Union Of India & Anr vs S.N.Maity & Anr on 6 January, 2015

Equivalent citations: AIR 2015 SUPREME COURT 1008, 2015 (4) SCC 164, 2015 AIR SCW 579, 2015 LAB. I. C. 1750, AIR 2015 SC (CIVIL) 947, (2015) 2 SCT 43, (2015) 1 SCALE 85, (2015) 1 SERVLJ 337, (2015) 1 PAT LJR 348, (2015) 2 SERVLR 248, (2015) 2 ESC 217, (2015) 1 JLJR 234, (2015) 3 ALL WC 2243, 2015 (1) KCCR SN 76 (SC), 2015 (3) ADJ 21 NOC

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Bench: V. Gopala Gowda, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5983 OF 2007

Union of India & Anr. ... Appellants

VERSUS

S.N. Maity & Anr. ...Respondents

J U D G M E N T

Dipak Misra, J.

In this appeal, by special leave, the justifiability and soundness of the judgment and order dated 18.5.2006 passed by the High Court of Jharkhand at Ranchi in W.P.(Service) No. 6106 of 2005 whereby the Division Bench of the High Court has overturned the order passed by the Central Administrative Tribunal ('tribunal' for short), Circuit Bench at Ranchi in O.A. NO. 215 of 2005, is called in question.

2. Shorn of unnecessary details, the facts which are requisite to be stated are that the 1st respondent was working as a Scientist E-II in the Central Mining Research Institute (Council of Scientific and Industrial Research). On 29.07.2003, he was appointed on deputation to the post of Controller General of Patents, Designs and Trade Marks ((for short, 'CGPDTM'). After serving there for one year, by order F.No. 8/52/2001-PP&C dated 31.8.2004, he was repatriated to his parent department. The said order was challenged before the tribunal contending, inter alia, that he could not have been pre-maturely repatriated to his parent department and there had been a violation of the principle of audi altram partem. The said stand of the 1st respondent was contested by the authorities of Union of India proponing, inter alia, that he had no right to continue in the post as he was on deputation. Be it stated, some reliefs were claimed with regard to the TA bills and salary for certain period. The tribunal accepted the stance put forth by the Union of India and dismissed the Original Application. However, as far as payment regarding T.A. and salary for certain period is concerned, the tribunal directed that the same should be decided by the respondents after due verification in accordance with law.

3. Being dissatisfied with the aforesaid decision of the tribunal, the 1st respondent invoked the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India. The High Court posed two questions, namely, whether the order F.No.8/52/2001-PP&C dated 31st August, 2004 issued by Under Secretary to the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy & Promotion repatriating the petitioner to his parent department was illegal; and whether the petitioner had the right to continue as Controller General of Patents, Designs and Trade Marks.

4. The High Court after posing the questions took note of the fact that the Union of India had issued an advertisement in the Employment News dated 20/26.10.2001 calling for applications from eligible candidates for appointment to the post of CGPDTM and the Ministry had proposed to fill up the post by transfer on deputation, including short-term contract. The 1st respondent, being eligible, applied through his parent department i.e. Central Mining Research Institute, Dhanbad and his selection was made by the Union Public Service Commission (for short, 'the UPSC') which held interview on 4.6.2002 and finding him suitable, recommended his name for appointment. The competent authority approved the appointment of the 1st respondent, the petitioner before the High Court, for the post of CGPDTM in the pay scale of Rs.18,400-500-22,400/- on deputation basis for a period of five years or until further orders, whichever was earlier from the date of assumption of the charge of the post. The said order was communicated vide letter no. 8/52/2001-PP&C (Vol.II) dated 23.6.2003 issued by the Deputy Secretary to the Government of India, Department of Industrial Policy and Promotion. Thereafter, a letter of appointment dated 11.8.2003 was issued to the 1st respondent in the name of the President, appointing him on deputation basis for a period of five years or until further orders, whichever was earlier.

5. In pursuance of the aforesaid order of appointment, the 1st respondent joined the said post and continued to function, but after eleven months, the Under Secretary to the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, issued an order dated F No. 8/52/2001-PP&C dated 31.8.2004 repatriating him to his parent department. The High Court, taking note of the factual backdrop, and the nature of the appointment of the 1st

respondent, came to hold that his appointment was not a case of simplicter deputation; that the employer did not have the prerogative to get him repatriated to his parent department as the controversy fundamentally related to appointment and the source of appointment i.e. deputation on transfer; that the principles inhered under Articles 14 and 16 were violated, for the authorities did not disclose the ground for which such appointment had been disturbed by repatriating him to the parent department; that in the absence of any reasonable or valid ground, the order was bound to be treated as arbitrary thereby inviting the frown of Article 14 of the Constitution of India; and that the Under Secretary to the Government of India could not have passed the order of repatriation as the order of appointment was issued by the President of India. Being of this view, the High Court set aside the impugned order of repatriation and directed the writ petitioner to be reinstated in the post of CGPDTM on similar terms and conditions with all consequential benefits.

6. We have heard Mr. Tushar Mehta, learned Additional Solicitor General for the Union of India, Mr. Colin Gonsalves, learned senior counsel for the respondent no. 1 and Mr. Praveen Swarup, learned counsel for the respondent no.2.

7. To appreciate the defensibility and legal pregnability of the judgment and order passed by the High Court, it is necessary to reproduce the Notification dated 7.8.2003 by which the 1st respondent was appointed. It reads as follows:

> "NOTIFICATION No. 8/52/2001-PP&C: The President is pleased to appoint Dr. S.N. Maity, Scientist E-II of Central Mining Research Institute (Council of Scientific and Industrial Research) as Controller General of Patents, Designs and Trade Marks under the Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) on deputation basis for a period of five years with effect from the forenoon of 29th July, 2003 or until further orders, whichever is earlier.
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> Sd/-
>
> (Y.P. Vashishat) Under Secretary to the Govt. of India"

8. From the aforesaid order, it is luculent that the 1st respondent was appointed on deputation basis for a period of five years or until further orders, whichever was earlier. Submission of Mr. Tushar Mehta, learned ASG is that the order, as is demonstrable, being an order of deputation, it is the prerogative of the employer to recall him to the parent department without assigning any reason before the term of five years was over as such a rider was postulated in the order of appointment. Per contra, Mr. Gonsalves, learned senior counsel appearing for 1st respondent would contend that in the absence of any reason, such an order could not have been passed as that smacks of absolute arbitrariness which the law does not countenance. It is the stand of respondent no.2, Council for Scientific and Industrial Research (CSIR), that the 1st respondent had only gone on deputation and on being released, he was bound to come back to the parent department.

9. On an anxious appreciation of the facts, which include issuance of an advertisement, selection process which led to eventual recommendation by the UPSC and the ultimate issue of Notification, it

is extremely difficult to accept the submission of Mr. Tushar Mehta that it is a deputation by one department to another or to put it differently, the parent department had lent the services of the 1st respondent to the borrowing department. It is not a deputation simpliciter. The Notification by which the 1st respondent was appointed has a different nature and character. Mr. Gonsalves, learned senior counsel has commended us to the decision in Debesh Chandra Das V. Union of India[1]. In the said case, the appellant, a member of Indian Civil Service, was chosen by the Appointments Committee of the Cabinet to function as the Secretary, Department of Social Security and he continued in that Department. Thereafter, he received certain communications on June 20, 1966 and September 7, 1966 from the Cabinet Secretary, which he construed them as reduction in rank and challenged the same in a writ petition in the High Court of Calcutta on September 19, 1966. Many a ground was urged contending, inter alia, that there was reduction in rank. The High Court did not accept the contention and dismissed the writ petition. It was contended before this Court on behalf of the appellant that the reversion being in the nature of penalty, the procedure under Article 311(2) was required to be followed and as there was gross violation of the same, the order passed by the Government of India could not be sustained. The said submission was countered by the Government of India urging, inter alia, that he was on deputation and the deputation could be terminated at any time; that his order of appointment clearly showed that the appointment was "until further orders"; that he had no right to continue in Government of India if his services were not required and his reversion to his parent State did not amount either to any reduction in rank or a penalty and, therefore, the order was quite legal and justified.

10. The Court, as is evident, referred to various Rules in vogue, the Rules of Indian Administrative Service (Cadre Rules), especially the "Constitution of Cadres", "Strength of Cadres", "Deputation of cadre officers" and adverted to the concept of 'permanent post', 'temporary post' and 'tenure post' and addressing the issue from various angles, held thus:

"11. The position that emerges is that the cadres for the Indian Administrative Services are to be found in the States only. There is no cadre in the Government of India. A few of these persons are, however, intended to serve at the Centre. When they do so they enjoy better emoluments and status. They rank higher in the service and even in the Warrant of Precedence of the President. In the States they cannot get the same salary in any post as Secretaries are entitled to in the Centre. The appointments to the Centre are not in any sense a deputation. They mean promotion to a higher post. The only safeguard is that many of the posts at the Centre are tenure posts. Those of Secretaries and equivalent posts are for five years and for lower posts the duration of tenure is four years.

12. Now, Das held one of the tenure posts. His tenure ordinarily was five years in the post. He got his Secretaryship on July 30, 1964 and was expected to continue in that post for five years, that is, till 29th July, 1969. The short question in this case is whether his reversion to the Assam State before the expiry of the period of his tenure to a post carrying a smaller salary amounts to reduction in rank and involves a stigma upon him."

11. After so stating, the Court adverted to the concept of reversion and stigma and in the ultimate eventuate ruled that:

> "16. We have shown above that he was holding a tenure post. Nothing turns upon the words of the notification "until further orders" because all appointments to tenure posts have the same kind of order. By an amendment of Fundamental Rule 9(30) in 1967, a form was prescribed and that form was used in his case. These notifications also do not indicate that this was a deputation which could be terminated at any time. The notifications involving deputation always clearly so state the fact. Many notifications were brought to our notice during the argument which bear out this fact and none to the contrary was shown. Das thus held a tenure post which was to last till July 29, 1969. A few months alone remained and he was not so desperately required in Assam that he could not continue here for the full duration. The fact that it was found necessary to break into his tenure period close to its end must be read in conjunction with the three alternatives [pic]and they clearly demonstrate that the intention was to reduce him in rank by sheer pressure of denying him a secretaryship. No secretary, we were told, has so far been sent back in this manner and this emphasises the element of penalty. His retention in Government of India on a lower post thus was a reduction in rank."

12. After so holding, the Court opined that the appellant was being reduced in rank with a stigma upon his work without following the procedure laid down in Article 311(2) of the Constitution and consequently quashed the order of reversion and directed retention of the appellant in a post comparable to the post of a Secretary in emoluments till such time as the tenure lasted.

13. Mr. Gonsalves, learned senior counsel, has also drawn inspiration from a recent authority in Ashok Kumar Ratilal Patel V. Union of India and Another[2]. In the said case, the appellant while functioning as Director, Computer Department in Hemchandracharya North Gujarat University applied through proper channel pursuant to the advertisement for the post of Director under the All India Council for Technical Education (for short "AICTE"), the 2nd respondent therein. Eventually, the terms and conditions attached to the letter were issued. It contained that the deputation would be for a period of one year and extendable for a total period of three years on yearly basis. The communication that was sent by the appellant therein to the AICTE was to the effect that he had requested his University to relieve him to join AICTE on deputation within the joining date suggested by the Council. The University, in its turn, by letter dated 20.2.2010 informed the 2nd respondent, AICTE, that the approval of the deputation given by the Executive Council by the University with further information that the appellant would be relieved on 17.3.2010. The salary component was also mentioned in the said letter. Thereafter, the AICTE, on receipt of the letter from the University withdrew the offer of appointment issued to the appellant on the ground that the deputation from higher post to lower post was not admissible under the Rules. This Court reproduced the relevant portion of the grounds of the impugned order. Be it noted, after the offer was cancelled, another advertisement was published which was also assailed by the appellant before the Gujarat High Court which also did not meet with any success. It was contended before this Court that his was not a case of transfer on deputation, but a case of appointment on deputation after following all due procedure for appointment and selection and, therefore, in the absence of any illegality in selection, it was not open to the respondent to cancel the offer of appointment as that would fall foul of Article 14 of the Constitution of India. On behalf of the respondents, the grounds

mentioned in the letter were urged i.e the person getting the higher scale of pay could not be deputed against a lower scale of pay; and that the appellant therein had no right to claim his entitlement to the post of Director, AICTE.

14. In the above backdrop, this Court made a distinction between 'transfer on deputation' and 'appointment on deputation' and proceeded to lay down thus:

> "14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organisation or State within the meaning of Article 12 of the Constitution of India, the provisions of Article 14 and Article 16 are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of Article 14 of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.
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> 15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance".

15. Eventually, taking note of the communications, this Court directed as follows:

> "18. For the reasons aforesaid, the impugned order of withdrawal of appointment dated 11-3-2010 and the order of the Division Bench of the Gujarat High Court cannot be sustained and they are accordingly set aside. As the post of Director is vacant, in view of the interim order of this Court dated 9-5-2011, we direct the 2nd respondent to accept the joining of the appellant for a period of one year on deputation which is to be counted from the date of his joining and other terms and conditions of deputation will remain same. North Gujarat University is directed to relieve the appellant with further direction to the 2nd respondent to accept the joining of the appellant within one week from the date of reporting by the appellant."

16. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principles of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a Government Department to a Government Corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the 1st respondent had gone through the whole

gamut of selection. On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is curtailed. But, a pregnant one, this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words 'until further orders' are used, it would not confer allowance on the employer to act with caprice.

17. Presently, we shall scrutinise under what circumstances the order of repatriation has been issued. The impugned communication dated 17.1.2005 by the Under Secretary to the Government of India, reads as follows:

> "Immediate/confidential No. 10/7/2004-EO(SM.II) Government of India Secretariat of the appointments committee of The Cabinet Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training New Delhi, dated the 17th January, 2005 Reference correspondence resting with department of Industrial Policy & Promotion DO No. 8/52/2001-PP&C, dated 9.12.2004.
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> 2. The appointments committee of the Cabinet has approved the following proposals:
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> i. Premature repatriation of Dr. S.N. Maity, controller General of Parents, Designs and trade Marks (CGPDTM) to his parent department w.e.f. 31.08.2004 (AN) and ii. entrusting current charge of the post of controller General of Patents, Designs and Trade Marks (CGPDTM) to Shri S. Chandrasekaran, Joint Controller of Patents and Designs w.e.f. 1st September, 2004 for a period of 1 year, within which, the Department may be directed to finalise selection of a regular incumbent of the post.
>
> Sd/-
>
> (Ravindra Kumar) Under Secretary to the Govt. of India"

18. The order is absolutely silent on any aspect. An argument has been advanced by Mr. Gonsalves, learned senior counsel for the 1st respondent that this letter was issued because of some frivolous complaints made against the 1st respondent and also regard being had to his stern and strict dealings by him pertaining to certain aspects. Be that as it may, the letter is absolutely silent and it has curtailed the tenure of posting without any justifiable reason. Regard being had to the nature of appointment, that is, tenure appointment, it really cannot withstand close scrutiny. Therefore, the judgment passed by the High Court lancinating the said order cannot really be found fault with.

19. Though we have accepted the reasoning of the High Court for axing the order of repatriation, yet at this distance of time, we find it difficult to give effect to the direction for reinstatement in the post of CGPDTM. The 1st respondent was appointed on 29.7.2003. The period is since long over. The stand of the 2nd respondent is that the 1st respondent, after being relieved, joined in his parent department on 16.11.2004 and has been holding the post of Scientist-G w.e.f. 13.2.2007 and continuing on the same post. It is also the stand of the respondents that a new person has been holding the post.

20. Mr. Gonsalves, learned senior counsel would submit with emphasis that the 1st respondent should be allowed to function for the rest of the period of the tenure which he could not because of unwarranted interference, as that would not only sub-serve the cause of justice but also would be a redemption of a cause which has been scuttled and strangulated. Resisting the aforesaid stand it is submitted by Mr. Tushar Mehta, learned ASG for the Union of India that the expiry of six years of time has to be kept in view, for it would be extremely difficult to put the clock back. In this context, we may refer with profit to an authority in Sri Justice S.K. Ray V. State of Orissa and others[3]. We are conscious that the factual matrix in the said case was different, but we are referring to it for the purpose of analogy. In the said case, the appellant, formerly a Chief Justice of the Orissa High Court was appointed as the Lokpal under the Orissa Lokpal and Lokayuktas Act, 1970. The said enactment was repealed by the Orissa Lokpal and Lokayuktas (Repeal) Ordinance, 1992 which came into effect on 16.7.1992. He ceased to hold the office of Lokpal. The said Ordinance was subsequently replaced by the Orissa Lokpal and Lokayuktas (Repeal) Act, 1992. The appellant therein filed a writ petition before the High Court contending that he incurred certain disabilities in ceasing to hold office being ineligible for further employment under the State Government or any other employment under an office in any such local authority, corporation, government company or society, which is subject to the control of the State Government and which is notified by the Government in that behalf. He claimed for compensation for loss of salary for the remainder period of his tenure as Lokpal, pension with effect from 16-7-1992 as per Rule 7 of the Orissa Lokpal (Conditions of Service) Rules, 1984, refund of the amount of pension deducted from his salary during the period 17-8-1989 to 16-7-1992 and payment of encashment value of unutilised leave which accrued to him during the period 17.8.1989 to 16.7.1992.

21. The High Court declined to grant him the compensation for loss of salary; but certain other reliefs were granted by the High Court which need not be referred to. This Court adverted to the issue whether the appellant was entitled to any compensation for loss of salary for the remainder period of his tenure as Lokpal, which stood curtailed by latter enactment. The Court also took note of the fact of repeal, abolition of post and ultimately opined that in the obtaining factual matrix therein, adequate compensation should be granted and the compensation should be the loss of his salary for the remainder tenure for which he would have held the office of Lokpal.

22. We will be failing in our duty, inter alia, if we do not state the rationale behind that direction. It is as follows:

> "9. There are two ways of understanding the effect of abolition of the office of Lokpal, which resulted in curtailment of the tenure of the office of the appellant. One is that the appellant having held the office at least for some time is subject to all the restrictions arising under the provisions of the Act, including those which debar him from holding any office on his ceasing to be Lokpal. The other point of view could be that on the abolition of the post the restrictions as to holding of office on the appellant ceasing to be the Lokpal will not be attached to him. The latter view, if taken, would lead to incongruous results because the incumbent in the Office of the Lokpal, having functioned as such at least for some time, would have dealt with many matters and, therefore, to maintain the purity of that office, the restrictions imposed

under the Act should be maintained. The only other reasonable way, therefore, is to interpret the provisions to the effect that even when such restrictions continue to be operative on abolition of the office, the incumbent in office should be reasonably compensated not for deprivation of the office but for attachment of the restrictions thereafter.

10. The learned counsel for the respondents contended that loss of employment in such a situation is only a contingency of service and the right to abolish the post is available with the Government in the same manner as the right to create a post and a person whose post has been abolished should not be entitled to salary. In our view, these arguments have absolutely no relevance to the question which we have examined. The crux of the matter in this case is the effect of the disqualification of not holding any office after ceasing to hold the Office of the Lokpal. He is deprived of all other offices or business interest when he holds the Office of the Lokpal and the office, which he holds, is also denied to him by reason of the repealing Act. If the argument of the learned counsel for the respondents is accepted, it would lead to incongruity and would baffle all logic.

11. The learned counsel for the respondents further submitted that the appellant had not presented his case or claimed compensation for loss of future employment but has claimed only the loss for the present tenure and, therefore, we should not grant any relief to him. A writ petition, which is filed under Article 226 of the Constitution, sets out the facts and the claims arising thereto. Maybe, in a given case, the reliefs set forth may not clearly set out the reliefs arising out of the facts and circumstances of the case. However, the courts always have the power to mould the reliefs and grant the same."

23. We repeat at the cost of repetition that we are absolutely conscious in the said case, the situation was different, but the Court moulded the relief and granted the compensation. The Court did not think to go for the alternative i.e. once there is an abolition of post, the restrictions of holding office would not be attracted to him. The Court did not think of the second situation as the result would be incongruous and baffle all logic. We ingeminate that we have referred to that authority only to keep in view, in certain circumstances relating to curtailment of tenure, the Court can mould the relief depending upon the fact situation. In the obtaining factual scenario, the period has been over since last six years. There had been an order of status quo by this Court on 01.11.2006. The 1st respondent has come back to his parent Department and working in the post of Scientist-G. In distinction to the decision in Debesh Chandra Das (supra), the period of tenure is not available which was there in the said case. Similarly, in Ashok Kumar Ratilal Patel (supra), the appellant was not appointed and, therefore, the Court directed the authorities to appoint him as per the orders of appointment. In the present case, we are of the considered view, the appellant should not suffer the loss of salary, but if we direct for his reinstatement as the High Court has done, it will create an anomalous situation. It would be, in our considered view, not apt at this juncture and, therefore, the cause of justice would be best subserved if he is allowed to get the entire salary that was payable to him for the post of CGPDTM for the balance period, that is, five years minus the period he had actually served and

drawn salary. The balance amount shall be paid with interest @ 9% p.a. within three months hence.

24. Another aspect that has been highlighted before us by Mr. Gonsalves is that the 1st respondent should be entitled to draw the same salary that he was drawing on the basis of his last pay drawn when he came back to his parent Department. It is an admitted fact that he was drawing a higher scale while holding the post of CGPDTM, but the question is whether the said pay scale should be maintained in the parent department. Mr. Praveen Swarup, learned counsel appearing for the 2nd respondent has commended us to the decision in Union of India & Others V. Bhanwar Lal Mundan[4]. In the said case, a deputationist was getting a higher scale of pay in the post while he was holding a particular post as deputationist. After his repatriation to the parent department, on selection to higher post, he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. In that context, this Court opined that such fixation of pay was fully erroneous and, therefore, the authorities were within their domain to rectify it. Mr. Gonsalves, learned senior counsel would submit that here it was as tenure posting and, therefore, he is entitled to get the equivalent pay which he was holding as a tenure-post holder. The said distinction, on a first glance, may look attractive, but on a deeper scrutiny, has to pale into insignificance. Assuming he would have completed the entire tenure of five years, he would have definitely come back to his parent department. There is no rule or regulation that he will get the equivalent pay scale in his parent department. The normal rule relating to pay scale has to apply to avoid any kind of piquant and uncalled for situation. Therefore, the submission does not commend acceptation and accordingly we repel the same.

25. Consequently, the appeal is allowed to the extent indicated above. There shall be no order as to costs.

.....J. (Dipak Misra) .....J. (V. Gopala Gowda) New Delhi;

January 06, 2015

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[1] (1969) 2 SCC 158 [2] (2012) 7 SCC 757 [3] (2003) 4 SCC 21 [4] (2013) 12 SCC 433

REPORTABLE