CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

O.A. No. 374/2003 Date of decision: 20.11.2003.

Shri H.P. Kacholia S/o Shri Ram Swaroop Kacholia, aged 40 years, r/o C-132, Vidyut Nagar, Gandhi path, Vaishali Nagar, Presently posted as Superintendent , Central Excise Head Office, Jaipur.

Applicant.

VERSUS

1. Union of India through the Secretary, Department of Personnel and Training, Government of India, New Delhi.

2. The Chairman, Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, North Block, New Delhi.

3. The Chief Commissioner, Central Excise & Customs, Jaipur Zone.

4. The Commissioner, Central Excise & Customs, Statue Circle, "C"Scheme, Jaipur.-1

: Respondents.

Mr. S.K. Sharma : Counsel for the applicant.

Mr. T.P. Sharma : Counsel for the respondents.

CORAM:

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

The applicant inter-alia assailed the order dated 29.01.03 (Annex. I-A by which he has been ordered to be reverted from the post of Superintendent Group (B) to the post of Inspector Group (C) and has also sought certain consequential and ancillary reliefs.

2. We have heard the learned counsel for the parties and have carefully perused the pleadings and records in this case.

3. The indubitable facts which are relevant in resolving the controversy involved in the instant case are that the applicant while working on the post of Inspector of Central Excise and Custom, came to be promoted to the post of Superintendent of Central Excise and Custom Group (B) in the scale of pay of Rs.6500-10500 vide order dated 23.09.2002 Annex(A.2). He immediately carried out the order and enjoyed the promotion. Thereafter, by an order dated 29.1.2003, the applicant has been ordered to be reverted from the post of Superintendent to the post of Inspector and certain persons belonging to reserved category have been ordered to be promoted.

4. The Original application has been filed on diverse grounds naratted in the O.A. Certain judgements of various courts including that of the Tribunal have been referred to in support of the contentions raised in the O.A.

5. As regards the variance a preliminary objection was taken with regard to maintainability of this O.A on the ground of alternative remedy and it has been said that instructions were issued by the DOPT vide OM dated 11.07.2002 and they could not be implemented by the DPC and there were certain SC & ST candidates who were selected as per their own merits and

thus a decision was taken to convene review DPC to rectify the unintended mistakes and as a result thereof, the impugned order had to be passed.

6. The learned counsel for the applicant has submitted that the applicant was promoted to the post of Superintendent Group (B) on substantive basis and the promotion was without any rider whatsoever. Therefore the applicant has vested an indefeasible right to hold the post and he could not be reverted except after following the due process of law and giving him pre-decisional hearing in the matter. At this stage a brief pause was given and the learned counsel for the respondents wanted an hour's time to ascertain the factual position as to whether any show cause notice has been given to the applicant or not. The matter was taken up again and it was informed by the learned counsel for the respondents that in the instant case no show cause notice was given. The learned counsel for the respondents, however, submitted that in case this Tribunal feels that show cause notice ought to have been given, the respondents may be given liberty to take action in accordance with law. However, he strenuously submitted that the applicant has no cause worth interference by this Tribunal in as much as it was very well known to him that certain orders have been issued by the DOPT regarding reservation and also in view of the amendment of the Constitution of India and there was hardly any necessity to give notice in the matter.

7. We are very clear in our mind that in the present case, admittedly the applicant was promoted on substantive basis without any rider whatsoever and no show cause notice or pre-decisional hearing has been given to him. It would be pertinent to mention here that the old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must by consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non pecuniary damages. In its

wide umbrella comes everything that affects a citizen in his civil life.

8. Besides, what have been discussed above, the law has been propounded through one of the very celebrity judgement passed in the case of H.L. Trehan and others vs. Union of India and others [AIR 1989 SC 568], wherein their Lordships have elucidated and examined the significance of the following of the principles of natural justice. The relevant portion in para 11 of the report reads as under:

> "..... ....
> ....
> It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant without complying with the rules of nataural justice by giving tne Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against tne provision of Art. 14 of the Constitution. Admittedly, the employees of CCRIL were not given opporotunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice. "

9. Now applying tne aforesaid principle of law to the present case, since in the present case, the applicant was promoted on substantive basis and has vested right to hold the post no order visiting him with civil or evil consequence could have been passed against him without following the principles of natural justice. The aforesaid decision squarely covers on all fours the instant case. Therefore the impugned order cannot be sustained since there was an infraction of principles of natural justice.

10. In view of what has been stated and discussed above, there is force in the instant application and therefore the same is partly allowed. The impugned order in so far as it relates to the applicant stand quashed and the applicant shall be entitled to all consequential benefits. HOwever, this order will not preclude the respondents from passing any fresh order in accordance with law. With regard to the other relief(s) claimed by the applicant he is at liberty to approach the Tribunal according to law. No costs.

(A.K. Bhandari)
Administrative Member.

(J.K. Kaushik)
Judicial Member.

jsv.