

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.389/2013

Jodhpur, this the 26th day of September, 2016

CORAM

**Hon'ble Mr. Sanjeev Kaushik, Judicial Member
Hon'ble Ms. Praveen Mahajan, Administrative Member**

P.D. Beniwal S/o Shri Maluka Ram Beniwal, aged about 44 years.

R/o Kamla Niwas, Gandhinagar, Bhilwara.

Presently working on the post of Superintendent in the office of Central Excise Range I Bhilwara, Rajasthan.

.....Applicant

Mr.S.K. Malik, counsel for applicant.

Versus

1. Union of India through the Secretary,

Ministry of Finance, Department of Revenue,

North Block, New Delhi.

2. Chief Commissioner,

Central Excise & Service Tax Jaipur,

Rajasthan.

3. Additional Commissioner (P&V) Office of Chief Commissioner,

Central Excise & Service Tax Jaipur, Rajasthan.

4. Shri Sunil Kumar Verma, Superintendent Adhoc in the office of Chief Commissioner, Central Excise & Service Tax Jaipur, Rajasthan.

.....respondents
Mr. B.L. Tiwari, counsel for respondents.

ORDER (Oral)

Per: Hon'ble Mr. Sanjeev Kaushik, Member (J)

The present Original Application is directed against the order dated 11th of September, 2013 whereby the applicant has been reverted from the post of Superintendent (Adhoc) Group 'B' to the post of Inspector. He has further sought issuance of a direction to the respondents to treat/promote him against the regular vacancy of Superintendent Group 'B' for the vacancy year 2012 -2013 with all the consequential benefits.

2. The facts, which led to filing of present Original Application, are that the applicant who belongs to scheduled caste category, was appointed to the post of Inspector Customs & Central Excise on 08th of February, 1993. During his service career, he was granted financial up-gradation in terms of ACP and MACP scheme. He was considered for promotion to the post of Superintendent Group 'B' (on adhoc

basis) by the Departmental Promotion Committee and was promoted as such on adhoc basis w.e.f. 05th of January, 2012. One, Sh. Suresh Chand Maich, who also belongs to the same category to which applicant belongs, was considered and promoted as Superintendent on adhoc basis along with the applicant. It is case of the applicant that one Shri Rakesh Kumar, whose case was under sealed cover, was subsequently promoted on the post of Superintendent Group-B and said Shri Suresh Chand Maich was reverted to the below post which became the subject matter in Original Application No.131/2013 where his reversion order was stayed by this court and ultimately, he was allowed to continue on the post of Superintendent on adhoc basis. It is submitted that the applicant is senior to Sh. Suresh Chand Maich and his reversion order is unwarranted as the respondents have wrongly considered the applicant being junior most and reverted him to adjust Sh. Sunil Kumar Verma who was repatriated from deputation prematurely. Therefore, he submitted that impugned order is illegal and arbitrary and liable to be set aside. Hence, present O.A.

3. The respondents resisted the claim of the applicant by filing a detailed written statement wherein they have

submitted that the applicant has not disclosed the true facts. It is submitted that the applicant was promoted as Superintendent on adhoc basis vide order dated 05.01.2012 w.e.f. 01.12.2011 against the vacancy reserved for SC Category in terms of instruction issued by the DoPT. On joining of Sh. Sunil Kumar Verma, who belongs to SC category, on repatriation from deputation on 04.09.2013 prematurely under the establishment, the applicant was reverted from Superintendent (adhoc) to Inspector and Sh. Verma was adjusted against the said post. It is also submitted that the case of the applicant was considered by DPC for promotion to the grade of Superintendent on adhoc basis but his case was kept in seal cover because of running punishment and subsequently, when punishment expired, he was promoted on the said post on adhoc basis against the said vacancy. Subsequently, vide impugned order he was reverted to adjust Sh. Sunil Kumar Verma, being junior most. It is also submitted that the applicant cannot claim to continue on the said post because he was promoted on adhoc basis and there was also no need to provide hearing to the applicant before passing of impugned order. It is also submitted that while promoting the applicant on adhoc basis, the respondents had already reserved the right to revert the

applicant to the post of Inspector without assigning any reasons or prior notice as adhoc promotion does not confer any right on an individual.

4. We have heard Sh. S.K. Malik, learned counsel for the applicant and Sh. B.L. Tiwari, learned counsel for the respondents.

5. Shri S.K. Malik, learned counsel for the applicant attacked the impugned order on two counts. Firstly, the respondents cannot replace an adhoc promotee by appointing another adhoc promotee. In this regard, he placed reliance on the judgment in the case of **State of Haryana v. Pyara Singh**, reported in 1992 (4) SCC 178. Secondly, he argued that before passing the impugned order, the applicant was not put on notice, therefore, there is violation of principles of natural justice. He prayed that on these two counts, impugned order be quashed and set aside. He also argued that the respondents themselves have admitted in reply to para 4.7 of O.A that vacancy exists, therefore, claim of the applicant can be considered against the vacancy lying vacant with respondent department.

6. Per contra, Shri B.L. Tiwari, learned counsel appearing on behalf of the respondents supported the

impugned order. He submitted that earlier when the applicant was considered by the Departmental Promotional Committee for adhoc promotion to the post of Superintendent Group B, it was made clear while issuing promotional order that the respondents reserve their right to revert the applicant without giving any notice. Since, Sh. Sunil Kumar Verma was on deputation and prematurely repatriated to his parent department, he was adjusted against the said post being senior, therefore, rightly respondents have reverted the applicant. He then submitted that while passing the impugned order, there is no need to put the applicant on notice as he is junior most person in his cadre. To support his argument, he placed reliance upon the judgment passed in cases of **Aligarh Muslim University Vs. Mansoor Ali Khan**, 2000 (7) SCC 529 and **Davinder Bathia & Ors. Vs. Union of India & Ors**, 1988, SCC L & S 1331 where their Lordships have held that an adhoc appointee does not have a right to be in the cadre unless and until he is duly regularized after going through a process of selection.

7. We have given our thoughtful consideration to the entire matter and have perused the pleadings available on

record with the able assistance of learned counsel for the parties.

8. Narration of facts as depicted above makes it clear that case of the applicant was considered by DPC held on 01.12.2011 for promotion to the post of Superintendent Group B on adhoc basis. He was promoted as such with a condition that he can be reverted without giving any notice. On repatriation, Sh. Sunil Kumar Verma who also belongs to SC category and being senior to the applicant, was promoted to the post of Superintendent Group B, therefore, to make a room for Sh. Verma, the applicant being junior most in cadre, was reverted to the post of Inspector. Therefore, we find no illegality in the impugned order. Moreover, the applicant has failed to contradict that Sh. Sunil Kumar Verma, is senior to him. It is also born out from the pleadings that subsequently when DPC was held for promotion to the post of Superintendent Group B, all the cases were considered and the applicant could not make out as there were other persons senior to him in the cadre and as such he cannot be allowed to retain a promotion which has become redundant after availability of senior persons.

9. Before parting with the judgment, we would also deal with the arguments raised by the applicant that an adhoc cannot be replaced by another set of adhoc appointee. We find the submissions made at the hands of the applicant to be thoroughly misplaced. The theory of not replacing an adhoc employee by another set of adhoc employee is applicable in the cases of direct recruitment where courts have held that if a person is appointed to a particular post on adhoc, then he cannot be replaced by another set of adhoc employee unless the post is filled up by a regularly selected candidates. This analogy cannot be used in case of promotion as it is based upon the rule formulation and senior cannot be ignored for promotion unless there is something adverse against him. In the present case, the applicant being junior has to make a room for a senior and rightly, the respondents have reverted him to adjust Sh. Sunil Kumar Verma who was repatriated from parent department prematurely. The second argument of violation of principles of natural justice raised by the applicant is also misplaced because there is no requirement of giving any notice in such like cases for the reasons as it has already been clarified in his promotion order that the respondents reserve their right to revert him without any notice. Even if the applicant was given any notice, even then,

ultimate result was to remain the same and it would have amounted to useless formality. In early 60's and 70's, the Superior Courts had treated violation of the rules of natural justice as sufficient for invalidating administrative and quasi-judicial actions and orders without requiring the applicant to plead and prove that his cause had been prejudiced on account of such violation. The theory of empty/useless formality was discarded on the premise that violation of the rules of natural justice is in itself a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the principle of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the applicant pleads and prima facie shows that his cause has been prejudiced. There are large numbers of decisions of the Hon'ble Supreme Court on this issue that the principle of natural justice cannot be put in a straight jacket formula. We will refer the recent judgment on this issue in the case of **P.D. Agarwal v. State Bank of India** 2006(8) SCC 776, where the lordships of Hon'ble Supreme Court held that the principles of natural justice cannot be put in a straight jacket formula and then observed:

"Decision of this Court in S.L.Kapoor v. Jagmohan and Ors.; whereupon Mr. Rao placed strong reliance to

contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in State Bank of Patiala and Ors. v. S.K. Sharma and Rajendra Singh v. State of M.P. , the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula."

10. In the above backdrop of factual as well as legal scenario, we find no reason to interfere with impugned order. Accordingly, present O.A is dismissed being devoid of any merit. No costs.



[PRAVEEN MAHAJAN]
Administrative Member



[SANJEEV KAUSHIK]
Judicial Member

Date:- 26.09.2016

Place: Jodhpur

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