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

Original Application No. 50/2004

Date of decision:05.08.2005

Hon'ble Mr. J K Kaushik, Judicial Member.

Hon'ble Mr. G R Patwardhan, Administrative Member.

Nankoo Ram, S/o Shri Ram Dev by caste Schedule Caste aged about 53 years, R/o R.K. Colony, Bhilwara, presently working on the post of Inspector, Central Bureau of Narcotics, Bhilwara.

P.K. Rai, s/o Shri K.P.N.Rai, aged about 46 years, resident of Mayur Colony, Kota Junction, Kota (Rajasthan) presently working on the post of Inspector, Central Bureau of Narcotics, Pratapgarh, Distt. Chittorgarh.

: Applicants.

Mr. Manoj Bhandari : Counsel for the applicants.

VERSUS

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Narcotics Commissioner, Central Bureau of Narcotics, 19, the Mall, Morar, Gwalior - 6, (MP).
3. Dy Narcotics Commissioner (Administration), 19, (The Mall Morar), Gwalior - 6 M.P.
4. The Dy Narcotics Commissioner, Central Bureau of Narcotics, Kota (Rajasthan)

: Respondents.

Mr. Kuldeep Mathur : Counsel for the respondents.

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Nankoo Ram and Shri P K Rai, have questioned the validity of the order dated 19.02.2004(Annex. A/1) and have prayed for quashing of the same in addition to declare the review DPC held on 23 & 24.01.2004 as illegal and grant them all consequential benefits including continuity of service on the post of Inspector.



2. With the consent of learned counsel representing contesting parties, the arguments were heard for final disposal of this case at the stage of admission. We have carefully perused the pleadings and records of this case.

3. The abridged facts that are considered necessary for resolving the controversy involved in this case are that the applicant No. 1 Shri Nankoo Ram was initially appointed as LDC on 03.09.73 and the said post came to be re-designated as Sub-Inspector on 25.11.1980. The applicant No. 2 Shri P K Rai came to be initially appointed on 26.11.80 as Sub-Inspector in the respondents department. The applicant No. 1 enjoyed the ad hoc promotion to the post of Inspector vide letter dated 23.09.94. The respondents department issued a seniority list in the year 1996 for the post of Sub Inspector wherein the applicants' name were placed at Sl. No. 62 and 58, respectively. Both of them were within the zone of consideration and they were allowed the promotion to the post of Inspector after due recommendations of the DPC vide order dated 09.08.96. The promotions were made on regular basis without any rider, except that the same shall be subject to the out come of O.A No. 15/94 filed by one Md.Islam before the Lucknow Bench of this Tribunal and due to opening of sealed cover cases in respect of their seniors in the grade of Sub Inspector. The post of Inspector is to be filled on the basis of seniority cum fitness by promotion and the same is to be filled from amongst sub inspectors, UDCs and by way of direct recruitment in the ratio of 33 1/3% each.



4. The further facts of the case are that certain subsequent

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developments had taken place. There were some changes in the recruitment rules and the quota for promotion to the post of Inspector was reduced. This change resulted in stagnation on the post of Inspector in as much as some of sub-inspectors had to take reversion to the post of LDC and then became UDC and became inspector; the quota of UDC being more. All of a sudden, the impugned order dated 25.07.2003 has been issued whereby the applicants have been ordered to be reverted to the post of sub-inspectors on the ground that the applicants promotion were erroneously made and the same was done as per the recommendations of the Review DPC held for that purpose. The respondents have not determined the year wise vacancies and have also not finalised the seniority list for the grade of sub-inspector. The applicants filed an O.A. No. 157/2003 before this bench of the Tribunal, wherein an interim order was passed on 04.08.2003. Thereafter the respondents, altered the impugned order on 08.08.2003, which had resulted in the disposal of the said OA as infructuous. Now, again the order dated 19.02.2004 has been passed reverting the applicants from the post of Inspector to the post of sub inspector. This Original Application has been filed on multiple grounds which are mentioned in para 5 and its sub-paras as well as are intermixed with facts mentioned in paras 4.15 to 4.22.



4. The respondents have contested the case and have filed a detailed reply to the O.A. In the reply the details of the recruitment rules have been incorporated. It has been averred that during the year 1996-97, most of the sub-inspectors were facing departmental inquiry and the recommendations of the DPC

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in their cases have been kept in sealed covers. Both the applicants were promoted on an officiating basis against such vacancies and subsequent to re-opening of the sealed covers, senior sub-inspectors were also promoted without reverting the junior sub-inspectors and an anomalous situation arose which had resulted in filling up the vacancies far in excess of the quota earmarked. Certain sub-inspectors who did not get their promotion due to adverse entries, which came to be expunged later, were also there. In their cases also Review DPC was held. However, the recommendations of the Review DPC could not be implemented as the validity of the panel had expired. Review DPCs were held for all these reasons. The applicants being the junior most sub-inspectors could not be promoted on regular basis for want of vacancies. Applicant No. 2 could not be promoted since he was under suspension. Applicant No. 1 also could not be promoted since he was junior. There has been repetition of facts in the reply and the grounds taken in the O.A have generally been denied. The reply is followed by an elaborate rejoinder almost reiterating the facts and grounds raised in the O.A, refuting the grounds of defence of the respondents especially in regards to vacancy position and giving certain other details.



5. Both the learned counsel representing the contesting parties have reiterated the facts and grounds narrated in the respective pleadings as noticed above. The learned counsel for the applicant has tried hard to submit that the respondents have passed the impugned order without giving any pre-decisional hearing or an opportunity to show cause. He has also contended that had the respondents carried out the required exercise, the instant situation

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could have been avoided. The applicants have been working on the promotional post for over 10 years and during all this period number of vacancies for the post in question must have occurred and applicants could have been adjusted against them. He has also submitted that no details of vacancy position is reflected and only vague averments have been made. In the promotion order, there was no specific mention regarding persons whose promotions were withheld due to adverse ACRs but in reply such defence has been averred. It is also not known as to what is the seniority position of the so-called seniors whose cases were kept in sealed cover and when such covers were opened.



6. Per contra, the learned counsel for the respondents has submitted that the promotions of the applicants were subject to certain conditions but due to mistake they were not reverted at appropriate time and for rectification of mistake there is no requirement of following the principles of natural justice. He has tried to justify that the question of reversion of the applicants arose only when they could not be accommodated against the future vacancies. Thus no fault can be found with the action of the respondents.

7. We have anxiously considered the aforesaid submissions. As far as the factual facet of this case is concerned, we find that no prior notice or pre-decisional hearing has been given to the applicants, before passing the impugned order. From the reply of the respondents we find that no statistical details regarding the vacancy position in regard to the post in question have been disclosed. We also find that the applicants have been working on

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the said posts uninterruptedly for about a decade, without there being any fault on their part.

8. Numerous decisions have been cited on behalf of the applicants on the point that if an order visits an employee with civil consequences, the same can not be sustained until it is passed after adhering to the principles of natural justice. In one of the judgment it has also been held that if an incumbent is allowed to work for a long time on the promotional post on which he has been promoted after due procedure i.e. on recommendations of DPC as accepted by the competent authority, one acquires a vested right to hold the same. However, we are not referring to all of them here.



9. We take judicial notice of a celebrated judgement of the apex court in case of **H. L. Trehan and others. v. Union of India and others** AIR 1989 SC 568, wherein their Lordships have elaborately dealt with the question involved here and the following para are considered relevant:

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.

12. xxx In our opinion, the post-decisional opportunity of hearing does not subserve the, rules of natural justice. The authority who embarks. upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the resrepresentation at such a post-decisional opportunity. In this connection, we may refer to a. recent decision of this Court in K. L. Shephard v. Union of India, JT 1987 (4) 600 : (AIR 1988 SC 686). What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial, Bank which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under S. 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being

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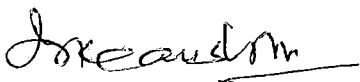
heard. Ranganath Misra, J. speaking for the Court observed as follows :-

"We may now point out that the learned single Judge of the Kerala High Court had proposed a post amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

10. Keeping in view of the aforesaid principles of law, we are unable to uphold the action of the respondents and the impugned order cannot be sustained. We may point out that the respondents should have been very precise and specific in the matter and given the requisite details of the subsequent/future vacancy position of the post in question. To solve such contingencies, the respondents would do well by resorting to create supernumerary posts till the persons promoted in excess are adjusted against subsequent/future vacancies.

11. The upshot of the aforesaid discussion leads us to an inescapable conclusion that the Original Application merits acceptance and the stands allowed, accordingly. The impugned order dated 19.2.2004 (A/1) is hereby quashed with all consequential benefits. Rule already issued is made absolute. The respondents shall have liberty to modify the date of promotion of the applicants as per our observation in penultimate para. No costs.


(G.R.Patwardhan)
Administrative Member.


(J K Kaushik)
Judicial Member.



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Part II and III destroyed
in my presence on 17-1-14
under the supervision of
section officer (J) as per
order dated 12-12-13

Section officer (Record)

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