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**(2002) 03 J&K CK 0016**  
**In the Jammu And Kashmir High Court**  
**Case No : SWP. 1821 of 1991**

Gulam Rasool Digoo

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

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**Date of Decision :** 20-03-2002

**Acts Referred:**

**Citation :** (2003) 1 JKJ 780

**Hon'ble Judges :** Muzaffar Jan, J

**Bench :** Single Bench

**Advocate :** Z.A. Shah Qureshi and M.I. Qadri, AAG, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Muzaffar Jan, J.—This writ petition has been submitted praying to quash the order No. 1391 of 1991 dated 13.9.1991 with further prayer

that the respondents be directed not to change the seniority position of the petitioner pursuant to the order dated 13.9.1991.

2. It appears that the petitioner was initially appointed as Constable in the year 1967 in the Police Department. The petitioner was promoted as

Head Constable in the year 1973 and thereafter he was promoted as Assistant Sub-Inspector in the year 1984. His promotion to the rank of ASI

was issued vide PHQ order No. 1472 of 1986 dated 01.12.1986 with retrospective effect from 11.09.1980. The respondents meanwhile,

realised that some mistake has been committed in giving retrospective effect to the seniority of the petitioner and as such issued order No. 1391 of

1991 dated 13-09-1991 whereunder the retrospective and the order No. 1472 of 1986 was cancelled. The petitioner prays for intervention to

quash this order of withdrawal dated 13-09-1991.

3. Heard learned counsel for the parties and perused the record.
4. Learned counsel for the parties submitted that once the order of promotion was accorded to the petitioner and had been acted upon, the same could not be withdrawn without affording an opportunity to the petitioner of being heard and in the absence of compliance to the natural justice the order withdrawing the, retrospective effect of promotion, and the benefits thereof, is bad and not maintainable under law.
5. The stand taken by the respondents is that the petitioner was given promotion as ASI in the year 1984 and was entitled to promotion but the promotion could not be given retrospective effect because that would change the sequence of seniority of the other officials of the department and would violate the natural justice of those persons who would be condemned without being heard. In order to rectify this error, the promotion of the petitioner was kept intact to be effective from the year 1984, but the retrospective effect granted to the promotion was withdrawn. By doing so, the respondents were within their rights in view of the law laid down by the Hon'ble Apex Court in M.C. Mehta Vs. Union of India (UOI) and Others, .
6. The submission of learned counsel for the petitioner that since the petitioner was promoted and given retrospective effect and subsequently the benefit was withdrawn without giving the petitioner right of being heard in breach of natural justice, sufficient to quash the impugned order does not seem to be justified from facts, circumstances and law on the point. The case of the petitioner put in plain and simple language, is that since he was given promotion with retrospective effect from the year 1984, therefore, the benefits given under the order of promotion could not have been withdrawn, no matter whether the retrospective effect was justified or not. It has been held in number of judgements delivered by the Apex Court that natural justice cannot be invoked to revive wrong order after the mistake has been rectified. This view has been taken in cases titled M.C. Mehta Vs. Union of India (UOI) and Others, and Roshan Deen v. Preeti lal AIR 2001 SCW 4577). It is not the case of the petitioner that he was senior to any person. Even the seniority list existing in the department has not been challenged in the present proceedings. The petitioner has not claimed prejudice by way of the impugned order as a matter of right, but has

only projected violation of principles of natural justice. The principles of natural justice would be applicable where the acts of the respondents result in injustice and violation of the right of the petitioner. In this case, the clear stand of the respondents is that if the order of promotion granted to the petitioner in 1984 would be given effect retrospectively and permitted to remain in existence, the petitioner figuring in the seniority list at Sr. No. 295 would steal march over the other officers of the department when the promotion was actually made up to Sr.No. 238. None of the juniors of the petitioner after Sr. No. 295 have been promoted. The promotion has been made upto Sr. No. 238 and not thereafter. While considering the implications of non-compliance of natural justice, the Apex Court has held that if justice has been done by taking an erroneous view, the justice so done cannot be erased and reversed which would otherwise result in revival of an incorrect and erroneous order under law. This view has been taken in case titled Roshan Deen v. Preeti Lal AIR 2001 SCW 4577).

The relevant portion of the judgment is reproduced as under:--

Time and again this court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it. State of U.P. Vs. District Judge, Unnao and Others, . The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.....

7. From the above, it is manifestly clear that the respondents on realising that by giving retrospective effect to the promotion of the petitioner as

ASI would cause injustice by disturbing the existing seniority list of the ASIs of the Department and thereby corrected the mistake, in doing so, the

respondents were well within their rights. Since no violation of the rights of the petitioner are shown to have been made, either by changing his

place of seniority or by depriving the petitioner his due promotion as ASI, therefore, there is no merit in the writ petition to quash the impugned

order No. 1391 of 1991 dated 13-09-1991.

8. The writ petition is, accordingly, disposed of.