

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application NO. 85/2004

This, the 19th Day of March, 2009

**Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Vijay Kumar Singh, aged about 49 years, S/o late Girdhari Lal Pundir, R/o 509/3 Old Haidrabad, Lucknow, presently serving as Inspector in the Officer of District Opium Officer, Barabanki

...Applicant.

By Advocate Sri Virendra Mishra.

Versus

1. Union of India through its Secretary Ministry of Finance Department of Revenue Govt. of India, New Delhi.
2. The Central Bureau of Narcotics, 19 The Mall, Morar, Gwalior M.P. through Narcotics Commissioner.
3. Deputy Narcotics Commissioner, Central Bureau of Narcotics (Admn.) 19 The Mall, Morar, Gwalior, M.P.
4. Deputy Narcotics Commissioner, Lucknow.
5. Sri Vijay Kumar aged major, S/o not known presently posted as Deputy Narcotics Commissioner Disciplinary Authority, Lucknow.

Respondents.

By Advocate Sri Sri Sumit Kumar for Sri Yogesh Kesharwani.

ORDER

BY HON'BLE DR. A. K. MISHRA, MEMBER(A)

The applicant has challenged the order dated 19.2.2004 of Respondent No. 3 reverting him from the post of Inspector Narcotics to the post of Sub-Inspector after serving more than 10 years on the post of Inspector.



2. The initial appointment of the applicant was on the post of Sub Inspector Narcotics. He was promoted on the post of Inspector on 23.9.94 on a regular basis. The applicant took us through the appointment order in which his name finds place at serial No. 6. The order clearly states that promotion in respect of Serial No. 7 to 17 was on ad-hoc basis. In other words, the promotion of the applicant was made on a regular basis. He also took us through the order of the Jabalpur Bench of this Tribunal in O.A. No. 368/97 in which, an application of an adhoc promotee was being considered. At paragraph 5 of the judgment, a reference was made to the statement in the promotion order that 6 senior persons have been promoted on a regular basis, whereas 11 juniors were promoted on adhoc basis. In other words, the applicant, whose position is at Serial No. 5 was considered a regular promotee. This finding was made on the basis of the submissions made by the respondents before the Jabalpur Bench. At paragraph 2 of the preliminary submissions made by the respondents in the aforesaid case, the department had stated that 6 of candidates in the select panel were promoted on regular basis and 11 others, who were juniors, were given ad-hoc promotion.

3. It is clear from the promotion order as well as the submissions of the respondents authorities before the Jabalpur Bench that his promotion was a regular one.

4. The impugned order dated 19.2.2004 states that the review DPC was made necessary so as to have a re-look at the promotions made on the basis of the recommendations of the DPC in the years 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, and 1998-1999 on account of the fact that some seniors were eligible for promotion due to expunction of adverse remarks in their ACR, disposal of sealed cover cases. It became necessary to adjust them having regard to their seniority on the basis of available vacancy position. Further, it has been stated in the impugned order that in the review DPC, the applicants Nand Lal and B.K. Singh were not found fit for promotion. It is not very clear whether the reduction in their rank was due to non availability of



vacancies after seniors were adjusted, or because they were not found fit for promotion on the basis of their service record. If the latter is true, no reason has been given how they were found fit and suitable for promotion in the year 1994 and once having been found fit, there was no material on the basis of which they could be declared unfit later. Therefore, the statement that, Nand Lal and B.K.Singh were not fit for promotion as per review DPC was uncalled for.

5. In the CA of the respondents and the written arguments submitted by the learned counsel for the respondents and it has been clarified that the applicants were reverted to adjust their seniors in the available vacancies. The learned counsel for the applicant has challenged this order by citing a number of decisions to the effect that before any decision, which adversely affects an employee, is taken, he should have been heard. He cited the following cases:-

- (1) 1999 (8) SCC 378 *Gajanan L. Parnekar Vs. State of Goa and another.*
- (2) 1991 Suppli (1) SCC 330 *Shrawan Kumar Jha & another versus State of Bihar and Others.*
- (3) 1999 (3) SCC 107 *Gulzard Singh Versus S.D.M. .*
- (4) 1993 LCD 441 *Hari Shankar Srivastava Versus Special Land Acquisition Officer*
- (5) 1999 (1) LCD 8k *Javed Ahmad and Others Versus State of U.P. and Others.*
- (6) 2004 (1) UPLBEC 446 *Ratnakar Chaudhary Versus D.D.of Education*
- (7) AIR 1990 SC *Sridhar Versus Nagar Palika Jaunpur.*
- (8) AIR 1981 SC 136 *S.L.Kapur Versus Jagmohan and others.*
- (9) AIR 1976 SC 667 *State of Punjab Versus Iqbal Singh*

6. It is admitted that no opportunity was given to the applicant before the impugned order of reversion was passed against him. Therefore, this is a clear



case of violation of the principles of natural justice and on this ground alone this order can not be sustained.

7. Learned counsel for the applicant has cited the following cases:-

- (i) 2001 (3)SCC 328 *Buddhi Nath Chaudhari Versus Abahi Kumar and Others*
- (ii) 1988 (1) SLR 320 *Saroj Kumar Tyagi Versus State of U.P. and Others.*
- (iii) CPW No. 6826 of 1999 (*Delhi H.C. Barkho Ram Versus Union of India.*)
- (iv) 1998 (8) SCC 59 *Roshni Devi and others Versus State of Haryana and others*

to the effect that appointment made long back, following the process of selection, could not be unsettled after a long lapse of time. A person, who is promoted after following procedure laid down and works for a long time on the promotional post, acquires a right to hold the post and he could not be reverted there from for no fault on his part. He drew our attention to the observations of Hon'ble Delhi High Court in CPW No. 6826/99 in which it was held that if some other eligible candidates, who had not been considered earlier, had to be adjusted in the promotional post, in that event supernumerary posts could be created, but a person who has been regularly appointed on promotional post and works for a long time and in the process acquires the right to hold the said post should not be unsettled without following the prescribed procedure.

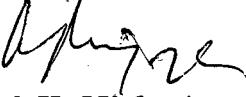
8. Hon'ble Supreme Court, in *Roshni Devi and Others Vs. State of Haryana and others*, 1988 Supreme Court Cases 59, held that equity demands to save the appointment of a person who rendered long years of service in that post even though the original appointment was found to be invalid. In the present case, admittedly the original appointment was made on a regular basis.

9. Ratio of these judgments is that a person, who has been promoted on a regular basis, could not be reverted after having worked in that position more than 10 years simply to adjust some seniors who were not found fit at the time



of his selection. Under the circumstances, we hold that the applicant has a right to continue on the same post.

10. In the result, the impugned order is set aside and it is directed that the applicant should be allowed to continue on the promotional post. No costs.


(DR. A.K. Mishra)

Member (A)

19/03/09


(M. Kanthaiah)

Member (J)

v.

order
canceled
dated 19-3-09
signed
24-3-09