

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 340/2000
T.A. No.

199

DATE OF DECISION 26.11.05

Petitioner

R.N.Johari

Advocate for the Petitioner (s)

Mr.P.V.Calla

Versus

Respondent

Union of India & Ors.

Ms.Shalini Sheorn,Adv.brief holder Advocate for the Respondent (s)
for Mr.Bhanwar Bagri

CORAM :

The Hon'ble Mr.

Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr.

A.P.Nagrath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.P.Nagrath)
Member (A)

(G.L.Gupta)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 26/11/02

OA 340/2000

R.N.Johari, UDC (Cashier) in the Passport Office, Tonk Road, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of External Affairs, Govt. of India, CPV Division, Patiala House, Tilak Marg, New Delhi.
2. Joint Secretary (CPV) & Chief Passport Officer, Ministry of External Affairs, CPV Division, Patiala House, Tilak Marg, New Delhi.
3. Passport Officer, Passport Office, Tonk Road, Jaipur.
4. Shri Mir Singh, UDC, Regional Passport Office, Bhikaji Kama Place, New Delhi.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant

... Mr.P.V.Calla

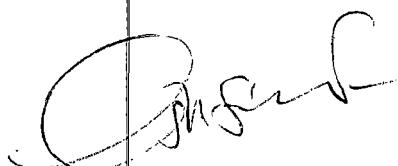
For the Respondents

... Ms.Shalini Sheorn, Adv.brief
holder for Mr.Bhanwar Bagri

O R D E R

PER MR.JUSTICE G.L.GUPTA

The applicant was appointed as daily rated Clerk on 19.4.82. It is averred that after undergoing the selection process he was given regular appointment on the post of LDC w.e.f. 1.6.85. In the seniority list of LDCs, published on 2.11.98, his name was shown at S.No.174. A DPC was constituted for making promotion to the post of UDC. In its meeting held on 1.11.99, the DPC recommended the applicant for promotion to the post of UDC. The applicant was given promotion to the post of UDC, vide order dated 4.11.99, in the pay scale of Rs.4000-6000. However, the respondents have reverted the applicant from the post of UDC to that of LDC, vide order dated 12.7.2000, on the ground that a review DPC had been constituted and as per its recommendations the applicant and others were being reverted. The reason of reversion is said to be that there was a short-fall of the reserved category candidates and it was to be made up.



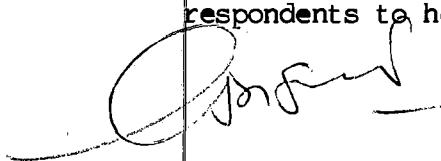
2. The case for the applicant is that the order of reversion has been issued without following the principles of natural justice. It is his further case that there was no short-fall of the reserved category candidates in the cadre of UDCs and the impugned order is illegal and arbitrary.

3. In the reply, the respondents have come out with the case that out of 23 posts reserved for the Scheduled Caste candidates in the grade of UDC, only 6 candidates belonging to that category were promoted and it was felt that there was no proper determination of the vacancies in each grade when the process of DPC of 1999 had commenced and, therefore, on the advice of the Member, National Commission for Scheduled Castes/Scheduled Tribes, the review DPC was held. It is averred that out of 431 posts of UDC, 231 candidates were in position and there was short-fall of 21 SC & 24 ST candidates. It is further averred that the applicant has not been put to financial loss, as he has been given the benefit of the Assured Career Progression (ACP) Scheme w.e.f. 9.8.99. It is also the case for the respondents that in the peculiar facts and circumstances of the case the principle of violation of the principles of natural justice has no application and the error could not be allowed to be perpetuate.

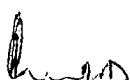
4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The learned counsel for the applicant canvassed that the impugned order is liable to be quashed on the sole ground that it was issued without following the principles of natural justice. He pointed out that the order of promotion of the applicant dated 4.11.99 did not indicate that the promotion had been given to him on provisional basis. His contention was that after the applicant was recommended by the DPC and given promotion in February, 1999, his right to hold promotional post could not be taken away without following the principles of natural justice. His further contention was that the seniority list (Ann.A/4) indicates that there was no short-fall of the reserved category candidates.

6. On the other hand, the learned counsel for the respondents contended that in such a matter it was not necessary to follow the principles of natural justice because the Member, National Commission for Scheduled Castes/Scheduled Tribes, had directed the respondents to hold the review DPC.



7. We have given the matter our thoughtful consideration.
8. There is merit in the contentions of the learned counsel for the applicant. The applicant had been given promotion after his name was approved by the DPC. He had, therefore, a right to hold the promoted post. It may be that some error was detected in the calculation of vacancies. It may also be correct that error cannot be allowed to perpetuate. However, it cannot be accepted that the so called error could be corrected without giving an opportunity to the applicant of being heard. By the impugned order (Ann.A/1), the respondents had taken away the right of the applicant to hold the promotional post. This could not be done without following the principles of natural justice.
9. We do not think it necessary to decide whether there was any short-fall of the reserved category candidates or not in the cadre of UDCs. The matter should be seen by the department itself.
10. We have no hesitation in saying that the impugned order (Ann.A/1) is liable to be quashed only on the ground that it was passed without following the principles of natural justice.
11. Consequently, the OA is allowed. The impugned order (Ann.A/1) dated 12.7.2000, so far as it relates to the applicant, is hereby quashed. The applicant shall be deemed to be continued on the post of UDC, with all consequential benefits.
12. This order, however, will not preclude the respondents from passing appropriate order after following the procedure provided in law.
13. No order as to costs.


(A.P. NAGRATH)
MEMBER (A)


(G.L. GUPTA)
VICE CHAIRMAN