

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
CALCUTTA**

**Present : Hon'ble Mr. B.N. Som, Vice-Chairman.  
Hon'ble Mr. B.V. Rao, Judicial Member.**

O.A. 544 of 1997

**Shri Nishith Kumar Ghosal**

O.A. 635 of 2000

**Shri Dilip Kumar Mondal**

- v e r s u s -

**Union of India and Ors.  
(National Test House)**

**For the applicants : Mr. B. Mukherjee, counsel (for O.A. 544/97)  
Mr. S.K. Dutta, counsel (for O.A. 635/2000)**

**For the respondents : Ms. K. Banerjee, counsel.**

**ORDER**

Dt 7/6/03

**Per Mr. B.N. Som, VC**

The facts and law involved in these matters being identical, they have been heard together and are being disposed of by this common order. For the sake of convenience and brevity we shall refer the facts and annexures of O.A. No. 544 of 1997.

2. Shri Nishith Kumar Ghosal has filed O.A. No. 544/1997 having faced reversion from the post of Stenographer Gr.II to the post of Stenographer Gr.III by office order No. G-117/Estt. dated 22.4.1997.

3. The case of the applicant is that he was promoted to the post of Stenographer Gr.II w.e.f. 1.3.1996 vide Order of the Assistant Director (ER), the respondent No. 5. That promotion was made on regular basis and he was asked to exercise his option from the date of issue of that office order and his pay to be fixed w.e.f. the date of promotion or to be fixed w.e.f. the date of next increment in the lower post. But about eleven months thereafter he was reverted from the regular post without affording any opportunity to defend his case or without stating any reason for his reversion. It was, therefore, a case of arbitrariness and hence is liable to be set aside. He has further submitted that his promotion to the higher grade w.e.f. 1.3.96 was ordered on the superannuation of one Shri Sukumar Dutta. In the circumstances, his order of reversion at Annexure-A/6 was clearly bad in law and is liable to be struck down forthwith. Relying on the case of J. Kalpana alias J. Lilly Vs. Union of India and Ors. (1986 (1) SLJ (CAT) 93) he has submitted that the impugned order has to be set aside on the ground of violation of principles of

natural justice. He has further submitted that the applicability of principles of natural justice is not confined to an order imposing punishment alone nor is it dependent on whether observance of the same would have made any difference. For the aforesaid reasons he has prayed for setting aside the impugned order at Annexure-A/6.

4. The respondents in their reply have disclosed that the order of promotion of the applicant was done inadvertently without following correctly the roster point applicable for appointment to Gr. D and Gr. C posts. They have submitted that on receipt of a representation made by one Shri Dilip Kumar Mondal, Private respondent to the Secretary, Department of Supply alleging that the promotion made by order dated 1.3.1996 had been made without proper application of the roster point, it was decided to conduct a review DPC for promotion to the Stenographer Gr. II. It was the review DPC which recommended promotion of the Pvt. Respondent and on acceptance of said recommendation of the review DPC, the impugned office order was issued. They have denied that there was anything wrong or unlawful or illegal with the impugned office order dated 22.4.1997 on the ground that the said order was issued by the appropriate authority after obtaining approval of the competent authority. Denying that the reversion of the applicant from the post of Stenographer Gr. II to Stenographer Gr. III was illegal, they have explained that a DPC was convened on 9.1.1996 for filling up of one vacant post of Stenographer Gr. II. In the said DPC proposal the post was shown under UR quota. The mistake in identification of the vacancy in the communal roster came to light later. It also came into light that one ST point was being carried forward which was exchangeable from the recruitment year in which promotion of the applicant took place. It was also noticed that one of the Roster points (Point No. 4) in the roster had not been duly carried forward after dereservation to the subsequent three recruitment years and the lapse was noticed while operating Point No. 7 after filling up the vacancy by promoting the applicant. A report to this effect was sent to the Department of Supply explaining the above position with reference to the representation made by the Pvt. Respondent and it was finally decided to hold a review DPC to set right the wrong. The review DPC was accordingly convened on 16.4.1997 recommending promotion of the Pvt. Respondent to Stenographer Gr. II. The said order correcting the roster point was issued by the Accounts Officer who is a Gr. B gazetted officer. The said order they claimed to be completely legal inasmuch as the same had been signed by a Gazetted officer who had been designated as Head of the Office. However, they

contended that the designation of the signatory as appearing in the copy of the application was a typographical mistake.

5. We have heard Id. Counsel for the rival parties and have perused the records placed before us.

6. The question of law to be answered in this case is whether the applicant was entitled to notice before being reverted. More than what the respondents have submitted in their reply the Id. Counsel for the respondents canvassed before us that the law is well settled that no show cause notice is mandatory, if there is no stigma attached to reversion order. In this case, the respondents had acted strictly according to the Recruitment Rules or the Roster prescribed for reservation in promotion and as there was no denying the fact that an error had crept in, the respondents had to exercise their power to rectify the erroneous promotion and for the same no show cause notice was necessary inasmuch as it was a case of fitment to the correct position, viz., placement of the applicant as Stenographer Gr.III according to his seniority and rotation of vacancy for the prescribed communal representation. The Id. Counsel has also relied on the decision of Anand Kumar Pandey & Ors. Vs. Union of India and Ors., Civil Appeal No. 4828/94 wherein the Apex Court has held that the rules of natural justice cannot be put in a strait jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. In the case of Anand Kumar Pandey and Ors. where the railway authority found evidence of wholesale malpractices in examination, they ordered cancellation of the examination without giving any show cause to the candidates. The decision of the railway authorities was upheld by the Apex Court holding that "in the present case" the Railway authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the examination. To make sure that deserving candidates are selected, the candidates were asked to go through the process of written examination once again.

7. The Id. Counsel for the applicant, on the other hand, depending on the case of Ram Ujarey Vs. UOI, Civil Appeal No. 5714/98 decided on 31.11.1998, Lal Mohd. Vs. State of Rajasthan, has submitted that reversion order cannot be passed without show cause notice to the employee concerned and, therefore, the impugned order is liable to be quashed being violative of the principles of natural justice. He, further relying on the decision of the Apex Court in R.K.

Sabharwal's case, has submitted that the Pvt. Respondent who has been recruited against the UR quota vacancy, could not have claimed the benefit of reservation in promotion.

8. We have carefully considered the rival view points. We are, however, not impressed by the submission of the Id. Counsel for the applicant that the decision in the case of R.K. Sabharwal has any application in the present case. It is also not the correct position that if a reserved category candidate, at entry into the service, is selected on the basis of merit, he will forfeit his right of enjoying the privilege given to the reserved category candidates in promotion. Finally, with regard to the question whether the rules of natural justice were violated in the instant case, we have given our anxious thought to the rival contentions and we are of the view that as held by the Apex Court in the case of Anand Kumar Pandey that the principles of natural justice is not a strait jacket, applicability of these rules necessarily depends upon the facts and circumstances of the case. In the instant case as it has come out clearly that there was an error in application of roster point in the matter of promotion from Stenographer Gr.III to Stenographer Gr.II and as reservation in promotion is a constitutional guarantee, the respondent authorities have rightly taken action for rectifying the error. To that extent, their action is not assailable. Further, it is also the settled law that if entry into the service has been made de-hors the Recruitment Rules or in violation of the statutory provisions, appointee is not entitled to show cause. In view of the said position of law, we are of the view that there has not been any miscarriage of justice in the instant case nor the respondents had acted illegally in rectifying the mistake in maintenance of roster in the matter of promotion.

9. In view of the aforesaid, the O.A. fails. Accordingly, both the O.As are dismissed being devoid of merit.

Member (J)

Vice-Chairman

- (a) Sl No of the "Applic" .....
- (b) Name of the applicant .....
- (c) Dt. of presentation of application for copy .....
- (d) No. of pages .....
- (e) Copying fee charged/urgent or ordinary .....
- (f) Dt. of preparation of copy 12/6/2006
- (g) Dt. of delivery of the copy to the applicant .....