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**(2007) 04 AHC CK 0086**  
**In the Allahabad High Court**

D.R. Patel

APPELLANT

Vs

Union of India (UOI) and Central Administrative Tribunal

RESPONDENT

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**Date of Decision :** 11-04-2007

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** (2008) 5 AWC 4979 : (2007) 3 UPLBEC 2603

**Hon'ble Judges :** Sudhir Agarwal, J;Anjani Kumar, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—Heard learned Counsel for the parties and perused the record Aggrieved by the order dated 22.5.2001, passed by the Central Administrative Tribunal, Allahabad (hereinafter referred to as "the Tribunal"), rejecting, original application No. 620/2001- filed by the petitioner. The petitioner has come up in this writ petition, assailing the said order as well as his reversion order dated 26.4.2001 which was impugned before the Tribunal.

2. Learned Counsel for the petitioner vehemently contended that he was promoted to the post of Lab Superintendent in the pay scale of Rs. 1640-2900 and was posted in Laboratory (Workshop) Jhansi vide order dated 23.3.1995 passed by the Senior Personnel Officer (Workshop), Jhansi and after more than six years, he was reverted by the order dated 26.4.2001 without giving any opportunity or show cause notice or opportunity, hence, the order of reversion is illegal and in violation of Article 311 of the Constitution of India. He further submits that the Tribunal erred in law in rejecting his claim petition without considering the aforesaid issue. Lastly lie submitted that on 2.5.2001 result of regular selection for promotion to the post of Chemical and Metallurgical Superintendent, Grade- II in the pay scale of Rs. 6500-10,500 was declared wherein the petitioner was declared successful and, therefore, it was incumbent upon the respondents to protect his pay which he was receiving at the time the impugned order was passed. To substantiate his argument, the learned Counsel

for the petitioner placed reliance on the Apex Court judgment in *Parent Department. Bhadei Rai v. Union of India and Ors.*, AIR 2005 SC 2404. We do not find any force in the aforesaid submission. From the facts available on record, it appears that the petitioner was selected and appointed as Junior Chemical Metallurgical Assistant in the grade of Rs. 1320-2040 on 27.11.1984. He was promoted to the post of Chemical and Metallurgical Assistant in the pay scale of Rs. 1400-2300 on 18.10.1988. In the Chemical and Metallurgical cadre the next higher post was Lab Superintendent/Chemical and Metallurgical Superintendent, Grade-II, which is a selection post in the pay scale of Rs. 1640-2900 (revised to Rs. 6500-10,500). A selection for 25 vacancies was held in 1993-94 wherein the petitioner was not considered since he was not in the zone of consideration and field of eligibility. The cadre controlling authority was Chief Personnel Officer, Central Railway, Bombay for making appointment/promotion to the post of Lab Superintendent/Chemical and Metallurgical Superintendent, Grade- II. However, the Senior Personnel Officer (Workshop), Central Railway, Jhansi at the local level issued an order on 23.3.1995 posting him in an officiating and stop gap arrangement as Lab Superintendent in the pay scale of Rs. 1640-2900 with the condition that the said arrangement is subject to the result of the matter pending before the Tribunal and it shall also not give any right to the petitioner to continue in higher scale and he shall be liable to be reverted to his substantive post at any time. It was also mentioned that the order was being passed with concurrence of the competent authority. In the counter affidavit the respondents have also said that a selection for regular appointment on the aforesaid post was held in 1995-96 wherein the petitioner was considered and allowed to participate by appearing in the written test but he could not qualify therein. Hence, he could not be promoted on regular basis. Thereafter in 1998-99 also regular selection was held but there the petitioner could not be considered for the reason that number of vacancies was less and the petitioner did not figure in the one of consideration. The last selection was held in 2001 wherein he qualified in the written test. Thereafter interview was held on 26.4.2001 and result was declared on 12.5.2001 wherein the petitioner was empanelled and ultimately was promoted to the post of Chemical and Metallurgical Superintendent, Grade- II in the pay scale of Rs. 6500-10,500 on 15.5.2001. The local arrangement made by respondent No. 3 vide order dated 23.3.1995 was without consulting respondent No. 2 and even otherwise did not confer any right upon the petitioner to continue on the basis thereof or to claim any advantage, since the said arrangement was purely ad hoc and on officiating basis, therefore, no illegality was committed in reverting the petitioner vide order dated 26.4.2001 and the learned Tribunal did not err in law in rejecting the claim petition.

3. Without entering into the question as to whether the order dated 23.3.1995 was issued by respondent No. 3 in concurrence of the competent authority or not, in our view the matter can be decided assuming that the said order was passed with the concurrence of the competent authority. Admittedly, the said order placing the petitioner in the pay scale of Rs. 1640-2900 was purely an

officiating stop gap arrangement, without any right to continue in higher scale and the petitioner was liable to be reverted at any time. In view of the precarious nature of the order dated 23.3.1995, the petitioner cannot be said to have any right to hold the post and continue in the said pay scale or to retain any benefit pursuant to the said arrangement. His reversion vide order dated 26.4.2001 is in accordance with the terms of his officiating appointment made by the order dated 23.3.1995. Therefore, respondent No. 3 was well within its right to revert the petitioner to his substantive post, terminating ad hoc and officiating arrangement-made on 23.3.1995.

4. The petitioner has not disputed that selections were held by tie respondents in the year 1993-94 and onwards but he has sought to make comments on the correctness of the said selection which cannot be looked into in this writ petition since it was neither challenged before the Tribunal nor in this writ petition. Once it is admitted that in regular selection the petitioner was found unsuitable and had failed in the selection test or was outside the zone of consideration, in case he is allowed to retain the benefit of pay of higher post, it would be contrary to the very purpose of selection and statutory provisions, namely, an incumbent would be entitled to get salary in the higher pay scale on substantive basis after his appointment in accordance with the Rules. It is not disputed by the petitioner that after his regular selection he has been promoted on a higher post in the prescribed pay scale. The judgment relied upon by the learned Counsel for the petitioner does not apply to the facts of this case, inasmuch as, therein also Bhadei Rai was initially engaged on daily wage basis in 1979 but was conferred temporary status under the Rules applicable to the Railway Department w.e.f. 1.1.1982. Thereafter he was promoted on 3.2.1985 on ad hoc basis in the scale of Rs. 121-1500 and continued to work in the higher scale till 1999 when he was regularised and absorbed on Group "D" post on 5.10.1999 though he had completed more than 20 years of service in Group "C" post. He challenged his repatriation in Group "D" post before the Central Administrative Tribunal but his application was rejected on the ground that he had no right for absorption and continuance in Group "C" post. The order of the Tribunal was upheld in the writ petition of Hon Hon'ble Delhi High Court, where after the matter came up in appeal before the Apex Court. It was argued that the absorption of the petitioner after twenty years long service in Group "D" post with a lower scale is unjust. The Apex Court upheld his reversion on Group "D" post but considering the fact that the appellant had worked for more than 20 years in a higher scale and had undergone a screening test in the year 1995 and qualified therein 1997, therefore, directed to protect the last pay drawn. It was not a case where for regular selection an opportunity was granted to Bhadei Rai and he failed therein. In the present case, neither the petitioner worked for 20 years nor he continued in higher grade for the reason that no regular selection was held. On the contrary, regular selections from time to time were held wherein for the first occasion, he was within the zone of consideration, thus appeared but failed and on other occasion, he was outside the zone of consideration. In the facts and

circumstances of the case, any direction for protection of pay to the petitioner would be contrary to the Rules and would also cause serious prejudice to the persons who have been promoted in the higher posts on regular basis. This would also be contrary to the terms of his officiating appointment made on 23.3.1995 which clearly provided that he would not have any legal right of higher pay scale. Therefore, we do not find any force in the said submission. In our view the learned Tribunal has rightly rejected his application. The writ petition lacks merit and is dismissed. There shall be no order as to costs.