

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 7th July, 2010*

+ **W.P.(C) NO.3991/2008**

UOI Petitioner
Through: Mr.P.K.Dey, Advocate with
Mr.Kaushik Dey, Advocate

versus

JAGMOHAN SHARMA Respondent
Through: Mr.A.K.Trivedi, Advocate for
respondent with respondent in
person.

+ **W.P.(C) NO.3992/2008**

UOI Petitioner
Through: Mr.P.K.Dey, Advocate with
Mr.Kaushik Dey, Advocate

versus

ASHOK KUMAR Respondent
Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. At the outset it may be recorded that Ashok Kumar, the respondent in W.P.(C) No.3992/2008, whose identity has been established with reference to the ID card issued by the Election Commission of India (photocopy whereof is taken on record under his signatures) as also the PAN card issued by the

Government of India (photocopy whereof is taken on record under his signatures) states that notwithstanding he having won the battle against the petitioner before the Central Administrative Tribunal, his consent be recorded that he withdraws his claim and thus we proceed to declare that as regards Ashok Kumar, the petitioner stands relieved from the rigours of the impugned order dated 09.07.2007 allowing O.A. No.1829/2006.

2. The issue raised has thus to be considered vis-à-vis Jag Mohan Sharma, the respondent in W.P.(C) NO.3991/2008.

3. Jag Mohan Sharma sought a declaration that the action of the writ petitioner in reverting him from the post of Tech II to the post of Tech III with effect from 01.02.2006 and withdrawing the benefit of pay and salary was illegal, if for no other reason, the denial of hearing inasmuch as having promoted him in grade II, the promotion could not be withdrawn without a hearing.

4. The petitioner justified denial of a hearing by relying upon the decision of the Supreme Court reported as 2006 (8) SCC 192 UOI Vs. Bikash Kumar in para 12 whereof it was observed:- *"It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of mistake, however, may in a given situation require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the fact of the record, a rectification thereof is permissible without giving any hearing to the aggrieved party."*

5. The factual controversy has been summed up by the Tribunal in paragraph 3 of the impugned decision which reads as under:

Admitted facts are Applicant No.1 was initially appointed as Khalasi in the year 1982/27.9.1985 and promoted as Technician (Skilled Post) on 29.6.1998. He was declared medically unfit for the post of

Technician-III vide order dated 7.12.2001. Applicant No.1 was appointed as Diesel Cleaner in the year 1987, promoted as Technician Gr.-III and Gr.-II. In the year 2001, he was also declared medically unfit for the post of Technician Gr.-II. Based on the recommendation of Medical Board, the competent authority posted them in Tool room & under CTA vide Order dated 20.09.2001/20.12.2001 respectively. In the year 2003, the Railway Board introduced the scheme of Cadre restructuring of Group C & D employees. Applicants were allowed the benefits of said restructuring scheme and upgraded to the post of Technician Grade-II & Grade-I respectively vide orders issued on 5.12.2005 and Nov, 2005 respectively and consequently their pay were fixed in scale of Rs.4000-6000 & 4500-7000 respectively. Similarly situated officials were granted arrears w.e.f. 1.11.2003.

6. We concur with the view taken by the Tribunal that in the facts of the instant case, as held by the Supreme Court in Bikash Kumar's case (supra) compliance with the principles of Natural Justice was required. We agree with the reason given by the Tribunal for its opinion, to be found in para 9 of the impugned decision, that inasmuch as the respondent qualified the trade test and was granted benefit of restructuring thereafter, which was a conscious decision, its reversal was not akin to rectification of a mistake and thus a show cause notice was required.

7. We dismiss the writ petition but without any orders as to costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(MOOL CHAND GARG)
JUDGE**

JULY 07, 2010
anb