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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.269/2001

Cuttack, this the 26th day of May, 2004

D. Umapati ..... Applicant

Vrs.

Union of India & Others ..... Respondent

FOR INSTRUCTIONS

(1) Whether it be referred to the Respondents or not?

(2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

  
( M.R. MOHANTY )  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.269/2001

Cuttack, this the 26<sup>th</sup> day of May, 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
&

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

D. Umapati, aged about 42 years, S/O: Late D. Bhagirathi, Permanent resident of working Upper Division Clerk in the Head Quarter Army Air Defence College, At: Gopal Military Cantonment, P.O. Golabandha, Via: Gopalpur Sea, Dist: Ganjam-761052.

..... Applicant.  
By the Advocate(s) ..... Mr. R.B. Mohapatra

-Vs-

1. Union of India, represented by its Secretary Govt. of India, Ministry of Defence (Army) Army Head Quarter, P.O., New Delhi.
2. Director General of Air Defence Artillery (ADA-3), General Staff Branch, Army Head Quarter, D.H.Q. New Delhi-110011.
3. Commandant, Army Air Defence College, At: Gopalpur Military Cantonment, P.O. Golabandha, Via- Gopalpur Sea, Dist-Ganjam-761052.

..... Respondent(s)  
By the advocate(s) ..... Mr. A.K. Bose, Sr. ASC

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN: Shri D. Umapati has filed this O.A. being aggrieved by the decision of the Respondent No.3 for not paying him the salary in the scale of Upper Division Clerk (in short UDC) with effect from August, 2000. He has prayed for a direction to be issued to the

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Respondent No.3 to restore his position in the grade of UDC with all consequential benefits.

2. The facts of the case in a nutshell are that while the applicant was working as a Lower Division Clerk ( in short LDC) in INS, Chilika, he made an application to the Chief of the Naval Staff through the Commanding Officer INS Chilika for a transfer on deputation from his present office to Head Quarters, Army Air Defence College, Gopalpur on compassionate ground. This application he had submitted on 01.03.95 as a result of which he was transferred out by an order dated 01.02.1994 issued by the Chief Staff Officer ( P & A) Visakhapatnam. Ultimately, he joined his duty at the Army Air Defence College, Gopalpur on 16.06.99. A short while after his joining there, a meeting of the Departmental Promotion Committee ( in short DPC) took place for promotion of the officials from LDC grade to UDC grade to fill up two regular vacancies. He was one of the selected candidates and was appointed to the higher post with effect from 01.10.99. While he was so working as UDC, all on a sudden the DPC proceeding was cancelled without assigning any reason. Thereafter, the Respondents recovered from the pay of the applicant the amount they had paid to him on his promotion as UDC without giving him any opportunity to show cause. In fact the recovery of the amount was made in one lump

from his pay and allowances for the month of August, 2000 and he was brought down to the grade of LDC for which no formal order was issued.

3. The Respondents have contested this application on all grounds. They have submitted that the applicant was posted to Army Air Defence College on compassionate ground and as per their order dated 11.03.97 an official posted/transferred on compassionate ground has to reckon his seniority position from the date of his joining the new unit/organization. Though he was to be treated as the junior most LDC of the unit, inadvertently he was considered for promotion and thus his promotion to the grade of UDC during the month of May/June 2000 was not found in order. It was on this ground his promotion was cancelled being irregular by issuing an order dated 07.08.2000 (Annexure R-3). They have also argued that the applicant having been promoted to UDC grade on probation for two years, they were within their rights to revert him to the lower post on detection of the irregularity as stated earlier. As his promotion was made de-hors rules and he was on probation, they were entitled to terminate his service at any point of time.

4. The applicant has assailed the decision of the Respondents to revert him without assigning any reason or without communicating the decision of the Army Head Quarters in that regard relating to the cancellation of his

promotion to him and denying him the benefits of show cause. His grievance is that though he had shouldered the responsibility of higher post he was denied the pay of that post. Not only that, they had recovered the amount so paid to him from his pay without allowing him the benefit of show cause and thereby violating the principles of natural justice. He has further submitted, relying on the decision in the case of Indra Bahadur Chetry Vs. Union of India that the applicant having actually worked in the promotional post was entitled to get the pay of that post and as such the order of recovery made in his case is liable to be set aside being illegal. He further submitted that for recovery from pay, procedure as laid down under CCS (CCA) Rules 1965 is to be followed being an essential requirement of principles of natural justice as decided in the case of Harbhajan Singh Sethi Vs. Union of India. Further, referring to the decision in the case of National Union of Extra Departmental Agents Vs. Union of India he submitted that as he was not given any opportunity to represent his choice, the recovery action is liable to be declared bad in law & the Tribunal be pleased to direct them to refund the amount so recovered.

5. We have carefully considered the pleadings made on behalf of the

rival parties and also the submissions made before us during oral arguments.

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We have also carefully gone through case laws relied upon by the Ld. Counsel for the applicant and the written note submitted by him.

6. The short point to be answered in this case is whether the Respondents were within their rights to terminate the promotion of the applicant to the higher grade of UDC and to recover the amount of higher salary paid to him on account of his promotion as UDC without confronting him with the said decision and allowing him an opportunity to represent against the said decision.

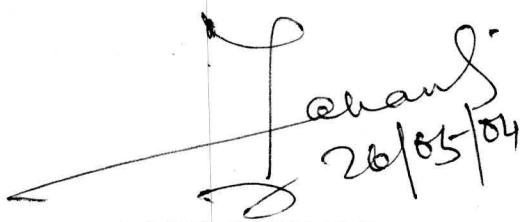
7. Keeping our faith in the principles of natural justice which is the hallmark of our judicial system and the judgement-laws governing the ground in this regard, we answer both the question in the negative. The basic canon of our judicial system is that no one should be denied the opportunity of defending himself especially when an action proposed to be taken is visited with civil consequences, and is prejudicial to one's interest. Further, that the law is now well settled as decided by the Apex Court in the case of Saheed Ram Vs. State of Haryana and others, Civil Appeal No.6868 of 1994, decided on 19.09.1994, that if official has been paid his salary in a higher scale not on account of any mis-representation made by him the benefit of higher pay scale cannot be denied to him because he was not at fault in any way. Following the ratio of this case law we are of the opinion

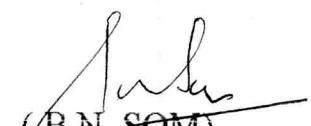
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that the amount already paid to the applicant after granting him promotion to the grade of UDC on their own motion should not have been recovered from him. We, therefore, direct the Respondent to refund the amount already recovered from the pay of the applicant within 30 days from the date of receipt of this order.

8. Before we close, we would also like to observe that an error in judgement of the Respondents took place in this case while considering officials for promotion from LDC grade to UDC on account of their instruction contained in para 5 of their letter dated 11.03.97 ( Annexure-R/4). The subject matter of that letter is titled, " Posting/Transfer on Compassionate Grounds :CIVS." In para 5 of this order it has been stated that seniority of an official would undergo change in the event of a posting on transfer from one unit to another on compassionate ground. But this instruction as contained in this paragraph is neither explicit nor exhaustive. According to the rules governing the ground in this regard, seniority of a person does not undergo change so-long as he is posted/transferred within the same recruiting/parent unit. It is only in case of transfer of an official from one recruiting unit to another either on mutual exchange basis or on own request there will be change in seniority and the new comer will be offered the bottom position in the grade in which he is transferred in the

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new unit. This rule will also apply in case an official is transferred on permanent basis from his parent unit to another unit which is independent from his parent Department. However, question of seniority does not arise in case a person is joining a unit on deputation basis ( as in the instant case) because a deputationist is brought in on ex-cadre basis for a short period which is pre determined and that individual goes back to his parent unit on expiry of that period. Hence the question of offering him a permanent foothold by way of granting him seniority does not arise. The Respondents therefore, should revise their instruction as contained in para 5 Annexure R-4 to avoid repetition of such a mistake in future specifying that only on transfer on permanent basis at own request or on mutual basis seniority of an individual will have to be re-determined.

9. In the conspectus of the discussions made above this O.A. succeeds. No costs.

  
26/6/04  
( M.R. MOHANTY )  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

CAT/CTC  
Kalpeshwar