

T-14

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 255/2004
Date of order: 15.11.2006

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Bal Kishan Panwar S/o Shri Gullab Chand Panwar, aged about 43 years, Resident of Jodhpur, presently working as Accountant at Akashwani Suratgarh.

....Applicant.

Mr. Manoj Bhandari, counsel for the applicant.

VERSUS

1. The Union of India through - the Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. The Chief Executive Officer, Prasar Bharti, Information and Broadcasting Corporation of India, PTI Building, Sansad Marg, New Delhi.
3. The Dy. Director (Administration), Prasar Bharti, Information and Broadcasting Corporation, Directorate, All India Radio, Sansad Marg, New Delhi.
4. The Station Director, Prasar Bharti, Information and Broadcasting Corporation of India, All India Radio, Jaipur (Rajasthan).

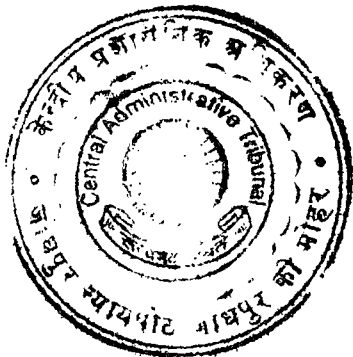
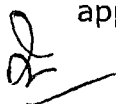
.....Respondents.

Mr. M. Prajapat, Advocate brief holder for
Mr. Ravi Bhansali, counsel for respondents.

ORDER

(By Mr. J K Kaushik, Judicial Member)

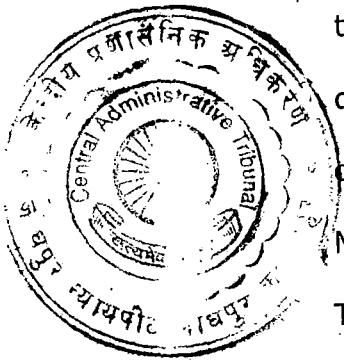
Shri Bal Kishan Panwar has questioned the validity of order dated 4th October 2004 (Annex. A/1) whereby the applicant has been sought to be reverted from the post of CG-I/Accountant/Head Clerk to the post of U.D.C. and has prayed for setting aside of the same with further direction to the respondents to restrain from applying the judgement of the Hon'ble Tribunal dated 19.09.2002 to the case of applicant and recasting of seniority list etc.



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2. We have heard learned counsel for both the parties at a considerable length and have anxiously considered the pleadings as well as the records of this case.

3. The abridged facts considered necessary for resolving the controversy involved in this case, are that the applicant while holding the post of Senior Clerk came to be promoted to the post of Head Clerk/Accountant in the pay scale of Rs. 5000-8000 vide order dated 01.01.2004. This promotion was made after the due recommendations of the D.P.C. Subsequently, an order dated 04.10.2004 has been issued vide which three persons have been extended the benefits of certain judgement in their favour. These three persons have been ordered to be promoted from retrospective date. Simultaneously, five persons including the applicant have been ordered to be reverted out of which the applicant and one Shri Radha Mohan Sharma were holding the promotional post on regular basis. The applicant was not given any opportunity of hearing prior to passing of the impugned order.

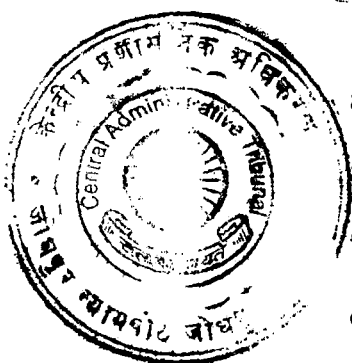


4. As regards the variances in facts, it has been averred by the respondents that three persons were extended the benefits from retrospective date and the applicant had been reverted to make room for them. They have also given details of other two vacancies and have submitted that one was belonging to Staff Selection Commission and other was for Departmental Examination. The same is followed by a rejoinder to reply wherein the grounds of defence put forth on behalf of the respondents has been refuted.

5. Both the learned counsel for the parties have reiterated the facts and grounds enunciated in the respective pleadings of the

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parties. Learned counsel for the applicant has laid a great emphasis on the ground that the applicant was holding the promotional post on substantive basis and the reversion order would result in visiting him with civil and evil consequences. The same could not have been made accept after following the principle of natural justice. Learned counsel for the respondents has not disputed the position regarding the fact that no prior notice was given to the applicant and has submitted that certain subsequent developments are also likely to take place since some more vacancies have become available in the department.



6. We have considered the rival submissions put forth on behalf of both the parties. It is admitted case of both the parties that the applicant was holding the promotional post on regular basis without any rider and nor show cause notice has been given prior to passing the impugned order. We find that this Original Application could be disposed of on this ground alone. Before coming to the main legal point, we would like to mention regarding the present concept of natural justice. The concept of natural justice has been lucidly narrated by the Hon'ble Apex Court in the case of **Canara Bank vs. V.K. Awasthy**; 2005 SCC (L&S) 833 in para 14, which reads as under: -

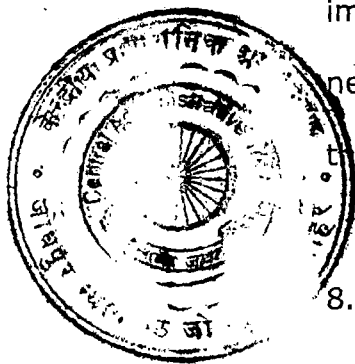
"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."



Similarly in H. L. Trehan and others v. Union of India and others
AIR 1989 SUPREME COURT 568, their Lordships of Apex Court have
held as under:

"11. xxx It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Art. 14 of the Constitution."

7. Applying the aforesaid principles of law to the controversy involved in the instant case, we have no hesitation in holding that the impugned order shall have to be held as offending Article 14 of Constitution and therefore inoperative and illegal. We are not impressed with the defence version of the respondents. There is no need of examining other grounds raised on behalf of applicant since the impugned order is not sustainable on the aforesaid ground itself.



8. In the result, this original application has ample force and substance and the same stands allowed accordingly. The impugned order dated 4th October 2004 (Annex A/1) is hereby quashed qua the applicant and the applicant shall be entitled to all the consequential benefits. The interim order already issued is made absolute. This order shall not foreclose the right of respondents for passing a fresh order in the same matter in accordance with law i.e. after following the due procedure. Costs made easy.


(R R BHANDARI)
ADMINISTRATIVE MEMBER

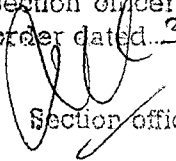

(J K KAUSHIK)
JUDICIAL MEMBER

Kumawat


P/c
2012/07

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22/11/06

Part II and III destroyed
in my presence on 11/11/14
under the supervision of
section officer () as per
order dated 31/01/14


Section officer (Record)

Copy Recd-
today


R. Khemsel
29/11/02