verted to his substantive post, consequent on the abolition of the post he was officiating.

Hence, according to the Supreme Court, the Cuttack Bench of the Central Administrative Tribunal made a mistake when it held that the reversion of Mr Bigyan Mahapratra and Mr Janakar Patra from the post of junior clerk, to which they had been promoted by the South-Eastern Railways on an ad hoc basis, was bad.

According to the tribunal, their promotion to the post of junior clerks, even though on an officiating basis, was after an interview and finding them fit for such promotion. That being the nature of promotion, the reversion back to the post of Khalasi Helper was wrong.

The tribunal also had held that in view of a Government circular, a person who worked in an officiating capacity in a promotional post for more than 5 years must be absorbed in that post and could not be reverted.

Both the persons, who were holding the post of Khalasi Helper, had been promoted as junior clerks purely on an ad hoc basis against temporary posts created in the Construction Wing of the Electrical Branch of the South-Eastern Railway.

It had been stated in the order promoting them that no right will accrue to them in the said posts. Further, they could not claim seniority over some others in the lower posts.

The post of junior clerk was sanctioned up to December 31, 1989. The railway administration found that there was no necessity to continue the clerical post in the construction wing. As a result, the clerical staff were reverted to the substantive posts of Khalasi Helper in April, 1990.

According to the Supreme Court Bench, consisting of Justice Lalit Mohan Sharma, Justice S.Mohan and Justice N.Vankatachaliah, the tribunal without going into the merits of the contentions, adopted an easy course on the assumption that two posts of junior clerks were available and directed to accommodate the respondents there.

This approach is wholly wrong. Where a person is reverted to a substantive post from the officiating promotional post, he cannot have any grievance whatsoever. This is a case where the reversion was necessitated, consequent to the abolition of the post of junior clerks. This aspect of the matter had been lost sight of by the tribunal. It has merely proceeded as though two posts of junior clerks are available and they should be given to the respondents.

Even assuming that two posts were available, they cannot straightaway be accommodated in those posts since there may be other eligible candidates whose rights also require to be taken into consideration. They cannot claim a right to officiate as

Culpable homicide

CULPABLE homicide is murder if it is done with an intention. But it will not be considered a murder if the offender, while deprived of the power of self-control by grave and sudden provocation, causes the death of the person who caused the provocation. Such is the effect of the exception 1 to Section 300 of the Indian Penal Code.

Again, under Section 100 of the code, the right of private defence of the body extends even to voluntary causing of the death of an assailant, even though one is not to exceed the limits of this right.

According to the Supreme Court, Mr Raghavan Achari (Njoonjappan) of Kattampakkukara in Kottayam district, who had been convicted under Section 304 Part I (Culpable homicide not amounting to murder) and the sentenced to imprisonment for three years for murdering one Krishna Pillai, could claim the benefit of both these provisions. So the court set aside the conviction and sentence.

The accused Raghavan Achari was a goldsmith. His wife Bhavani, mother of four children, was having illicit relationship with the deceased. The accused was aware of it and there used to be quarrels between them. On February 12, 1990, Mr Achari left the house in the morning to attend a marriage and the children to school. When Mr Achari returned home in the afternoon he was shocked to see Krishna Pillai with his wife in a compromising position on a cot in the house. It is this unholy scene that provoked him to commit the murder.

The sessions court, Kottayam, found that it was a not a case of culpable homicide. Yet the court convicted him under Section 404 Part I and sentenced him to rigorous imprisonment for five years. The High Court of Kerala in appeal confirmed the conviction, but reduced the sentence to three years.

Allowing the appeal filed by Mr Achari, the Supreme Court Bench, consisting of Justice Kuldip Singh and Justice Yogeshwar Dayal, said the compromising position in which he saw the deceased with his wife, gave him the grave and sudden provocation to commit the murder.

The provocation was further aggravated when the deceased, instead of running away, sprang at him and fisted on his forehead and hit him with a lamp causing multiple injuries. In the circumstance, the right as envisaged under Section 100 became available to him.

The Bench said no court expected a citizen not to defend himself, particularly when they have already suffered grievous injuries. It is clear that though the appellant had a chopper in

Evasion of tax

IF a dealer unauthorisedly retains the amount of sales tax collected by him from the purchasers, it amounts to evasion of tax as contemplated under Section 45 A of the Kerala General Sales Tax Act, warranting imposition of penalty.

According to Justice P.A.Mohammed of the Kerala High Court, under Section 22 of the Act, a registered dealer is legally authorised to collect the sales tax payable by him, from his customers, and pay the same to the Government in the prescribed manner.

The Sales Tax Rules make him liable to remit the amount of tax collected during a particular month, to the Government treasury before the 20th of every succeeding month. If the tax is not remitted as required under the rules, he becomes not only a defaulter but also a violator of the statutory provisions.

The petitioner in this case, Mr S.N.Zakir Hussain of Thrissur, had challenged the penalty of Rs 23,500 imposed on him for non-payment of tax in time. The stand taken by him was that the delay in filing the annual returns would not constitute default contemplated under Section 45(1)(c) of the Act. The delay in filing the tax returns does not attract the penalty under Section 45 A as no evasion is involved.

But the judge did not agree. This is a case where sales tax has been collected by the petitioner. The tax collected is payable to the Government every month. In this case he has been collecting tax from April 1, 1988 to March 31, 1989. But the returns showing the amount of tax collected, total taxable turnover etc for all the months were filed together only on August 4, 1981, that is to say, four months after the expiry of assessment year in question.

The tax collected by him was Rs 46,715. This amount was not paid by him till the books of account were verified by the officer concerned. The penal provision under Section 45 was invoked because the petitioner had failed to submit the returns as required. The delay in filing the returns was admitted. That means the failure to submit the returns within the time prescribed by law is proved. Then the delay can only be a conscious default and that is, no doubt, an evasion of tax.

In short, this is a case of willful default with a fraudulent intention, attracting penal action. This is not a case where the tax payable was in dispute. He did not file the monthly returns obviously to evade the payment of tax collected by him from the public.

When there is a conscious and unauthorised retention of tax due to the Government, coupled