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ORDER DT. 24.1.2001.

Heard Mr. K. C. Kanungo, learned counsel for the Applicant and Mr. A. K. Bose, learned Senior Standing counsel appearing for the Respondents. In this Original Application, the applicant has prayed for quashing the order dated 17-8-2000 (Annexure-4) and also for a declaration that his promotion to the post of U.D.C. and his continuance is legal. By way of interim relief, the applicant has prayed that during the pendency of this Original Application, operation of the order at Annexure-4 should be stayed. In order dated 21-8-2000, by way of interim relief, it was ordered that till 12.9.2000, operation of the order at Annexure-4 is stayed in case the applicant had not actually been reverted by 21.8.2000 to the post of L.D.C. This order has continued till **date**.

2. Respondents have filed counter opposing the prayer of the applicant and applicant has filed rejoinder.

3. Facts of this case are not in controversy. Learned counsel for the applicant has relied on the decision of the Honourable Supreme Court in the case of K. I. Shephard v. Union of India and others reported in AIR 1988 SC 686 which has also been gone through.

4. Admitted position is that the applicant was working as L.D.C. in the office of the Director, Regional Medical Research Centre, Chandrasekharpur, Respondent No. 2. In order dated 2.12.1994 he was promoted to the post of U.D.C. on the recommendation of the Departmental Promotion Committee and he joined as such on 5.12.1994 and continued in the post of UDC. Respondents have stated that it came to their notice that on the date of recommendation of the DPC and

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also on the date of promotion of the applicant there was no post of U.D.C. available against which the applicant could have been promoted. They have also indicated that even at present there is no post of U.D.C. against which the applicant can be adjusted. Respondents have mentioned that the applicant is the seniormost L.D.C. amongst the unreserved category of LDCs. In view of the fact that there is no post against which the applicant can work as UDC, Respondents have stated that they have rightly reverted the applicant to the post of L.D.C. It is further averred that as the reversion of the applicant has been done in order to correct a fault committed by the Office and not because of any lapse committed by the applicant, even though promotion order dated 2.12.1994 has been cancelled in order dated 17.8.2000, Respondents have decided not to recover the amount which has been paid to the applicant during the period from December, 1994 to August, 2000. It has been further stated that in the meantime the applicant has already been given the scale of U.D.C. i.e. the scale which he was enjoying prior to issuance of the order at Annex.4 under ACP scheme, i.e. the scale of Rs. 4000 - 6000/- Applicant has also been put in the scale and therefore, the Respondents have stated that they have taken all steps to protect the interest of the applicant. They have further indicated that in the next available vacancy of UDC in unreserved category, the case of the applicant will be considered. Learned counsel for the applicant has challenged the order at Annexure-4 mainly on three grounds.

5. The first ground urged by him is that he has worked for about six years in the post of

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U.D.C. and has thus acquired a right to that post. As there is no vacant post of U.D.C. now or even the time when the applicant was promoted he could not have acquired any right to hold any particular post. This contention, is therefore, held to be without any merit and is rejected.

6. The second contention of the applicant is that by this order at Annexure-4 adverse consequences has resulted to him and therefore, going by the established law on this point, before such order a show cause notice should have been given to him.

7. The third point of the learned counsel for the applicant which is linked up with the second point is that even though the applicant has been put back in the scale of UDC in **Rs. 4000-6000/-** he scale which was enjoying prior to issuing of the order of reversion at Annexure-4 in the process of pay fixation he is suffering substantial loss. More particularly, it has been mentioned that for his work in the post of U.D.C. for about six years, he has earned increments and he was getting **Rs. 6010/-** as pay plus D.A. After he was granted the same scale of **Rs. 4000-6000/-** under the ACP scheme, the increments drawn by him has not been taken into account and his pay has been fixed as if he has been given the scale of **Rs. 4000/-** afresh and his pay has accordingly been fixed at **Rs. 5658/-**. Thus, resulting in a loss of little over **Rs. 500/- p.m.** These two contentions of learned counsel for the petitioner have ^{up} been taken together. It is no doubt true that in case of any administrative order which results any adverse consequences a show cause notice has to be given. This has been laid down by the Apex court

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in a series of decisions and learned counsel for the petitioner has referred to one of them and we have also perused the same. The purpose of granting such hearing is with the objective of giving an opportunity to the applicant to explain any deficiency or mistake on his part. In the instant case admittedly the reversion order has been passed not because of the fault or deficiency on the part of the applicant but because of the mistake on the part of the Respondents for wrongly taking into account one vacancy unreserved in the cadre of UDC when in fact such a vacancy was not there. In consideration of this fact we hold that not granting an opportunity to the applicant for showing cause against the order would not vitiate the order in view of the circumstances which have compelled the Respondents to issue that order.

8. As regards the other point about loss of the applicant in the matter of fixation of his pay in the scale of Rs. 4000-6000/- granted to him under ACP scheme we note that under the ACP scheme granting of next higher scale to a person who has completed the required period of service in the lower scale is not by way of promotion to the next higher scale. The scheme specifically provides that this granting of higher scale need not be considered as promotion and the person who has been granted the higher scale would have to wait for his turn for being promoted strictly in accordance with rules. As this granting of the scale of UDC to the applicant is not by way of promotion of the applicant to the post of UDC we are not inclined to direct that the pay which the applicant was getting as UDC prior to his reversion

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should be protected on his getting the same scale under the ACP scheme. The ACP scheme has been introduced recently and all the aspects of the scheme are yet to be finally set out by the appropriate authority. In view of this, we direct the Respondents to consider the question of protecting the pay which the applicant was getting as UDC on his being granted the same scale under the ACP scheme. If necessary the Respondents should consult the appropriate ministry and take a view in the matter within a period of 120 days from the date of receipt of a copy of this order.

9. In view of our above discussions and directions we do not find any reason to strike down the order at Annexure-4. This prayer is accordingly rejected. Interim order of stay is vacated.

10. In the result, therefore, the OA is disposed of with the observations and directions made above. No costs.

John Mathew
VICE-CHAIRMAN
27.1.2001

John Mathew
MEMBER (JUDICIAL)

Case Records received
to-day viz on 16.1.2001.
B.R.

Free copies of order
denial order H241/01
given to both sides.

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16/01/01

John Mathew
KNM