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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No.350/00849/2017

&

Misc. Application No.350/196/2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Subrata Kundu
Aged about 59 years
S/o Shri Kartick Chandra Kundu
Residing at 50/5/3
Botanical Garden Road
Howrah-711103 and working to
The post of Senior Stenographer
In the office of the Development Commissioner
Falta Special Economic Zone
Ministry of Commerce, Government of India
2nd MSO Building, 4th Floor, Nizam Palace
234/4, A.J.C. Road, Kolkata-700020

... Applicant

- Versus -

1. Union of India
Service through the Secretary
Ministry of Commerce & Industry
Government of India, SEZ Section
Udyog Bhawan, New Delhi-110 011.
2. The Under Secretary
Ministry of Commerce & Industry
Government of India, SEZ Section
Udyog Bhawan, New Delhi-110011.
3. The Development Commissioner
Falta Special Economic Zone
Ministry of Commerce & Industry
Department of Commerce

Government of India
2nd MSO Building, 4th Floor
Nizam Palace, 234/4
A.J.C. Bose Road
Kolkata-700 020.

4. The Assistant General Manager (Personnel)
National Jute Manufactures Corporation Limited
Chartered Bank Buildings, 2nd Floor, 4
Netaji Subhas Road, Kolkata-700001.

.. Respondents

For applicant (Adv):

Mr.P.C.Das & Ms.T.Maity

For respondents (Adv):

Mr.P.Mukherjee

Heard on: 12.06.2018

Date of Order: 7.9.2018

MANJULA DAS, MEMBER (J):

On the prayer of the learned counsel for both the sides, both the MA and the OA are heard and being disposed of by this order.

2. Being aggrieved with cancellation of absorption of the applicant, vide order dated 2/6th June 2017 the applicant approached before this Tribunal vide this O.A. with the following reliefs:

"a) To quash and/or set aside the impugned order No. 6(30)/2015/525 dated 2nd/6th June, 2017 issued by the Development Commissioner, Falta Special Economic Zone, Ministry of Commerce & Industry, Department of Commerce, Government of India, 2nd MSO Building, 4th Floor, Nizam Palace, Kolkata-700020 by which the appointment of the Senior Stenographer in which your applicant is discharging duty and function to the said post for more than nine years on permanent basis has been cancelled and/or set aside without giving any show cause notice to the applicant being Annexure A/21 of this original application;

b) To declare that the impugned order No. 6(30)/2015/525 dated 2nd/6th June, 2017 issued by the Development Commissioner, Falta Special Economic Zone, Ministry of Commerce & Industry, Department of Commerce, Government of India, 2nd MSO Building, 4th Floor, Nizam Palace, Kolkata-700020 is otherwise arbitrary and illegal on the ground of violation of the principle of natural justice and on the ground of without issuing any show cause notice upon the present applicant;

c) To pass an appropriate order directing upon the respondent authority to reinstate your applicant in service to the post of Senior Stenographer in the pay scale of Rs.5000-8000 (pre-revised) along with all consequential benefits."

3. In the interim, the applicant also prayed for stay of the impugned order dated 02/06th June, 2017 pending disposal of the OA. The matter came up before the court several times, but no interim order was granted. During pendency of the OA, the applicant Therefore, the applicant filed MA No.350/00196/2018

praying for stay of the operation of the relieving order No. 6(30)/2015/3107 dated 03.01.2018.

4. Heard Mr. P.C.Das, assisted by Ms. T. Maity, learned counsel for the applicant and Mr.P.Mukhrjee, learned counsel for the Respondents.

5. The brief facts, narrated by the applicant, are that he was initially appointed to the post of Stenographer-cum-Typist on permanent basis vide office order dated 19.05.1983 in the pay scale of Rs.545-18-635-23-865/- in the office of National Jute Manufacturing Corporation Limited, Kolkata. In pursuance of advertisement published in Bengali Daily Ananda Bazar Pratika dated 13.07.2004 inviting applications from the eligible candidates for filling up the post of Junior Stenographer Grade-III in the office of the Development Commissioner, Falta Special Economic Zone, Ministry of Commerce and Industry, Department of Commerce, Government of India, Kolkata on deputation basis in the pay scale of Rs.4000-6000/-, the applicant did offer his candidature for the said post through proper channel vide application dated 15.07.2004. The applicant was found suitable from the panel in the selection process, as such, he was

appointed to the post of Jr. Stenographer in the scale of Rs.4000-6000 vide order dated 16.08.2004.

6. On receipt of the appointment order, the applicant made representation before Assistant General Manager (Personnel), National Jute Manufacturing Corporation Limited to release him to join the post of Jr. Stenographer Gr-III in the office of the Development Commissioner, Falta Special Economic Zone, Development Commissioner, Government of India, Kolkata. Thereafter, the applicant was released by the Assistant General Manager (Personnel), National Jute Manufacturing Corporation vide order dated 02.09.2004 enabling him to join the said post in the office of the Respondent No.3. Accordingly, the Applicant duly submitted his joining report and joined duty w.e.f. 03.09.2004 in the office of the Respondent No.3.

7. Applicant did make representation before the authority on 18.07.2007 seeking permanent absorption in the borrowing department. The parent department, i.e., the Respondent No.4 also issued No objection Certificate (NOC) and communicated to the borrowing department (Respondent No.3).

8. Thereafter, the DPC was constituted for considering the absorption of the applicant in the borrowing department vide office order dated 23.08.2007. The DPC its meeting on 24.8.2004 found the applicant suitable for absorption and hence duly recommended his absorption in the post of Sr. Stenographer in the office of Respondent No.3. Pursuant to recommendation of the DPC the applicant was absorbed in the post of Sr. Stenographer on permanent w.e.f. 03.09.2007 vide office order dated 24.8.2007. He submitted his joining report on 03.09.2007. Upon his permanent absorption in the borrowing department w.e.f. 03.09.2007 the applicant tendered his resignation from his parent department w.e.f. 03.09.2007 vide his application dated 03.09.2007 which was accepted and he was released from the services of parent department w.e.f. 02.09.2007 (AN) vide letter dated 18.02.2008.

9. When the applicant was continuing as such for about ten years, suddenly the Respondent No.3 issued impugned order dated 2/6th June 2017 by which his absorption of Sr. Stenographer has been cancelled. Hence this O.A before this Tribunal.

10. Mr.P.C.Das, learned counsel vehemently argued that the impugned cancellation of absorption of the application is not sustainable under the law, inasmuch as the same is issued in violation of principle of natural justice and fair play. No opportunity was given to the applicant either for representing or for being heard before issuing the impugned order. According to the learned counsel, in pursuance of the advertisement the absorption of the applicant was made as per due procedure of law. i.e., by the advertisement and selection process the applicant being found suitable for the post of Stenographer Gr-III by the Selection Committee held on 24.08.2004.

11. Mr.P.C.Das further submitted that on being selected for the post, the appointment order to the applicant was issued for the post of Sr. Stenographer on permanent basis. He accordingly, tendered resignation to the parent department (Respondent No.3) pursuant to which NOC was issued to join his borrowing department (Respondent No.3) on permanent basis. The applicant did continue as a Sr. Stenographer for 9 years against the sanctioned post after joining the office of the

Respondent No.3. Hence the action of the respondents' authority is bad in law and O.A. deserved to be allowed.

12. On the other hand, the learned counsel for the respondents Mr. Mukherjee, vide his written statement filed on 26.4.2018 submitted that the applicant joined in the office of Respondent No.3 on 03.09.2007 in the post of Sr. Stenographer on the basis of recommendation of the DPC. The applicant is not eligible to hold the post of the Senior Stenographer, but due to inadvertence or mistake, the DPC was itself wrongly constituted being entirely repugnant to the rules laid down by the statutory and extant Recruitment Rules of the Department. The said committee was constituted by the then respondent authority by three officers among whom unfortunately two officers were not eligible to act as members of the DPC in terms of the Recruitment Rules. As a result of which the selection process of the applicant was ab initio void and also untenable in law as per recruitment rules. The DPC was therefore a different composition than what is prescribed in the relevant Recruitment Rules.

13. The respondents submitted incidentally that the Hon'ble Supreme Court had held in several matters of identical facts and

circumstances that in case the recruitment rule is violated for any reasons whatsoever, the recruitment arising out of such violation and any action taken pursuant to such wrong order becomes per se void, being opposed to the extant Recruitment rules.

14. It was submitted by the learned counsel for the respondents that the another striking feature, which was entirely opposed to the Recruitment rules is that the absorption of the applicant as Senior Stenographer in Faltg SEZ was done from outsider candidate straightway despite that the Recruitment Rules clearly indicated that the method of recruitment in the post of Senior Stenographer is to be done by way of promotion, failing which by deputation. Thus a further clear violation was done out of inadvertence or by mistake, which is required to be rectified. Hence the order dated 2/6th June has been issued by the respondents strictly in accordance with the extant rules.


15. The learned counsel further submitted that unless the mistake thus committed in this particular case is rectified by withdrawing and/or rescinding/cancelling the said void recruitment order of the applicant with immediate effect, the

mistake thus committed by the respondents shall be allowed to continue giving rise to continued grant of illegitimate and undue benefit to the applicant for no reasons at all. Such action will be diametrically opposed to the numerous decisions of the Hon'ble Supreme Court in the identical matters to the effect that mistake once detected should not be allowed to perpetuate any further.

16. Learned counsel further states that the above mistake in regard to the recruitment of the applicant as Senior Stenographer having been of late detected, the respondents had no other alternative but to issue the order dated 2nd /6th June 6th June 2017, which has been impugned by the applicant in the instant application before this Hon'ble Tribunal.

17. It was further submitted by Mr. Mukherjee that further violation of recruitment rule will be perpetuated for an indefinite period and as a result whereof, while the applicant would be entitled to illegitimate gain of pecuniary benefit besides being ineligible, the respondents shall suffer irreparable loss. According to the learned counsel, the absorption of the applicant has rightly been cancelled, therefore, OA deserves to be dismissed.

18. Having heard the learned counsel for the parties, perusal of the pleadings, materials placed before us, it is noted that the applicant who was initially appointed as Stenographer-cum-Typist in the parent department, i.e., under the National Jute Manufacturing Corporation Limited, Kolkata (Respondent No.4). Thereafter, he was appointed to the post of Jr. Stenographer in the office of Development Commissioner, Falta Special Economic Zone, Ministry of Commerce & Industry, Government of India, Kolkata on deputation basis. The appointment order 16.08.2004 reads as here under:-


"Office of the Development Commissioner
FALTA SPECIAL ECONOMIC ZONE
Ministry of Commerce & Industry
Department of Commerce, Government of India
2nd MSO Building, 4th,
Nizam Palace, Calcutta-700020
Phone:2247-2263, 2247-7923, 2240-4092 Fax(033)2247-7923
Office Order Part 1 No.205/04 dated 16.8.04

Consequent upon selection from the panel as received through advertisement in the "The Telegraph" and Ananda Bazar Patrika" both dated 13.7.2004, Shri Subrata Kundu, Stenographer-Cum-Typist, Office of the National Jute Manufacturers Corporation, (A Government of India Undertaking Chartered Bank Buildings(2nd Floor), 4th Floor) 4 N.S.Bose Road, Kolkata-7000001, is hereby appointed to the post of Junior Stenographer in Falta Special Economic Zone, Kolkata, on transfer on deputation basis for an

initial period of three years in the scale of pay of Rs.4000-6000/- plus other allowances as admissible.

This order issues in Public Interest.

(Manoj Kumar)
Development Commissioner"

19. Thereafter, on 21.02.2006 the applicant applied for the post of Senior Stenographer in FEPZ when applications were called for the said post by Ministry of Commerce and Industry. The DPC was constituted for considering the absorption of the in the borrowing department which is apparent from Annexure A/12 given below:-

"Office of the Development Commissioner
FALTA SPECIAL ECONOMIC ZONE
Ministry of Commerce & Industry
Department of Commerce, Government of India
Nizam Palace, 4th Floor, 234/4 AJC Bose Road,
Calcutta-700020.

Office Order Part 1 No.411/2007 /04 dated 23.8.2007.

A Departmental Promotion Committee comprising of the following officers has been constituted for the purpose of consideration o absorption of Sri Subrata Kundu who is presently working this office on deputation.

1. Shri Arun Kr.Bit, Development Commissioner, FSEZ
2. Shri E.E.Das Senior Accounts Officer, FSEZ
3. Shri B.K.Howlader, Senior Accounts Officer(PAO, Textiles)



The aforesaid committee will meet on 24.8.2007 at 11.30 AM at the chamber of Development Commissioner, Falta SEZ, 4th Floor, 2nd MSO Building, Nizam Palace 234/4 AJC Bose Road, Kolkata-700020.

Arun Kr.Bit
Development Commissioner"

The DPC recommended the absorption of the applicant, Shri Subrata Kundu in the post of Senior Stenographer, FEPZ in August 2007. Minutes of the DPC is set out below (Annexure A/13):-

"Office of the Development Commissioner
FALTA SPECIAL ECONOMIC ZONE
Ministry of Commerce & Industry
Department of Commerce, Government of India
2nd MSO Building, Nizam Palace 4th Floor
234/4 AJC Bose Road, Kolkata-700020

Subject: Minutes of the Meeting of the Departmental Promotion Committee as per office Order Part 1 No.411/2007 dated 23.08.2007 for the purpose of absorption of Shri Subrata Kundu, Jr. Stenographer Gr.III who is presently working on deputation at FSEZ to the post of Senior Stenographer at Falta Special Economic Zone.

The meeting of the Committee consisting of the undersigned official was held on 24.8.2007 at 11.30 AM for the purpose of absorption of Shri Subrata Kundu to the post of Senior Stenographer at Falta Special Economic Zone.

The Committee verified the confidential report and vigilance clearance as available in the personal file of Shri Subrata Kundu and found no adverse remarks or any vigilance case pending against him for the period

under report Shri Kundu has been working this office on deputation for the last three years w.e.f. 3.9.2004 and his work has been found to be satisfactory.

Therefore, the committee considered the case of Sri Subrata Kundu and found him suitable for absorption to the post of Senior Stenographer at Falta Special Economic Zone.

Sd/illegible

24.8.2007

Sr. Accounts Officer

Falta SEZ

Sd/-illegible

Shri B.K.Howlader

Sr. Accounts Officer

PAO, Textiles

Sd/-illegible

Shri Arun Kr.Bit

Development Commissioner

Falta SEZ"

20. Applicant's lien was retained for three years in his parent department. Upon his absorption, applicant tendered his resignation from the parent department which was accepted and he was released from the services of NJMC Ltd w.e.f. 02.09.2007 (AN). However, his absorption was cancelled after nearly ten years vide impugned order dated 2/6.06.2017 reproduced below:-

"Office of the Development Commissioner
FALTA SPECIAL ECONOMIC ZONE
Ministry of Commerce & Industry
Department of Commerce, Government of India
2nd MSO Building, 4th , Nizam Palace, Calcutta-700020
Phone:2287-2263, 227-7923, 2281-3117 Fax(033)2287-3362
E-mail:fsez@nic.in Webssite:http://fsez.nic.in

No.6(30)/2015/525 Dated, the 2nd /6th June, 2017

ORDER

WHEREAS, office of the Development Commissioner, Falta SEZ released an advertisement on 1372004 in the Telegraph and Ananda Bazar Patrika for filling up the post of Jr. Stenographer, Gr.III on transfer and deputation basis in the scale of pay of Rs.4000-6000/-.

WHEREAS, Shri Subrata kundu, who was working as PA to Chairman-cum-Managing Director of JNMC Ltd. applied for the same and was appointed as Stenographer Gr.III on deputation basis for a period of 3 years vide Office Order Part No.205/04 dated 16.8.2004.

WHEREAS, Shri Kundu requested this office vide letter dated 18.7.2007 to absorb him in the post of Jr/Sr. Stenographer and NOC was obtained from parent office.

WHEREAS, a departmental Promotion Committee was formed vide Office Order dated 23.8.2007 for the purpose of consideration of absorption of Shri Kundu consisting members as follows:-

- (a) Shri Arun Kr.Bit, Development Commissioner, FSEZ
- (b) Shri B.B.Das, Senior Accounts Officer, FSEZ
- (c) Shri B.K.Howlader, Senior Accounts Officer, (PAO, Textiles)

WHEREAS, the Departmental Promotion Committee considered the case of Shri Kundu and found him suitable for absorption to the post for Sr. Stenographer at Falta SEZ.

WHEREAS, an Office Order dated 24.8.2007 was issued showing permanent absorption of Shri Kundu to the post of Sr. Stenographer in the scale of Rs.5000-8000 w.e.f. 03.09.2007.

WHEREAS, as per recruitment Rules the Departmental Promotion Committee for the post of Sr. Stenographer in Falta SEZ does not permit absorption as one of the methods for recruitment and the

Departmental Promotion Committee for the post has Development Commissioner (Falta SEZ) as Chairman, Dy. Development Commissioner and Admn. Officer (Falta SEZ) as members.

WHEREAS, the Departmental Promotion Committee constituted vide office order Part-1 No.41/2007 dated 123.8.2007 was a different composition as against the composition prescribed in the recruitment rules.

WHEREAS, the absorption of Shri Kundu as Sr. Stenographer in Falta SEZ was done despite the Recruitment Rules indicating the method of recruitment as Promotion, failing which Deputation Absorption was not one of the methods for recruitment.

WHEREAS, violation of Article 16 of Constitution of India, which deals with the equality of opportunity in matter of public employment, as the appointment seems to have been done in an arbitrary manner without following the extant procedures relating to selection of candidate.

NOW THEREFORE, in view of the aforesaid in depth examination of the issue and in compliance of the order dated 13.4.2017 of the Competent Authority of Department of Commerce, the absorption of Shri Subrata Kundu as Sr. Stenographer in Falta SEZ is hereby cancelled since he was absorbed in violation of Rules and that too at a higher level.

It is decided accordingly.

Ordered accordingly.

(J.M Gupta)
Development Commissioner"

21. For coming to a logical conclusion, I have gone through the Falta Export Processing Zone, Falta (Group 'C' and 'D' posts) Recruitment Rules, 2000 published in Gazette of India

by the Ministry of Commerce & Industry, Department of Commerce, Government of India, dated 15.9.2000. The method of recruitment of the post of Jr. Stenographer as prescribed under the said Rules is "60 percent by promotion and 40 percent by deputation/absorption, failing which by direct recruitment through Staff Selection Commission. Besides, the method of recruitment for the post of Sr. Stenographer as per the said rules is "By promotion failing which by deputation". The DPC for the post of Sr. Stenographer is to be constituted by the following members:-

1. Development Commissioner, Falta Export processing Zone - Chairman
2. Deputy Development Commissioner, Falta Export Processing Zone - Member
3. Administrative Officer, Falta Export Processing Zone - Member

In the present case, the DPC for considering the case of the applicant for absorption was constituted by the following members:-

- (i). Development Commissioner, Falta SEZ
- (ii). Sr. Accounts Officer, PAO, Textiles
- (iii). Sr. Accounts Officer, Falta SEZ.

22. According to the respondents, absorption of the applicant in the post of Sr. Stenographer was contrary to Recruitment Rules, 2000 as it is explicitly clear that the composition of the said DPC was made contrary to the Recruitment Rules, 2000 as two out of the three members of the DPC was not eligible to act as members. That apart, the method of recruitment for the post of Sr. Stenographer is by way of promotion, failing which by deputation. But in this case, the borrowing department without absorbing the applicant in the post of Jr. Stenographer in the pay scale of Rs.4000-6000/- where he joined on deputation basis straightway absorbed him in the higher post of Sr. Stenographer in the pay scale of Rs.5000-8000/-. This had unfortunately rendered the absorption of the applicant infructuous, void ab initio and untenable in law as per the said Recruitment Rules, 2000. The mistake if allowed to be continued, it will give rise to continued grant of illegitimate and undue benefit to the applicant. According to the respondents, the administrative error which was detected subsequently was set at right vide the impugned order dated 2/6.06.2017.

23. Be that as it may, this court cannot wash out or ignore the fact that the applicant had rendered almost ten years of

service under the respondent no.3. On completion of three years of service on deputation, the applicant has sought permanent absorption in the borrowing department. It is also an admitted fact that services of the applicant were found to be satisfactory as was evident from the minutes of the DPC dated 24.08.2007. The applicant had already been released from his parent department w.e.f. 02.09.2007 (AN). Since then, the applicant had rendered almost ten years of service in the borrowing department. The applicant ought to have been absorbed in the post of Jr. Stenographer but the respondents in their own wisdom absorbed him in the higher post of Sr. Stenographer for which the applicant cannot be faulted. For the lapse of the borrowing department, applicant cannot be allowed to suffer. In the case of **State of Maharashtra v. Jagannath Achyut Karandikar, 1989 Supp (1) SCC 393**, the Hon'ble Supreme Court has held that making employees to suffer adversely for the default or lapse on the part of the Government itself, would be unjust, unreasonable and arbitrary.

24. In view of the entire conspectus of the case, I am of the considered opinion that ratio laid down in the case of **Jagannath Achyut Karandikar (supra)** is applicable in the facts

and circumstances of the present case and, therefore, if no protection is given to the applicant, he will suffer irreparable loss in his service career for no fault of his own. Accordingly, I direct the respondent no.3 to reinstate the applicant in the post of Jr. Stenographer forthwith and absorb him in the post of Jr. Stenographer w.e.f. 03.09.2007 (forenoon) on which date he earlier was absorbed in the post of Sr. Stenographer on completed of three years of service on deputation. After such absorption, the said respondent is further directed to consider the case of the applicant for promotion to the post of Sr. Stenographer as per the relevant Recruitment Rules within a period of three months from the date of receipt of this order.

25. With the above observations and directions, the OA is disposed of. Consequently, MA is also disposed of. There shall be no order as to cost.

(MANJULA DAS)
JUDICIAL MEMBER

/BB/