

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO. 1834 OF 2015

1. R.N. Sahu, S/o Shri B.R. Sahu, aged about 48 years, MCM under Sr. Sectional Electrical Engineer (General), S.E.C. Railway, R/o Qr. No. 81/1, Railway Colony, Brajrajnagar – 760001, District Jharsuguda (Orissa)

2. B.B. Singh, S/o Shri Sarman Singh, aged about 51 years, MCM under Sr. Sectional Electrical Engineer (General), S.E.C. Railway, R/o Qr. No. 671/1, Railway Colony, Umariya– 484555, District Shahdol (M.P.)

... Petitioners

Versus

1. Union of India, through the General Manager, S.E.C. Railway, Bilaspur Zone, G.M. Office, Bilaspur - 495004.

2. The Chief Personnel Officer, Head Quarters, S.E.C. Railway, GM's Office, Bilaspur - 495004

3. The Senior Divisional Personnel Officer, O/o Chief Personnel Officer, S.E.C. Railway, Bilaspur - 495004

4. Shri Vijay Kumar Tiwari, S/o Shri S.P. Tiwari, posted as Sr. Technician (MCM), Train Lighting, S.E.C. Railway, Bilaspur 495004 (C.G.)

... Respondents

For Petitioners	:	Mr. B.P. Rao, Advocate.
For Respondents 1 to 3	:	Mr. Abhishek Sinha, Advocate.
For Respondent 4	:	Mr. Amrito Das, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

30/09/2015

1. The writ petition assails order dated 13.1.2015 passed by the Central Administrative Tribunal, Jabalpur, Bench circuit sitting at Bilaspur, in O.A. No. 272 of 2013.

2. The Tribunal declined interference with orders dated 11.3.2013 and 18.3.2013 canceling the promotion of the Petitioners to Junior Engineer Grade-II against the 25% departmental promotion quota made

on 29.3.2010 and their consequent reversion to the post of Master Craftsman.

3. In the nature of the order proposed it is not considered necessary to notice the entire facts of the case except to the extent necessary for the purpose of the present order so as not to prejudice either parties.

4. We have heard Counsel for the Petitioners, the Railways, and for Respondent No.4.

5. The post of Junior Engineer Grade-II was to be filled by direct recruitment to the extent of 75% and 25% from the departmental promotion quota from amongst Technician Grade-I and Master Craftsman.

6. Respondent No.4 preferred O.A. No. 160 of 2008 when he was excluded from the promotion process initiated on 6.11.2007. The representation filed pursuant to the same was rejected by a reasoned order on 11.4.2008. The Petitioners were successful in the written examination held on 8.3.2008 but could not be promoted due to non-availability of vacancies. Fresh consideration for promotion commenced on 11.12.2009. Nine persons were found eligible to participate, including the Petitioners, but excluding Respondent No.4. The Respondent again approached the Tribunal in O.A. No. 416 of 2010, disposed on 25.5.2010 to consider his grievance. The representation filed pursuant to the same was rejected by the Respondents on 9.8.2010. The Petitioners again cleared the written examination and promotion orders were issued on 31.3.2010. Respondent No.4 preferred O.A. No. 754 of 2010 afresh which was disposed by the Tribunal to consider his grievance including in light of Circular dated 22.2.2005. The impugned orders then came to be passed.

7. Learned Counsel for the Petitioners submitted that except for Respondent No.4, no other person was complaining denial of consideration or any aberration of the Rules. In the fresh selection process initiated after the impugned orders Respondent No.4 was again unsuccessful in the written examination the results for which were declared on 21.2.2013. The Respondent Railways had earlier supported the promotion of the Petitioners and then made a unilateral somersault. Five persons promoted along with the Petitioners in the same process have not been reverted thus causing hostile discrimination and arbitrariness.

8. Indisputably, the Petitioners were promoted on 31.3.2010 as Junior Engineer Grade-II. There are no allegations that they obtained the promotion by any misrepresentation or suppression of facts. On the contrary the promotions were given after they passed a written examination for the purpose and competed successfully. Once they were promoted, a civil right accrued to them to continue on the promotional post unless and until it was taken away in accordance with law. The Tribunal in O.A. No. 754 of 2010 could not have and did not order cancellation of promotion granted to the Petitioners in violation of the principles of natural justice. No Court can pass any order contrary to law. The question before the Tribunal in judicial review was not if the promotion was right or wrong, but whether the cancellation of the promotion had been done in accordance with law. Whether the Petitioners had a valid defence or not is again not relevant at this stage. The question is of an opportunity of defence not having been given at all. In AIR 1964 SC 506 (State of Mysore v. K. Manche Gowda) it was observed on the issue as follows :-

“7....The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his explanation. We cannot accept the doctrine of “presumptive knowledge” or that of “purposeless enquiry”, as their acceptance will be subversive of the principle of “reasonable opportunity”....”

9. The Petitioners had taken a specific objection before the Tribunal that the impugned orders to their prejudice had been passed in violation of the principles of natural justice without show cause to them. They had further contended that the earlier order dated 9.8.2010 by the Respondent Railways rejecting the grievances of Respondent No.4 had been passed after inter-alia considering the Circular dated 22.2.2005. The Tribunal did not consider and deal with these two objections. An order which does not consider and deal with a relevant and important issue and leaves it out of consideration or takes into consideration extraneous issues suffers from gross infirmity in the decision making process and which vitiates the final decision itself.

10. The issue if promotion granted after a selection procedure could be cancelled unilaterally in violation of the principles of natural justice fell for consideration in (1995) 2 SCC 377 (M.S. Usmani v. Union of India) observing as follows :-

“8. The reversion order issued by the Railways appears not only to be unjust but vitiated by error of law. It was passed without affording any opportunity of hearing to the appellants. The appellants had been selected through a competitive merit examination. Their selection was not challenged. They had been regularised and had been promoted to even higher grade on basis of suitability test. Reverting such persons after a lapse of six years from the date of their selection, five years from the date of their appointment, and two years from the date of their promotion in the higher scale, was not warranted.”

The question again fell for consideration in (1999) 1 SCC 685 (Ram Ujarey v. Union of India) observing as follows :-

“17.....If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and brought back to the post of Khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him.”

11. An order passed in violation of the principles of natural justice was considered akin to a still born child who never comes into being. The Court does not quash such an illegal order but only performs the obsequies of an order which was still born and never came in to existence as held in (1974) 2 SCC 121 (Nawabkhan Abbaskhan v. State of Gujarat).

12. The orders dated 11.3.2013 and 18.3.2013 cancelling the promotion of the Petitioners and reverting them are therefore held to be not sustainable as being in violation of principles of natural justice, but without prejudice to the rights of the Respondent-Railways afresh in accordance with law. If the Respondent-Railways issues notice to the concerned, and replies are not filed within such reasonable time or extended time that may be granted for the same, nothing prevents the Respondent-Railways from passing final appropriate orders in accordance with law but after recording reasons for the same so that the matter is finally concluded and brought to rest either ways within a

maximum period of three months from the date the show cause, if any, is issued.

13. The order of the Tribunal dated 13.1.2015 is set aside. The writ petition is allowed with directions.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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