

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.449/2006
This the 23rd day of January 2012**

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

1. V.S. Dwivedi aged about 52 years s/o Sri Ganesh Prasad Dwivedi R/o LJ-II, 91 C Sector 'C' Jankipuram
2. B.C. Sati aged about 48 years s/o Sri Manorath Sati R/o Type-IV/41, Postal Colony, Aliganj, Lucknow.
3. R.C. Gupta aged about 55 years S/o Sri Late Harish Chandra Gupta R/o C-1/113, Sector-F, Jankipuram, Lucknow.
4. R.S. Punia aged about 48 years S/o Sri Pitam Singh Punia R/o D-5/789, Raj Nagar, Loni Border, Distt. Ghaziabad U.P.

- All working as Assistant Accounts Officers in U.P. Postal Circle, Lucknow except applicant no.4, who is working in Postal Directorate, New Delhi.

...Applicants.

By Advocate: Sri A. Moin.

Versus.

Union of India through

1. Secretary, Ministry of Post, Dak Bhawan, New Delhi.
2. Member (Personnel) Department of Post, Dak Bhawan, New Delhi.
3. Chief Post Master General, U.P. Circle, Lucknow.
4. Director of Accounts (postal) U.P. Circle, Lucknow.
5. Ashok Kumar Gupta, PAP Section, Postal Directorate, New Delhi.

.... Respondents.

By Advocate: Sri S.P. Singh holding brief for Sri K.K. Shukla.

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ORDER**By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)**

This O.A. has been filed for the following relief's;

"a. to quash the impugned order dated 26.05.2006 as contained in Annexure-A-1 with all consequential benefits.

aa. to quash the impugned order dated 28.7.2006 passed on behalf of the respondents as contained in Annexure-A-6 to the O.A. with all consequential benefits."

2. It is said that all the four applicants appeared in the Departmental Qualifying Examination of Junior Accounts Officers Part-II Exam 1988. Its result based on merits was declared on 11.05.1989 (Annexure-A-1) and the applicants successfully passed in the said examination. The posting orders were issued on 29.06.1989. Meanwhile, certain other persons in other circle (Ambala, Tamilnadu, Kolkata, Cuttack etc.) who had also appeared alongwith applicants in the above examination were posted on 11.5.1989. On the publication of All India Seniority List of Junior Accounts Officers the applicants came to know about the administrative lapses that had been committed by the respondents. Therefore, they represented to Respondent No.3 for redressal of their grievances. The applicants understand that Respondent No.3 being satisfied that there was gross administrative lapse and delay in issue of promotion and posting orders, recommended to the office of Respondent No.1 for notionally promoting the applicants to Junior Accounts Officers cadre w.e.f. 11.5.1989 i.e. from the date of declaration of the result for fixing of their seniority in Junior Accounts Officers cadre, as was done in respect of other Junior Accounts Officers.

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The Respondent No.2 by his letter dated 18.10.2001 replied the Respondent No.3 that he being the Head of Circle was fully competent to decide the matter relating to the grant of notional promotion in Junior Accounts Officers cadre in respect of the applicants. This letter was followed by another letter dated 07.02.2003 based on said letter. Ultimately an order dated 04/07.04.2003 was issued by the office of Respondent No.4 with the approval of Respondent No.3 promoting the applicants in the Junior Accounts Officer cadre w.e.f. 11.05.1989 (Annexure-A-4). On the basis of this order, the correction in seniority of the applicants was duly made in the seniority list as on 31.10.1994 corrected up to 31.08.1996 by issue of order dated 16.01.2004. All of a sudden the impugned order dated 26.05.2006 was issued by Respondent No.2 canceling the order dated 04.04.2003 as contained in (Annexure-A-4) placing the applicants at the same place in the seniority list at which they were placed earlier, prior to the issue of order dated 04.04.2003 (Annexure-A-1). This order has been passed on the representation made by one Sri Ashok Kumar Gupta, who was allegedly aggrieved against the change of date of appointment from 22.05.1989 to 21.08.1989 as was done by the Harayana circle. The Respondent No.2 without giving any opportunity of hearing to the applicants and without the order dated 04.04.2003 passed by Respondents No.3 having been challenged either before him or before any court of law, passed the impugned order dated 26.05.2006 quashing the order of Respondent No.3 dated 04.04.2003 and

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also fixed the date of regular promotion of Ashok Kumar Gupta as 22.05.1989. As the order has been passed to the detriment of the applicants and that too without affording them any opportunity of hearing, it should be quashed outrightly. Moreover, it is said that while passing the impugned order Respondent No.2 indicated that there is no rule for notional promotion. This observation is against the record. The list of such persons of various circles such as Cuttack, Ahmadabad Madras, Kapurthala Nagpur, Haryana with the dates of their notional promotion has been given in para-23 of the O.A. Therefore, it is further said that there has been total non-application of mind in passing the impugned order. It is further said that illegality on the part of the respondents continued to be perpetuated by means of order dated 28.07.2006, followed by another order implementing the impugned order dated 26.05.2006 lowering the seniority of the applicants in the seniority list as on 31.10.1994. Hence this O.A.

3. O.A. has been contested by filing a detailed Counter Affidavit saying that there is no provision of notional promotion in the rules/instructions. It is said that the result of Junior Accounts Officers Part-II examination was declared by the postal directorate on 11.05.1989. They were promoted as Junior Accounts Officers on ad-hoc basis vide Director of Accounts (Postal), Lucknow office order dated 29.06.1989. Subsequently, their ad-hoc promotion was regularized from the date of their ad-hoc promotion vide order dated 15.10.1990. It is further said

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that the appointing authority for Junior Accounts Officers is the C.P.M.G. The department conducted the Junior Accounts Officers examination simultaneously all over India in two parts viz Part-I and Part-II. The candidate becomes eligible for promotion to Junior Accounts Officers cadre on his qualifying both the parts of the said examination. The result is declared circle wise in order of their circle merits on the basis of marks secured in the Part-II examination and further promotion in Junior Accounts Officer cadre is made from these Junior Accounts Officers, who cleared Part -II examination within their respective circles as per turn according to rules on the basis of their circle merit and on availability of vacancies. However, the postal directorate introduced benefit of notional promotion in Junior Accounts Officers cadre from the date of declaration of Junior Accounts Officers Part -II examination result vide order dated 24.12.1993 (Annexure CA-2). All India eligibility list of Junior Accounts Officers/Assistant Accounts Officers is centrally maintained at postal directorate for making further promotion to account officer cadre in accordance with directions circulated on 24.07.1997 (Annexure-CA-3). It has been admitted that on the representations made by the applicants the C.P.M.G., U.P. Circle, Lucknow granted them notional promotion in Junior Accounts Officers cadre from the date of declaration of result i.e. 11.05.1989. Then one Ashok Kumar Gupta, Assistant Accounts Officer, Haryana circle made a representation for grant of similar benefit of notional promotion. The case was thoroughly

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examined by the Member (Personnel), the next higher and appellate authority to the Chief Postmaster General and he passed the impugned order dated 26.06.2006, thereby, quashing the order passed by Chief Postmaster General, U.P. Circle, Lucknow regarding grant of notional promotion in favour of applicants on the ground that it was not covered under the rules/orders. In respect of giving opportunity of hearing before passing of the order by Member (Personnel), it has been said that it was not mandatory because, it was not a statutory order.

4. In the Rejoinder Affidavit the significant averments of the O.A. have been reiterated. It has been also said that Sri Ashok Kumar Gupta has also been extended the benefit of notional promotion w.e.f. 22.05.1989 and as such it is apparent that the respondents are trying to blow hot and cold at the same time. They want to extend the benefit of notional promotion to the Sri Gupta and deny the same to the applicants.

A Supplementary Counter Affidavit has also been filed reiterating the similar averments as contained in the counter affidavit.

5. From both the sides the written arguments have also been filed.

6. We have also heard the oral arguments placed by the learned counsel for both the sides and perused the material on record thoroughly.

7. The first and foremost arguments on behalf of the applicants is that both the impugned order dated 26.05.2006

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and 28.07.2006 have been passed in gross violation of rules of natural justice because, no opportunity was afforded to the applicants despite the fact that their seniority which was fixed way back on 04.04.2003 (Annexure-A-4) was disturbed after a period of more than three years. By means of impugned orders the notional promotion in favour of the applicants were quashed. The learned counsel for the applicants has placed reliance on the following three case laws in which it has been held that where an order affecting the vested right/civil right of a person has been passed without affording an opportunity of hearing, the said order would be nullity in the eyes of law.

(i)- **Shekhar Ghosh vs. Union of India 2007 (1) SCC-331-**

In this case principal of 'Audi alteram partem'—Right of hearing (Pre-decisional hearing)—Warranted where decision involves civil consequences, was discussed.

(ii). **Basudeo Tiwary vs. Sido Kanhu University and Others (1998) 8 SCC-194-**

In this case, it was laid down that natural justice, is an antithesis of arbitrariness, which too is a facet of Article-14. The requirement of Audi alteram partem therefore flows from Article-14. In order to ensure state action to be just, fair and reasonable, procedural requirement of natural justice has to be implied into many situations though relevant statute may be silent on this aspect.

(ii)-. **R. Sulochana Devi vs. D.M. Sujatha and Others 2005**

(1) ATJ-671- Para-18 and 19. In this case, it was laid down that when the order passed by an authority is not in accordance

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with law or no notice was given to the party concerned, then the order is nullity. Further an order made without hearing the party affected is also bad in law.

8. In the backdrop of the above preposition of law, it may be mentioned on the factual matrix that concededly, all the four applicants had appeared in the departmental examination for the post of Junior Accounts Officer cadre and had successfully qualified by means of letter dated 11.05.1989 (Annexure-A-2). It is also admitted that their promotion order could be issued on 29.6.1989 (Annexure-A-3). By that time certain other persons whose names were there in the result dated 11.05.1989 had been posted. But, while posting them these persons were assigned seniority w.e.f. 11.05.1989 itself i.e. the date of declaration of result while the applicants were assigned seniority w.e.f. 29.06.1989 i.e. the date when the actual promotion order was issued. Thus there was a delay of about 1-½ months in the issuance of actual promotion order. The applicants therefore preferred a representation to the head of circle i.e. C.P.M.G., O.P.No.3. He took-up the matter with opposite party No.2 i.e. Member (Personnel), who by means of letter dated 18.10.2001 and 07.02.2003 (Annexure-RA-8 and 9) directed that for Junior Accounts Officers cadre the C.P.M.G. himself is fully competent to decide the matter relating to the grant of notional promotion therefore decision may be taken by him accordingly. In furtherance thereof the C.P.M.G. (O.P.No.3) took the decision and issued the order dated 04.04.2003 (Annexure-A-4) in favour

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of the applicants giving them notional promotion w.e.f. 11.05.1989 and also correcting their seniority. Since then they were enjoying these benefits of notional promotion. The seniority list of Junior Accounts Officers was also corrected by opposite party with the issue of corrected/revised seniority by means of letter dated 14.01.2004. From the pleadings of the parties, it comes out that in due course of time one Ashok Kumar Gupta preferred a representation to opposite party No.2 for change of his date of appointment in Junior Accounts Officer cadre from 21.08.1989 to 22.05.1989 or w.e.f. 11.05.1989 on the ground that similar benefit has been given to the officers of U.P. Circle i.e. the applicants. The opposite party No.2 passed the impugned order dated 26.05.2006 (Annexure-A-1) allowing the regular promotion in Junior Accounts Officer Cadre of Sri Gupta from 22.05.1989. At the same time though no quashing of order dated 04.04.2003 (Annexure-A-4) passed by opposite party no.3 was sought, but he also quashed that order of C.P.M.G. (Respondent No.3) in respect of applicants on the ground that no notional promotion could be given. There is no quarrel on the point that while passing of this order by opposite party no.2, no opportunity of hearing whatsoever was given to any of the applicants, whose date of notional promotion which they were enjoying for the last about three year was being disturbed. This was certainly against the principles of 'Audi alteram partem' and natural justice. Rightly or wrongly a right had accrued in favour of the applicants vide order dated 04.04.2003 passed by the

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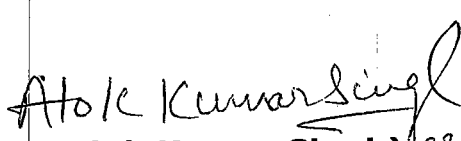
Cadre Controlling Authority. Therefore, prior opportunity of hearing was a condition precedent, which was not afforded to them. Therefore, first impugned order dated 26.05.2006 (Annexure-A-1) by means of which order dated 04.04.2003 passed by Respondent No.3 was quashed and also consequential order dated 28.07.2006 by means of which seniority was recast are void-abinitio and deserve to be quashed. It is also noteworthy that before giving notional promotion probably as a precautionary measure the cadre controlling authority i.e. C.P.M.G. himself has referred the matter to opposite party no.2 seeking his approval. But, as said above the opposite party no.2, asked opposite party no.3 to take decision at his own end being competent authority. In that reply, it was nowhere mentioned that the proposed notional promotion cannot be granted under the rules as has been mentioned now by respondent no.2 in the impugned order passed by him. Accordingly, Respondent No.2 took the decision at his end in favour of the applicants. Besides giving an opportunity of hearing to the applicants in fact the Member (Personnel) (Respondent No.2) should have also at least sought comments of his subordinate i.e. C.P.M.G., opposite party no.3, who had earlier referred the same matter seeking his approval. But, it was also not done. Not only this, though the order passed by opposite party no.3 was not challenged by said Sri Gupta but by means of same order opposite party no.2 also set aside that order in respect of applicants.

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9. It has been further argued on behalf of the applicants that though while passing the impugned order, the opposite party no.2 has indicated that there is no provision for grant of notional promotion, but in Annexure-A-5 the Column-8 pertains to notional promotion. Similarly, in Annexure R.A.-2 names of 21 person of 1988 batch of applicants have been shown who have been granted notional promotion w.e.f. 11.05.1989 despite their actual date of promotion was different and was of subsequent date. Yet another list of various officers throughout India in Junior Accounts Officers as contained in Annexure R.A.-3 has also been brought on record. This prima-facie shows that opposite parties have been following policy of giving notional promotion to the officers whose promotion were delayed on account of administrative lapses. Even Sri Gupta in whose favour the impugned order dated 26.05.2006 has been passed, was actually promoted on 21.08.1989 but has been given notional promotion w.e.f. 22.05.1989.

10. Finally, therefore, in view of the above discussion this O.A. deserves to be and is accordingly allowed. The impugned orders dated 26.05.2006 (Annexure-A-1) and consequential order dated 28.07.2006 (Annexure-A-6) so far the same relate to all the four applicants are hereby quashed with all consequential benefits, if any,. No order as to costs.


(S.P. Singh)
Member (A)


(Justice Alok Kumar Singh) 23.1.12
Member (J)

Amit/-