

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**
O.A. No.373/2014

New Delhi this the 27th day of May, 2016
HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)

Ved Pal
S/o Shri Ram Kishan
R/o H.No.836/24,
Dev Nagar,
Near Shiva Shiksha Sadan School,
Sonepat,
Haryana.Applicant

(Argued by: Mr. Shambhu Ji, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Health and Family Welfare
Nirman Bhawan, New Delhi.
2. The Director General Health Services,
Directorate General of Health Services
Nirman Bhawan, New Delhi-110011.
3. Director,
LHMC & SSKH Associated,
Kalawati Saran Children's Hospital,
Bangla Sahib Marg, New Delhi.Respondents.

(By Advocate: Ms. Anupama Bansal)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in the instant Original Application (OA), filed by applicant, Ved Pal S/o Shri Ram Kishan, is to the impugned order dated 21.10.2013 (Annexure A-1), by virtue of which, he was reverted from the promotional post of Technical Assistant (TA) to the entry level post of Mechanic Refrigeration & Air Conditioning (MR&AC), which was stated

to be without issuing any show cause notice (SCN), contrary to the rules and against the principles of natural justice.

2. The matrix of the facts and material, culminating in the commencement, relevant for disposal of the instant OA, and emanating from the record, is that applicant has joined on 11.06.1993 as MR&AC in reserved SC category in the pay scale of Rs.1320-2040 in Kalwati Saran Children's Hospital (KSCH), Delhi. It was claimed that the Ministry of Health and Family Welfare, with due concurrence of Ministry of Finance, Government of India, had sanctioned two posts of TA (Workshop) in the pay scale of Rs.5000-150-8000 under JICA Project vide order dated 01.05.2000 (Annexure A-2). The Administrative Officer of the Management, with the prior approval of Director, LHMC & SSKH (respondent No.3), published and widely circulated seniority list dated 10.11.2000 (Annexure A-4) of incumbents to the post of MR&AC.

3. The case of the applicant further proceeds, that, as per the scheduled calendar, a meeting of Department Promotional Committee (DPC) was convened to consider the promotion as per the existing Recruitment Rules. The Committee considered the entire service record and recommended the name of the applicant for promotion to the post of TA vide proceedings dated 19.10.2000 (Annexure A-3). In pursuance thereof, the Office Order dated 17.11.2000 (Annexure A-5), was issued on the recommendations of DPC

promoting the applicant to the post of TA (Workshop) in the pay scale of Rs.4500-125-7000 with effect from 19.10.2000. He worked on the promotional post for a long period 13 years.

4. Subsequently, the promotion of the applicant, as TA with effect from 19.10.2000, was abruptly cancelled by Additional Medical Superintendent vide impugned order dated 21.10.2013 (Annexure A-1).

5. Aggrieved thereby, the applicant has preferred the present OA, to challenge the impugned order mainly on the ground of violation of statutory rules and principles of natural justice. According to the applicant, the respondents were not empowered and competent to cancel his promotional order after 13 years, that too, without issuing any SCN and without providing opportunity of being heard. It was claimed that once the applicant was 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 cancel his promotional order and reverting him to the lower post of entry level (MR&AC).

6. The impugned order (Annexure A-1), is termed to be illegal, arbitrary, mala fide, whimsical and against the principles of natural justice. On the basis of the aforesaid grounds, the applicant has sought quashing of the impugned order, in the manner indicated hereinabove.

7. The contesting respondents refuted the claim of the applicant and filed the reply, whereby the factual matrix was admitted by the respondents. However, it was pleaded, that the earlier DPC has committed certain irregularities, so in view of the recommendations of Review DPC, the promotion of the applicant was rightly cancelled on 21.10.2013 (Annexure A-1), with retrospective effect and he was reverted to the post of MR&AC. Be that as it may, it was nowhere mentioned in the reply filed by the respondents that, any SCN was issued or opportunity of being heard was provided to the applicant before passing the impugned order (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 OA and prayed for its dismissal.

8. Controverting the allegations of the reply filed by the respondents and reiterating the grounds contained in the OA, the applicant has filed his rejoinder. That is how we are seized of the matter.

9. At the very outset, learned counsel for the applicant has contended with some amount of vehemence, that the cancellation of promotion of the applicant, that too, after a long period of about 13 years, 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.

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

11. After hearing the learned counsel for the parties, after gone through the record and legal position with their valuable assistance, and after bestowal of thoughts over 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.

12. As is evident from the record that the applicant has joined as MR&AC on 11.06.1993 in reserved SC category in LHMC & SSKH. He was a confirmed employee and has rendered excellent service for about 7½ years. In the wake of recommendations of DPC dated 19.10.2000, he was promoted. Consequently, an Office Order dated 17.10.2000 (Annexure A-5), was issued, whereby applicant was promoted to the next higher post of TA (Workshop). Surprisingly enough, his promotion was abruptly cancelled

with retrospective effect vide impugned order dated 21.10.2013 (Annexure A-1) by the respondents.

13. Therefore, once the applicant was duly promoted to the next higher post of TA (Workshop), then he cannot be abruptly reverted to the lower post by the competent authority, that too, without issuing SCN, providing adequate opportunity and following due procedure. Concededly, the respondents have not adhered to the indicated due procedure of law before passing the impugned order adversely affecting the service career of the applicant. Hence, the action of the respondents is illegal, which has caused a great deal of prejudice to the case of the applicant. This matter is no more res integra and is now well settled.

14. 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.

15. The same view was reiterated by this Tribunal in **OA No.674/2014 titled as Joseph T.A. Vs. U.O.I. & Others and connected cases** decided on 17.05.2016.

16. As indicated hereinabove, that neither any SCN was issued nor any opportunity of being heard was provided to the applicant 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 applicant, without adopting the procedure prescribed by law.

17. 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.

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

19. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order dated 21.10.2013 (Annexure A-1) is hereby set aside. Naturally, the applicant would be entitled to all consequential benefits. No costs.

Needless to mention that the respondents would be at liberty to pass appropriate orders in the matter, after following the due procedure and in accordance with law.

(V.N. GAUR)
MEMBER (A)

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

Rakesh