

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.492 of 1989

Date of Decision: 22.9.92

Versus

Union of India & Others Respondents

For the applicant Mr. Antaryami Rath,
Advocate

For the respondents Mr. P. N. Mohapatra,
Standing Counsel (Central)

For the respondent No.4 Mr.A.K.Mishra,
Standing Counsel (Central)

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THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order No. 9/DPC/1989 dated 27.3.1989 contained in Annexure-3 and order No. 10/DPC/1989 dated 27.3.1989 contained in Annexure-7 and to issue directions to the opposite parties to allow the petitioner to continue in the promotional post as a Superintendent in the Office of Collector, Central Excise and Customs, Bhubaneswar and to allow the petitioner all service benefits including pay and allowances from 27.3.1989 onwards and to fix his seniority accordingly.

2. Shortly stated the case of the petitioner is that while working as a Deputy Office Superintendent (Level-I) in the Office of the Collector, Central Excise and Customs, Bhubaneswar, two posts of Office Superintendent fell vacant as a result of which on the recommendations of the D.P.C. held in the first half of the year, 1988, eligible officers were considered for promotion to the post of Office Superintendents which include M/s. P.K.Rao, against Sl.No.1, Narayan Sarangi, against Sl.No.2 and the present petitioner Shri S. Paramanik, against Sl.No.3. According to the petitioner among the eight officers, two officers viz. M/s. Narayan Sarangi and S. Paramanik, were selected and recommended by the D.P.C. against said two vacancies. The Collector, Customs accepted the recommendations of the D.P.C. and appointed/promoted the petitioner Shri S. Paramanik vide Annexure-2 dated 13.6.1988 to the post of Superintendent on officiating basis. Vide Annexure-3 dated 27.3.1989, the

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petitioner was reverted to the post of Deputy Office Superintendent (Level-I) as Shri P.K.Rao was promoted to the post of Superintendent in the same office on the recommendation of a reviewed D.P.C. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties nos. 1 to 5 maintain that as per the Recruitment Rules 1973, the post of Office Superintendent being a selection post was to be filled up by promotion from the grade of Deputy Office Superintendent (Level-I) with three years service experience in the feeder grade. During the year 1984, there was no eligible candidate in the feeder grade for promotion to the post of Superintendent hence ~~relaxation~~ was sought for and the Central Board of Excise & Customs, New Delhi vide Annexure-R/2 dated 27.6.1984 agreed as a special case that the vacant posts in the grade of Office Superintendent may be filled up purely on adhoc basis by reducing the eligibility period of qualifying service by one year in the grade of Deputy Superintendent (Level-I) subject to the condition that the adhoc promotees be regularised on completion of the prescribed minimum qualifying service in terms of the rules. Basing on this circular OP No.6, i.e. Shri P.K.Rao was promoted to the grade of Office Superintendent on adhoc basis with effect from 23.12.1984, and during the year 1985, according to the availability of eligible candidates in the feeder grade, D.P.C. was held on 21.5.1985. Shorn of other unnecessary details in this regard stated in the counter, finally it is stated that the D.P.C. was held on 31.5.1985 to consider

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the cases of eligible officers including OP No.6, Shri P.K. Rao and the petitioner for promotion to the post of Office Superintendent. On the recommendation made by this particular D.P.C., the petitioner Shri S. Paramanik was promoted to the grade of Office Superintendent and consequently Shri P.K. Rao, who was continuing on adhoc basis was reverted vide order dated 13.6.1988. Shri Rao preferred an appeal to the Central Board of Excise & Customs. According to the decision of the Board, a review D.P.C. was convened and on the recommendation of the said D.P.C., Shri P.K.Rao (OP No.6) was declared to have been appointed to officiate as Office Superintendent with effect from 30.9.1986 and therefore there being no more vacancy in the grade of Office Superintendent, Shri Paramanik, the junior most officer Superintendent was reverted. Hence no illegality has been committed by the competent authority and the case being devoid of merit is liable to be dismissed.

4. OP No.6 (Shri P.K.Rao) in his counter has practically taken the same stand and it is maintained by him that as per the recommendation of the Review D.P.C., he has got promotion which should not be disturbed - rather it should be confirmed.

5. We have heard Mr. Antaryami Rath, learned counsel for the petitioner and Mr. P.N. Mohapatra, learned Standing Counsel and Mr. A.K. Mishra, learned Standing Counsel - both appearing for different opposite parties on the merits of the case.

6. The main issue to be decided in this case is as to whether reversion of the present petitioner is legal and sustainable. In paragraph-4/C it is stated by the petitioner that for the purpose of selection of two officers for the

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two vacant posts of Office Superintendent, eight officers have to be considered and accordingly eight officers were considered in the first half of the year 1988 - they are M/s. P.K.Rao (OP No.6), Narayan Sarangi, S.Paramaink(the petitioner), D.P.Mohanty, B.C.Bhera, Mr.Abdul Jamil and R.C.Das. It is further stated by the petitioner in the same paragraph that from amongst these eight officers D.P.C. found M/s.Narayan Sarangi and S.Paramanik(Sl.No.2 and 3) to be fit for promotion and obviously Shri P.K.Rao placed in Sl.No.1 was not found to be fit as a result of which both Shri Narayan Sarangi & S.Paramanik got promotion. This important fact has not been denied in the counter except that it is stated that Shri P.K.Rao was reverted after these two persons got promotion and Shri P.K.Rao again got promotion to the same post after directions were received from the Central Board of Excise and Customs to hold review D.P.C. which was held and Shri P.K.Rao having been found fit was given promotion and consequently the petitioner was reverted.

7. After giving our anxious consideration to the arguments advanced at the Bar, we are of opinion that once a regular D.P.C. held in the year 1988 did not find Shri P.K. Rao to be suitable and he was superceded by Shri Narayan Sarangi and S.Paramanik, it is not known how and for what reason another D.P.C. was held, subsequently and Shri P.K. Rao was found to be fit. No reasons have been assigned to indicate the grounds which persuaded the Central Board to allow the representation of Shri P.K.Rao and the reason for which the reviewed D.P.C. found Shri Rao to be suitable

for a period for which he had been found to be not suitable. We are of further opinion that once a particular D.P.C. had considered cases of several officers including the case of the petitioner and Shri P.K.Rao (OP No.6) and the petitioner having been found to be suitable, directions for holding a review DPC to consider the case of Shri Rao does not arise, especially because he was not found to be suitable and therefore we are of further opinion that neither such a direction is sustainable nor the recommendation of the 2nd DPC should ~~not~~ have been acted upon, because no reasons have been given as to how Shri Rao could be found fit for the same period at a subsequent stage. This is against all canons of justice, equity and fair play. We are of further opinion that principles of natural justice have been clearly violated in the present case. Admittedly regular promotion was given to the petitioner and before depriving him of the promotional post, adequate opportunity should have been given to the present petitioner calling upon him to have his say in the matter failing which principles of natural justice has been violated. Our views gain support from the judgment of the Hon'ble Supreme Court reported in 1988 (Vol-27) Pt. II All India Services Law Journal 105 (K.I.Sephard & others etc.etc. v. Union of India & Others). Hon'ble Mr. Justice R.N. Misra (as my Lord the Chief Justice of India then was) speaking for the Court was pleased to observe as follows :

" On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing on enquiry (if one is

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held): and (c)effectively to prepare their own case and to answer the case(if any) they have to meet. x x x We are of the view that rules of natural justice apply to administrative action."

8. Applying the principles laid down to the facts of the present case, we are of opinion that principles of natural justice have been violated and for the aforesaid reasons the reversion of the petitioner to the post of D.O.S. (Level-I) is illegal. Hence the order contained in Annexure-3 dated 3.11.1988, reverting the petitioner Shri S.Paramanik to the grade of Deputy Office Superintendent Level-I and promotion of Shri P.K.Rao to the grade of Deputy Office Superintendent are hereby quashed and furthermore the promotion of the petitioner Shri S.Paramanik contained in Annexure-2 dated 13.6.1988 is hereby restored. The petitioner will not be entitled to the pay scale of Office Superintendent from the date of reversion till he joins the post of Office Superintendent.

9. This judgment should be given effect to within seven days from the date of receipt of a copy of the judgment failing which it will be deemed to have been given effect to, on the seventh day from the date of receipt of a copy of the judgment by the Collector, Central Excise and Customs, Bhubaneswar and the petitioner will be entitled to the pay scale in respect of the promotional post with effect from such date. Thus the application is accordingly disposed of. No costs.



MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack

22.9.1992. /Sahoo/

VICE-CHAIRMAN

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