

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A. No.674/2014
with
O.A. No.675/2014
O.A. No.676/2014

New Delhi this the 17th day of May, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

(1) first case O.A. 674/2014

Joseph T.A. (Aged about 55 years)
 S/o. Sh. Augustya T.A.
 R/o. 12-D, A/3, Pocket, Mayur Vihar,
 Phase-III,
 Delhi-110 096.Applicant

(2) second case O.A. 675/2014

Smt. Raj. M. Gursahani (Aged about 50 years)
 W/o. Sh. M. L. Gursahani
 R/o. I-89, Lajpat Nagar-II
 New Delhi.Applicant

(3) third case O.A. 676/2014

Prabhat Kumar Govil (Aged about 54 years)
 S/o. Sh. G. L. Govil,
 R/o. 22/17 Block A-1, Sant Nagar,
 Burari, Delhi-110 084.Applicant

(Argued by: Mr. M.K. Bhardwaj, Advocate)

Versus

Union of India & Ors.

1. Secretary
 Ministry of Health and Family Welfare
 Nirman Bhawan, New Delhi.
2. Director General
 Directorate General of Health Services
 Ministry of Health and Family Welfare
 Nirman Bhawan, New Delhi.
3. Medical Superintendent
 Lady Harding Medical College & Associate Hospitals
 (Kalawati Saran Children Hospital)
 Bangla Sahib Road, New Delhi.Respondents.

(By Advocate: Mr. B.S.A. Wanchoo in all the cases)

ORDER (ORAL)**Justice M. S. Sullar, Member (J)**

As identical questions of law and facts are involved, therefore, we propose to dispose of all the **Original Applications** (OAs) **No.674/2014** titled as **Joseph T.A. Vs. U.O.I & Others** (for brevity first case), **No.675/2014** titled as **Smt. Raj M. Gursahani Vs. U.O.I. & Others** (for short second case) and **No.676/2014** titled as **Prabhat Kumar Govil Vs. U.O.I. & Others** (for brevity third case), by virtue of this common decision, in order to avoid repetition of facts.

2. Tersely, the facts and material, which need a necessary mention, for the limited purpose of deciding the core controversy involved in the instant OAs and emanating from the record, are that applicants in first and second case were initially appointed as X-Ray Technician in the month of August, 1987, whereas applicant in the third case was appointed as X-Ray Technician on 25.05.1990, in the pay scale of Rs.1350-2200, by way of appointment letters (Annexure A-2) respectively. Subsequently, the seniority list (Annexure A-3), was prepared. As per Recruitment Rules (RRs) (Annexure A-4), they were required to be considered for promotion to the post of Technical Assistant (TA) in the pre-revised scale of Rs.1400-2300. According to the applicants, after the recommendations of 5th Central Pay Commission (CPC), they were considered for grant of first

financial up-gradation and were granted the higher scale of Rs.5500-9000 vide order dated 13.04.1999 (Annexure A-5).

3. The Government of India, Ministry of Health & Family Welfare, created 217 temporary posts in Kalawati Sharan Children's Hospital vide letter dated 01.05.2000 (Annexure A-6). The applicants claim, that after completion of all the formalities & on the recommendations of Departmental Promotion Committee (DPC) and with the approval of Director and Principal & Medical Superintendent, they were duly promoted to the post of TAs/Sr. Radiographer in the pay scale of Rs.4500-125-7000 with effect from date of DPC, i.e., 05.02.2008 (F/N). The nomenclature of the said post was ordered to be as TA, after getting the approval of DGHS to change the nomenclature of Sr. Radiographer as TA by way of order dated 12.02.2008 (Annexure A-7).

4. Subsequently, consequent upon the decision taken by the fresh DPC, the promotion of the applicants was abruptly treated as cancelled with retrospective effect vide impugned order dated 19.02.2014 (Annexure A-1).

5. Aggrieved thereby, the applicants have preferred the instant OAs, to challenge the impugned orders mainly on the ground of violation of statutory rules and principles of natural justice. According to the applicants, the respondents were not empowered to revert them retrospectively, without issuing any show cause notice (SCN) and without providing opportunity of being heard. It

was claimed that once the applicants were duly promoted on the recommendations of DPC with prior approval of the Director, then there was no occasion to convene the second DPC to abruptly revert the applicants to the lower post. The impugned order (Annexure A-1) in all the cases were termed to be illegal, arbitrary, mala fide, whimsical and against the principles of natural justice. On the basis of the aforesaid grounds, the applicants have sought quashing of the impugned orders, in the manner indicated hereinabove.

6. The contesting respondents refuted the claim of the applicants and filed the reply, *inter alia*, pleading certain preliminary objections of the maintainability of the OAs, cause of action and *locus standi* of the applicants. It was pleaded that the earlier DPC held in the year 2008, overlooked some important facts with regard to continuation of the available posts and the RRs were not notified. Therefore, a fresh DPC scrutinized all the relevant documents, rightly decided to revert the applicants to the lower post on administrative grounds and as such this Tribunal has no jurisdiction to interfere. However, it was nowhere mentioned in the reply, that any show cause notice was issued or opportunity of being heard was provided to the applicants before passing the impugned orders (Annexure A-1). It will not be out of place to mention here that the respondents have stoutly denied all other

allegations contained in the OAs and prayed for their dismissal.

7. Controverting the allegations of the reply filed by the respondents and reiterating the grounds contained in the OAs, the applicants have filed their rejoinder. That is how we are seized of the matter.

8. At the very outset, learned counsel for the applicants has contended with some amount of vehemence, that the reversion of the applicants, without issuing any SCN and providing opportunity of being heard, is arbitrary, illegal and non-est in the eyes of law. In this regard he has placed reliance on the judgments of the Hon'ble Apex Court in the cases of **Ram Ujarey Vs. UOI (1999) 1 SCC 685**, **U.O.I. Vs. Narender Singh 2008 1 SCC 547**, **State of Punjab Vs. Chaman Lal Goyal (1995) 2 SCC 570**, **N.K. Durga Devi Vs. Commissioner of Commercial Taxes, Hyderabad (1997) 11 SCC 91** and **Jagdish Prasad Shastri Vs. State of U.P. and Others 1970 (3) SCC 631**.

9. On the contrary, learned counsel for respondents has vehemently urged that since the earlier DPC overlooked the material factors of promotion, so the applicants were rightly reverted in view of the fresh DPC through the medium of impugned order (Annexure A-1).

10. Having heard the learned counsel for the parties, having gone through the record and legal position with their valuable help, and after considering the entire matter, we

are of the firm view that the impugned order (Annexure A-1) cannot legally be sustained, for the reasons mentioned herein below.

11. As is evident from the record that the applicants were working as X-Ray Technicians. In the wake of recommendations of the DPC and with the prior approval of the Director and Principal & Medical Superintendent, Kalwati Saran Children's Hospital, they were duly promoted to the next higher post of TAs in the pay scale of Rs.4500-125-7000 w.e.f. the date of DPC, i.e., 05.02.1008 (F/N) vide order dated 12.02.2008 (Annexure A-7).

12. Therefore, once the applicants were duly promoted to the next higher post, then they cannot be reverted to the lower post by the competent authority without, issuing SCN, providing adequate opportunity and following the due procedure, which have not been adhered to in these cases by the respondents. Hence, the action of the respondents is illegal, which has caused a great deal of prejudice to the case of the applicants. This matter is no more res integra and is now well settled.

13. An identical question came to be decided by Hon'ble Apex Court in the case of ***Bhagwan Shukla Vs. U.O.I. and Others AIR 1994 SC 480***, wherein it was ruled that in case any employee is reduced without following the due procedure of law in lower scale, then he has obviously been visited with the civil consequences. There has, thus, been a

flagrant violation of the principles of natural justice and he was made to suffer huge financial loss, without being heard. Fair play in action warrants that no such order, which has the effect of employee suffering civil consequences, should be passed without putting the concerned employee to notice and giving him a hearing in the matter.

14. As indicated hereinabove, that neither any show cause notice was issued nor any opportunity of being heard was provided to the applicants nor due procedure was followed by the authorities, hence the impugned order was passed in colourable exercise of power. The order is not only arbitrary but smacks of colourable exercise of power deliberately intended to jeopardise the prevailing interest of the applicants, without adopting the procedure prescribed by law.

15. Thus, the ratio of law laid down in the aforesaid judgment is mutatis mutandis applicable to the present case and is a complete answer to the problem in hand.

16. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

17. In the light of the aforesaid reasons, the instant OAs are accepted. The impugned orders dated 19.02.2014 (Annexure A-1) in all the connected matters are hereby set aside.

Needless to mention the applicants would naturally be entitled to all the consequential benefits. No costs.

Let a copy of this order be placed in all the files.

**(V.N. GAUR)
MEMBER (A)**

**(JUSTICE M.S. SULLAR)
MEMBER (J)**

Rakesh