

# LIBRARY

## CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH KOLKATA

OA No.350/00245/2016

Dated of order: 16.02.2016

**PRESENT:**

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER

THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....  
ANUP KR NASKAR

V/S

N S M E

For the Applicant : Mr.G.Chakraborty, Counsel

For the Respondents: Mr. , Counsel

### ORDER

JUSTICE V.C.GUPTA, JM:

Heard the learned counsel for both sides at this admission stage itself.

2. This OA has been filed seeking the following reliefs:

"(a) quash and set aside the impugned illegal invalid order dated 19.1.2016 (A/6) with a direction upon respondents (especially to Respondent 3) to continue the applicant as LDC;

(b) direct the respondent (especially respond No. 3 ) to continue the payment of salary and other benefits to the applicant as admissible to the LDC;

(c) Any other order/orders as Your Lordships would deem fit and proper for the ends of justice."

**(extracted as such)**

3. The brief facts of this case are that the applicant has been promoted as LDC after clearing the departmental examination vide order dated 26/27.2.2007 (Annexure-A/1). He worked after promotion as LDC and now without giving any

102

opportunity his promotion was cancelled on 19.01.2016 vide letter dated 19.01.2016 which is extracted herein below:

"In pursuance of the letter of DC (MSME), New Delhi vide no. A-32016/8/2013-A (NG) (Pt.F) dated 05.01.2016, Director, MSME-D1, Kolkata is pleased to rescind the earlier promotion order of LD Clerk at Br MSME-D1, Durgapur issued vide no. 14279 (14)/A-12012/12/96-Admn dated 27.02.2007 in favour of Anup Kumar Naskar and revert him from the post of LDC to Helper (parent cadre) from the retrospective date on 01.03.2007 at Br MSME D-1 Durgapur in terms of CCS (CCA) rule 11 under explanation at (v) i.e. for the administrative ground unconnected with his conduct. The above promotion was invalid and not in consonance of the rules to the post of LDC. He is accordingly relieved from the post of Lower Division Clerk from the date of issue of this order and will continue to perform his duties as Helper at Br. MSME D1, Durgapur, His pay in his parent post is to be fixed accordingly.

Further, his name in the seniority list of L.D.Clerk is done away with and his relative seniority will be determined from his regular parent cadre post (i.e. Helper) for the consequential benefits in future like promotion pay pension etc in terms of DOPT, New Delhi OM No. 20011/1/2008-Estt.(D) dated 11.11.2010."

4. The learned counsel for the applicant would submit that before cancellation of promotion no opportunity has been given to show cause to the applicant. He worked on promoted post for about 09 years, as such the cancellation of promotion is illegal and violative of principles of natural justice.

5. The learned counsel for the respondents submitted that the order of cancellation on the ground alleged therein and stated that in such situation the order of promotion is void ab initio and there is no need to adhere to the principle of natural justice or to give show cause to the applicant.



Partly JVR

6. In view of submission of the parties as mentioned herein above and as agreed by the parties counsel the matter may be disposed of at this admission stage without calling for further reply from the respondents.

7. It is not in dispute that after being succeeded in the departmental test conducted by the Respondents, the applicant was promoted to the post of Lowe Division Clerk (in short LDC) vide appointment order dated 26/27.02.2007 (Annexure-A/4). It is also not in dispute that in pursuance of the offer of appointment dated 26/27.02.2007 he joined the post of LDC and continued to discharge his duty in the said promoted post. It further reveals from record that on 19<sup>th</sup> January, 2016, an order was issued by the respondents with regard to the petitioner that the promotion order of the applicant to the post of LDC is cancelled. By the impugned order the right of applicant shall be seriously hampered and lot of amount may be recovered from him. Admittedly, while doing so, no opportunity of being heard was provided to the applicant.

8. Therefore, in our considered opinion the said order dated 19.1.2016 cannot be allowed to sustain as the same is violative of the principles of natural justice. Accordingly, the petition is allowed and the impugned order dated 19.1.2016 is set aside.

However, liberty is given to the respondents to act in accordance with law, if so advised but that could only be after giving an opportunity of being heard to the applicant.



3. With the aforesaid observation and direction this OA stands disposed of. No costs.

(Jaya Das Gupta)  
Admn. Member

(Justice V.C.Gupta)  
Judicial Member

Knm