareilly.
3. The Assistant Divisional Engineer (Line), N.E. Railway,
Izatnagar, Bareilly.
4. The Sr. Section Engineer (Works), N.E. Railway Badaun.

.....Respondents

Present for the Applicant: Sri A.D. Singh

Present for the Respondents : Sri P.N Rai

O R D E R

BY HON'BLE MR. A.K. GAUR, J.M.

By means of this Original Application, applicant has claimed
following main relief/s:-

- “(i) To issue a suitable order or direction by way of
certiorari quashing the impugned order dated
18/27.11.2004 issued by the respondent NO. 3,
shown as Annexure No.A-I to this Original Application
in Compilation No.1.

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- (ii) To issue a suitable order or direction by way of mandamus directing the respondent NO. 3 to promote the applicant on the post of Helper Grade I in the pay scale Rs.2650-4000 w.e.f 18/27.11.2004.
- (iii) To issue a suitable order or direction by way of mandamus directing the respondents 2 and 3 to refund the recovered amount every months from the salary of the applicant w.e.f. 5.10.2002 with 18% penal interest".

2. The applicant was initially appointed as Carpenter on 26.2.1987 in the pay scale of Rs. 750-940. Subsequently, he was promoted to the post of Helper Grade II in the pay scale Rs. 2550-3200 and thereafter he was further promoted on the post of Helper Grade I on 5.10/11.2002 in the pay scale of Rs. 2650-4000 by the respondent NO. 3 (Annexure A-2). Consequently Respondent No. 2 passed an order dated 18/27.11.2004 reverting the applicant from the post of Helper Grade - I (Rs. 2650-4000) to Helper Grade II (Rs.2550-3200) on the basis of information that a case had been registered against the applicant under 3 RPUP Act on 15.09.1998 (Annexure A-1). In pursuance of impugned order dated 18/27.11.2004, respondents are started recovery to the tune of Rs. 300/- per months from the salary of the applicant. Applicant made a representation dated 1.12.2004 to the respondent No.2 for cancellation of revision order dated 18/27.11.2004 (Annexure A-5). Applicant made several reminders to the respondents for cancellation of reversion order and stoppage of recovery but respondents have not paid any heed to the request made by the applicant.

3. By filing counter reply, respondents have submitted that promotion order had been issued without taking in the knowledge that a case had been registered against the applicant under 3

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RPUP Act on 15.09.1998. As soon as it came to the knowledge, the reversion order has been issued. Respondents submitted that applicant did not bring to the knowledge of administration that a case was registered under 3 RPUP Act. Respondents further stated that no representation has been received and if applicant has filed any representation, it is the duty of the applicant to prove his statement. It is further stated that as a result of reversion, some deduction was to be made from the salary of the applicant, which have been made.

4. Applicant has filed rejoinder affidavit denying the facts enumerated in the counter affidavit and submitted that the applicant's pay cannot be reduced without issuing any show cause notice and affording any opportunity of hearing. According to the applicant, the Competent Authority was verbally informed that a case under 3 R.P.U.P Act was registered against the applicant on 15.9.1998, wherein the applicant was arrested and released on bail on 22.9.1998, but the respondent NO. 3 passed reversion order without show cause notice and opportunity of hearing after a lapse of six years arbitrarily without application of mind.

5. By filing Supplementary Counter Reply, respondents further submitted that it was in the knowledge of the applicant that a case under 3 RPUP Act had been registered against him on 15.9.1998, still he left an application for leave from 17.09.1998 to 22.9.1998 which was sanctioned on 05.10.1998. However, as soon as it came to his knowledge that he is an accused in a case of 3 RPUP Act, the applicant abstented from duty, and did not bring this fact to the knowledge of the department. However, as soon as he was released

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on bail on 22.09.1998, he presented himself in the office for duty on 23.09.1998.

6. We have heard Shri A.D. Singh, learned counsel for the applicant and Shri P.N Rai, learned counsel for the respondents.

7. Learned counsel for the applicant argued that the respondents have arbitrarily issued reversion order and the action of the respondents in making recovery of amount without issuing any show cause notice or opportunity of hearing to the applicant is not according to law. Learned counsel for the applicant further argued that applicant had represented to the respondent NO.2 for cancellation of reversion order, but the answering respondents failed to decide the representation of the applicant till filing of the O.A. He has further stated that at the time of promotion of the applicant on the post of Helper Grade I no Disciplinary proceedings were pending against the applicant. The reversion of the applicant is clearly violative of principle of natural justice and fair play. In support of his case, the applicant has placed reliance on the following decision of Hon'ble Supreme Court:-

- (i) **2003 SCC (L&S) 103- Prithipal Singh Vs. State of Punjab**
- (ii) **2007 (1) SCC (L&S) 444 - Inderpreet Singh Kahlon and others Vs. State of Punjab.**

8. Learned counsel for the applicant would further contend that the applicant has not at all concealed any material fact from the notice of the respondents. Learned counsel for the applicant further contended that the recovery of amount which has been paid to the applicant for the promotional post is also against the Rules because the applicant has already shouldered the higher

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responsibility of the promotional post and in lieu thereof he was paid the pay scale of the said post.

9. Learned counsel for the respondents argued that it was the duty of the applicant that as soon as he was taken under custody of the RPF he should have informed the administration, intimating all the facts of the case which the applicant failed to do so. After the knowledge of pendency of criminal case, respondents have rightly passed the impugned order reverting the applicant from the post of Helper Grade I to Helper Grade II.

10. We have carefully examined the record of the case and the arguments advanced by the parties counsel. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we are firmly of the view that the reversion of the applicant from the post of Helper Grade I (Rs. 2650-4000) to Helper Grade II (Rs.2550-3200) is clearly violative of principle of natural justice and fair play.

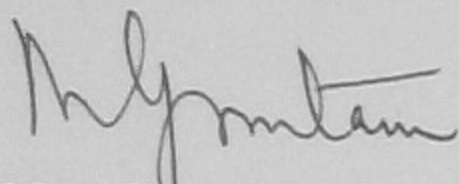
11. We may observe that decision rendered by Hon'ble Supreme Court reported in *1986 SCC (L&S) 745 – Smt. Rajinder Kaur Vs. State of Punjab and another* and *2000 (2) E.S.C 932 (S.C.) – V.P. Ahuja Vs. State of Punjab and others* are fully applicable to the facts of the present case. In our considered opinion, the order of reversion cannot be passed after a lapse of several years without affording any opportunity of hearing or show cause.

12. In the instant case, admittedly the applicant has not been afforded any opportunity of hearing before passing the reversion order dated 18/27.11.2004, which is totally in violation of principle

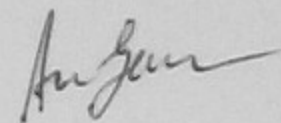
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of natural justice and fair play and in any view of the matter, the order of reversion cannot be sustained in the eye of law.

13. In our view of the aforesaid observations, O.A. is allowed. Order dated 18/27.11.2004 is hereby set aside. Respondents are directed to refund the amount already recovered from the salary of the applicant. It is, however, open to the respondents to proceed with the matter in accordance with the provision of law. No costs.



Member (A)



Member (J)

Manish/-