

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
Lucknow this the 16th day of January, 2001.

T.A. No. 1057/87 (W.P. No. 2670/82)

HON. MR. D.C.VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Mohd. Naseem, aged about 40 years, son of late Mohd. Haleem, Resident of Mohalla Rasoolpur, barabanki City, Barabanki.

Applicant.

By Advocate Shri A. Moin.

versus

1. Union of India through the Secretary to Govt. of India, Ministry of Finance, New Delhi.
2. Central Board of Excise and Customs New Delhi through its Secretary.
3. The narcotics Commissioner of India, 19, The Mall, Morar, Gwalior-6 (M.P.)
4. Assistant Narcotics Commissioner (H.Q.) Govt. of India, Central Bureau of narcotics, 19, The Mall, Morar, Gwalior-6 (M.P.)
5. Sri D.S. Jain, Inspector(Preventive), C/o Deputy Narcotics Commissioner, Kota (Rajasthan).

Respondents.

By Advocate Shri Deepak Shukla B.H. for Shri Prashant Kumar.

O R D E R

By D.C.VERMA, MEMBER(J)

The applicant of this case has challenged his reversion order from the post of Inspector to the post of Sub Inspector. The brief facts of the case are that the applicant was initially appointed as S.I.(Factory Guard) on 21.1.63. Subsequently, the applicant was appointed on 28.4.71 as S.I. in the Department of Narcotics (Preventive) as the post of Factory Guard had been declared surplus. By order dated 31.7.71, the applicant was absorbed as S.I. Preventive in the Department of Narcotics. A combined seniority list was issued on 6.6.75 and the applicant's name finds place at serial No. 216. The applicant represented

against the seniority list. The representation was allowed vide Annexure A-3 dated 4.8.76 and the applicant's seniority was fixed in the grade of Sub Inspector w.e.f. 21.12.63 between V.G. Pandey and Motilal i.e. serial No. 100 and 101 of the seniority list of Sub Inspectors.

2. The applicant was, by order dated 26.12.77 (Annexure-4 to the O.A.) appointed on adhoc basis to officiate as Inspector against the existing regular vacancy w.e.f. 10.1.1977. Subsequently, by order dated 26.5.1982, the seniority of the applicant in the grade of Sub Inspector was changed and the applicant was reverted back to his original position^s at serial No. 216 in the seniority list of Sub Inspector. The order dated 26.5.82 (Annexure -8 to the O.A.) was challenged by the applicant before the Hon. High Court of Judicature at Allahabad (Lucknow Bench) by filing writ petition No. 2670 of 1982. The impugned order was stayed by the Hon. High Court Court vide order dated 3.6.82. The Interim order was made absolute, by a Division Bench of the Hon. High Court vide its order dated 9.7.84. After the Administrative Tribunals Act, came into effect, the writ petition was transferred to this Tribunal and was registered as T.A. No. 1057/87. The T.A. was however, dismissed for non prosecution vide order dated 17.4.90. It was also provided in the order that the interim order granted by the Hon. High Court vide order dated 3.6.82 is vacated. Subsequent thereto, on application by the applicant, by order dated 3.8.85, the Tribunal recalled the order dated 17.4.90 and restored the case to its original number. By this order, the Tribunal stayed the establishment order dated 1.5.95 which had been passed by the respondents consequent to dismissal of the O.A. After completion of the pleadings, the O.A. has come up for hearing on merits.

3. The main submission of the learned counsel for the applicant is that the order of reversion has been passed by the respondents without affording any opportunity of hearing and consequently, a settled position has been unsettled by the impugned order by the respondents.


4. Heard the learned counsel for the parties. The documents on record show that when the seniority of the applicant was fixed in the grade of Sub Inspector, he was initially placed at serial No. 216. The representation of the applicant was allowed vide Annexure A-3 dated 4th August, 76 and the applicant was placed between serial no. 100 and 101 i.e. between Shri V.G. Pandey and Shri Motilal. This seniority was given to the applicant in the grade of Sub Inspector w.e.f. 21.12.63. Keeping that seniority in view, the applicant was promoted to officiate as Inspector against the existing regular temporary vacancy by order dated 26.12.1977 (Annexure -4 to the O.A.). This order shows that the applicant was appointed on regular basis w.e.f. 10.1.1977. After the order Annexure-4 was issued, the impugned order was passed in 1982, and the applicant was reverted back to his original seniority in the grade of Sub Inspector at serial No. 216. The applicant was not afforded any opportunity of hearing. Thus, the principle of audi alteram partem has not been observed. In the case of Basudeo Tewary vs. Sido Kanhu University and others reported in (1998) 9 SCC 194, even in the case where the appointment itself was found illegal, the termination of service without affording an opportunity of hearing was held not valid. In the cited case, the apex court held as below:

"The law is settled that non arbitrariness is an essential facet of Article 14 pervading the entire realm of State action governed by Article 14. It has come to be established, as a further corollary, that the audi alteram partem facet of natural justice is also a requirement of Article 14, for natural justice is the antithesis of arbitrariness. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an antithesis to fair, just and reasonable treatment."



5. In O.A. 800/93 Inre Uma Shankar Nirmal and others vs. Union of India and others decided by this Tribunal on 9.3.2000 following the decision in the case of Shrawan Kumar Jha and others vs. State of Bihar reported in 1991 (Suppl) 1, SCC 330 and Shivji Ray vs. Union of India and others reported in (1989) 10, A.T.C. 439, this Bench of the Tribunal quashed the impugned order by which the selection was cancelled and the applicant therein was reverted, as showcause had not been given to the applicant therein before the impugned order was passed.

6. In view of the above, the impugned order dated 26.5.82 re-fixing the seniority of the applicant and reverting him from the grade of Inspector to the grade of Sub Inspector in pursuance of the impugned order is quashed. The O.A. is allowed accordingly. Costs easy.


MEMBER(A)


MEMBER(J)

Lucknow dated: 16.01.01

Shakeel/