

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

(O. APPLICATION NO.: 46/2003)

Applicant(s)

Respondent(s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
<u>17-9-2007</u>	<p>Mr. Vinod Goyal proxy counsel for Mr. Virendra Bedha counsel for applicant. Mr. Kunal Patel counsel for Respd.</p> <p>Heard the learned Counsel for the parties. For the reasons dictated separately, the OA is disposed of.</p> <p><i>Shukla</i> (J. P. Shukla) Administrative Member</p> <p><i>Chauhan</i> (M. L. Chauhan) Judicial Member</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 17th day of September, 2007

ORIGINAL APPLICATION No.46/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Nand Lal Kumawat,
s/o Shri Mangilal Kumawat,
aged about 47 years,
r/o B-1/12 LIC Flats,
Vidhayak Nagar, Sector-2,
Jaipur, presently posted as
Superintendent (Law),
Central Excise Commissionerate,
Jaipur 1st, NCR Building,
Statue Circle, Jaipur

.. Applicant

(By Advocate: Mr. Vinod Goyal, proxy counsel to Mr.
Virendra Lodha)

Versus

1. Union of India through the Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chief Commissioner, Central Excise, Jaipur
3. The Commissioner, Central Excise, Jaipur 1st, Jaipur, NCR Building, Statue Circle, Jaipur.
4. Shri Mohan Lal, Superintendent, Custom Division, Bikaner.

.. Respondents

(By Advocate: Mr. Kunal Rawat, SCGSC)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- i) to quash and set aside the establishment order No.16/2003 dated 29.01.2003 (Annexure A-1) and establishment order No.18/2003 dated 29.1.2003 (Annexure-A2).
- ii) By appropriate order or direction, it may be declared that the applicant was rightly promoted as Superintendent, Central Excise, Group-B, by an order dated 23.09.2002.
- iii) Any other appropriate order or direction just deem fit may kindly be passed in favour of the applicant.
- iv) Cost of the application be also awarded."

2. Briefly stated, facts of the case are that Departmental Promotion Committee (DPC) for promotion to the post of Superintendent Group 'B' from amongst Inspectors was held on 18/19.7.2002 for 124 regular vacancies. Out of the aforesaid vacancies, 96 vacancies were treated as unreserved whereas 19 vacancies and 9 vacancies were treated for SC and ST candidates and a select panel of 124 candidates including the applicant was prepared by the DPC held on 18/19.7.2002. Accordingly, 121 Inspectors including the applicant were promoted as Superintendent Group 'B' on officiating basis under the Office Establishment order No. 96/2002 dated 23.9.2002. However, vide impugned order No. 16/2003 dated 29.1.2003 (Ann.A1) issued by respondent No.3, 18 persons including the applicant were reverted from the post of Superintendent Group 'B' to the post of

Inspector Group 'C' and vide a separate order No. 18/2003 dated 29.1.2003, the applicant was again promoted as Superintendent Group 'B' on ad-hoc basis. The grievance of the applicant in this case is that the order of reversion of the applicant vide impugned order Ann.A1 is illegal and arbitrary and the respondents had committed a great error by reverting the applicant vide impugned order after holding the review DPC and by mis-applying the DOPT OM dated 11.7.2002, which deals with reservation in promotion - treatment of SC/ST candidates promoted on their own merit.

3. Notice of this application was given to the respondents. The facts as stated above are not disputed in the reply by the respondents. The situation under which the review DPC was held by the respondents has been explained in the reply affidavit. It has been stated that the DPC held on 18/19.7.2002 for the post of Superintendent Group 'B' did not take into consideration the DOPT OM dated 11.7.2002, as such the reserved category candidates who were promoted on their own merit and fell within the general posts were adjusted against the reserved posts in violation of the aforesaid OM, as such a review DPC was convened. It is also stated that as against 96 unreserved vacancies of Superintendent Grade 'B', 10 candidates from SC category and 8 candidates from ST

category have obtained the requisite bench-mark and were eligible for selection against 96 unreserved vacancies on their own merit, as such they were required to be adjusted against unreserved vacancies and not against reserved vacancies as was done by the DPC held on 18/19.7.2002 which necessitated convening of the review DPC. Thus, according to the respondents, no infirmity has been committed by them by issuing the impugned order thereby reverting 18 persons including the applicant vide order No.16/2003 dated 29.1.2003. It is further stated' that the applicant has been promoted again on ad-hoc basis w.e.f. the same date vide another order as vacancy was available.

4. We have heard the learned counsel for the applicant and gone through the material placed on record.

5. The only dispute involved in this case is regarding interpretation of the DOPT OM No. 36028/17/2001-Estt. (Res.) dated 11.7.2002.

5.1 At this stage, it will be useful to quota the said OM in extenso and thus reads:-

- (i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualification will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- (ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a

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candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.

(iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

(iv) 50% limit on reservation will be computed by excluding such reserved category candidates who are appointed/promoted on their own merit.”

From perusal of the OM dated 11.7.2002, as reproduced above, it is quite evident that a person belonging to SC/ST category appointed by promotion on his own merit will not be adjusted against the reserved point of the reservation roster. Thus, according to us, the respondents have committed no infirmity in case 18 persons who were initially adjusted against the reserved posts of SC/ST category were adjusted against the unreserved vacancies of Superintendent Group 'B' as they have obtained the requisite bench-mark and were not promoted under reservation/relaxation of qualifications.

5.2 The learned counsel for the applicant further argued that the action of the respondents in issuing the impugned order thereby reverting the applicant is against the principles of natural justice as no show-cause notice was issued to the applicant and as such the applicant is entitled to the relief on this limited ground.

This brings us to the question as to whether the principles of natural justice were required to be

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complied with. There cannot be any doubt whatsoever that the audi-alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing. It is also however, well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore, in this case the selection of the applicant was in excess of quota meant for general category and he could not have been given the appointment/promotion in terms of OM dated 11.7.2002, it would have been a futile exercise to give him an opportunity of being heard.

In Aligarh Muslim University vs. Mansoor Ali Khan, (2000) 7 SCC 529, the Hon'ble Apex Court has held as under:-

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"25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of 'admitted or indisputable facts leading only to one conclusion' referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various case and also views expressed by leading writers like Profs. Garner, Craig, de Smith Wade, D.H. Clark etc. some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the fact of a particular case."

In Karnataka SRTC vs. S.G.Kotturappa, (2005) 3 SCC 409, the Apex Court has held as under:-

"The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straitjacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criteria required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the respondents on each occasion and thus, the respondents, therefore, could not have improved their stand even if a further opportunity was given."

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In Punjab National Bank vs. Manjeet Singh, (2006)

8 SCC 647, the Hon'ble Apex Court has observed as under:-

"The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice."

In P.D. Agrawal vs. State Bank of India, (2006)

8 SCC 776, the Hon'ble Supreme Court observed as under:-

"30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

39. Decision of this Court in S.L.Kapoor vs. Jagmohan, whereupon Mr. Rao placed strong reliance to contend that non-observance of the principles of natural justice itself causes prejudice or the same should not be read 'as it causes difficulty of prejudice', cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala vs. S.K.Sharma and Rajendra Singh Vs. State of M.P. the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of *audi alteram partem*, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is

not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."

5.3 Thus, viewing the matter from the law laid down by the Hon'ble Apex Court, we are of the view that principle of natural justice is not applicable in the instant case ,inasmuch as, the applicant is not entitled to any relief in view of the DOPT OM dated 11.7.2002, as reproduced above, and it will be useless formality to issue show-cause notice in the fact situation prevailing and in terms of legal consequences, which may flow from the aforesaid OM dated 11.7.2002 and the result would remain the same viz. that the applicant will not be entitled to any relief.

5.4 The learned counsel for the applicant further contended that some of the persons who were also reverted vide the impugned order has filed OAs in this Tribunal and the same were allowed with direction to the respondents to pass fresh order after giving opportunity of hearing to the applicants therein. The learned counsel for the applicant further submitted that he has not received any instruction from his client and probably he might have got the benefit on the basis of OAs allowed by this Tribunal on earlier occasion.

5.5 The learned counsel for the applicant further argued that in case the applicant has got relief as was granted to the persons similarly situated who were also reverted by common impugned order, his interest may be protected, in case this Tribunal comes to the conclusion that it is not necessary to remit the case to the appropriate authority to pass fresh order by following principles of natural justice. We have given due consideration to the aforesaid submission made by the learned counsel for the applicant. We are of the view that in case the respondents have granted some relief to the persons similarly situated who were reverted vide order No. 16/2003 dated 29.1.2003, the findings given by us in this order will not come in the way of the applicant and the applicant shall be treated at par with the similarly situated persons who were reverted vide order No. 16/2003 dated 29.1.2003.

6. With these observations, the OA is disposed of with no order as to costs.



(R.P. SHUKLA)
Administrative Member



(M.L. CHAUHAN)
Judicial Member

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