

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00335/2014

Date of decision: 05.02.2015.

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

Subhash Chander S/o Sh. Chanan Ram, Inspector (Retd.) Chandigarh Transport Undertaking-III, Chandigarh, R/o Village Sambhalkhi, Tehsil and District Mohali (Punjab).

...APPLICANT

BY ADVOCATE : By Advocate Shri J.R. Syal

VERSUS

1. Union of India through Secretary, Ministry of Home Affairs, North Block, New Delh-110001.
2. Union Territory, Chandigarh through Secretary Transport, UT Chandigarh.
3. The Divisional Manager CTU & Director Transport, U.T. Chandigarh.
4. General Manager, Chandigarh Transport Undertaking, Chandigarh.
5. Accountant General (A&E), U.T. Chandigarh.

...RESPONDENTS

BY ADVOCATE: Shri Anil Sharma, Vice Shri Amit Jhanji for R-2-4 and Shri Brajesh Mittal for R-5.

ORDER (ORAL

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

Challenge in this Original Application is to an order dated 05.03.2013, whereby the applicant has been reverted from the post of Inspector to that of Conductor.

2. The undisputed facts, which led to the filing of the present Original Application, are that the applicant, who joined the respondent department as Conductor vide order dated 03.05.1977, was recommended by the Departmental Promotion Committee (for short, DPC) held on 27.04.2012 for promotion to the post of Inspector and promoted as such vide order dated 30.04.2012. The applicant retired on attaining the age of superannuation, as envisaged under Rule 3.26 (a) of Punjab Civil Services Rules, on 31.01.2012. The impugned order dated 05.03.2013 has been issued by respondent no.3 after his retirement, reverting him to the post of Conductor with immediate effect from the date of his promotion, i.e., 30.04.2012. It is this action of the respondents, which is under challenge on the sole ground that before passing the impugned order the applicant has not been provided an opportunity of hearing, i.e., neither any show cause notice issue nor was he personally heard before passing the impugned order.

3. In support of the above, Shri Syal, learned counsel appearing for the applicant vehemently argued that in absence of compliance of natural justice, which has civil consequences, the order is bad in law and

accordingly cannot sustain. He placed reliance upon a judgment in the case of **Union of India v. Narendra Singh**, 2008 (2) RSJ 582.

4. The contesting respondents have filed a detailed written statement wherein they have taken a specific ground that the applicant was promoted as Inspector on 30.04.2012 under a mistake and later on it was found that he could not be promoted because he was under currency of punishment and when the above fact came to the knowledge of the respondent-department then they immediately issued the impugned order rectifying their mistake. It is submitted that the applicant was served with a penalty of one increment with cumulative effect. This fact was not brought to the notice of the DPC and in absence of that his case was recommended for promotion and based upon that recommendation he was promoted. Later on when the mistake was detected the promotion order was withdrawn.

5. Shri Anil Sharma, learned counsel appearing on behalf of respondents 2-4 vehemently opposed the prayer of the applicant to annul the impugned order being violative of principles of natural justice and submitted that when the case of the applicant was considered for promotion he was under a punishment, therefore, his case could not have been considered for promotion. He further submitted that the respondents can rectify their mistake by passing a subsequent order. To buttress his submission he placed reliance upon a judgment reported in **Jasvir Singh and others v. State of Haryana and others**, reported in 2014 (4) RSJ

306, **Jagdish Prajapati v. State of Rajasthan**, 1998 (2) ATJ 286 and in the case of **Union of India v. Narendra Singh** (supra).

6. We have given our thoughtful consideration to the entire matter and perused the pleading placed on record with the able assistance of the learned counsel for the parties.

7. The solitary contention at the hands of the applicant is that the impugned order has been passed in violation of the principles of natural justice, as he was not afforded an opportunity before passing the impugned order. A conjunctive perusal of the pleadings makes it clear that there is no denial to the averment made by the respondents that when the case of the applicant was considered for promotion by the DPC he was under the currency of punishment and his case could not have been considered by the DPC. Wrongly, not only his case was considered but also he was promoted to higher post.

8. Later on, when the above fact came to the knowledge of the respondents they immediately rectified their mistake by passing the impugned order, reverting the applicant to his original post. The contention of the applicant cannot be accepted to negate the impugned order simply for the reason that he was not afforded an opportunity before rectifying the mistake because in the facts and circumstances of the case the opportunity will be an empty formality, as the applicant was under the currency of the punishment at the relevant time. It is settled

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proposition of law that compliance of principles of natural justice in respect of peculiar facts and circumstances of the case is not mandatory or kind of cases. Reliance in this regard has been placed upon a judgment in the case of **Punjab National Bank & Ors. v. Manjeet Singh and others**, (2006) 8 SCC 647, where their Lordships of the Hon'ble Supreme Court have held that natural justice would be applicable only where the factual position or legal implication under an award is disputed. In the case of **Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Anr.**, (2005) 3 SCC 409 where their Lordships have also discussed applicability of principles of natural justice in a case where termination was effected in pursuance of a statutory requirement and did not find adherence to the said principles necessary. Even otherwise it is permissible under law that a bona fide mistake can be rectified at a later stage. Reliance in this regard is placed on **Jagdish Prajapati v. State of Rajasthan** and **Union of India v. Narendra Singh** (supra).

8A. No other point argued.

9. In the light of the above, the Original Application fails and the impugned order is upheld to the above extent. Though the applicant has not prayed for restraining the respondent-department from effecting recovery pursuant to his reversion with retrospective effect when he was promoted, i.e., 30.04.2012, but considering the law on the subject, as laid down in the case of **Chandi Prasad Uniyal & Others v. State of**