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C.F. 200/-

Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH

AT BILASPUR

W. P. (S) No. 2839 /2012

PETITIONER

1. ✓ Sunil Kumar Pandey
S/o. Late Dasrathi Prasad Pandey,
Aged about 55 years, Office of Chief
Medical and Health Officer, District
South Bastar, Dentewada (C.G.)
R/o. Sun-city Qrt. No. 42, Payal
Niwas, Jagdalpur, Distt.- Bastar
(C.G.)
2. Sundar Lal Patel, S/o. Late Shri
Lalji Prasad Patel, aged about 52
years, R/o. V.V. Vihar Colony,
Street No. 5, Mova, Raipur (C.G.)

R. No. 2839/12
Presented by Shri. Maneech Sharma
dated 27/7/12

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through: Secretary, Health and
Family Welfare Department
Mantralaya, D.K.S. Bhawan,
Raipur (C.G.)
2. Commissioner, Health and
Family Welfare Department,
Raipur (C.G.)
3. Director, Directorate of Health
Services, Raipur Chhattisgarh.
4. Divisional Joint Director, Health
Services, Bastar Division, Bastar
(C.G.)
5. Chief Medical and Health Officer,
District, Dantewada (C.G.)
6. Collector, District, Dantewada
(C.G.)
7. S.R. Rajput, Head Clerk, Office of
Civil Surgeon and Hospital
Superintendent, Dantewada
(C.G.)



As per Hon'ble Court
ORDER DT. 05.01.2015
THE NAME OF RESPONDENT
No - 7 IS HEREBY DELETED
NAUSHEENA ALI
07.01.2015

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8. Ashok Kumar Netam, Asstt.
Grade-III, Office of Chief Medical
and Health Officer, Dantewada
Distt. Dantewada (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

SB: HON'BLE SHRI PRITINKER DIWAKER, J

WRIT PETITION (S) No. 2839 of 2012

PETITIONERS

Sunil Kumar Pandey and another

VERSUS

RESPONDENTS

State of Chhattisgarh and others

Smt. Naushina Ali counsel for the petitioners.

Shri A.V. Shridhar PL for the respondents.

ORDER

(04.02.2015)

The petitioners were appointed on the post of AG-III in the office of respondent No.5 - Chief Medical and Health Officer (CMHO) Dantewada and being on the top of the gradation list published in the year 1999, they were promoted to the post of AG-II by the Departmental Promotion Committee (DPC) on 30.3.2001 vide Annexure P-9. After getting promotion, the petitioners assumed the charge of AG-II on the same day vide Annexure P-10. According to the petitioners, after following due procedure of law the promotion order was issued by respondent No.5 after considering all the aspects of the case. After working for more than 11 years on the post of AG-II, on 23.6.2012 vide annexure P-1 an order has been passed by respondent No.1 cancelling the promotion order of the petitioners on 30.3.2001. On 7.7.2012 an order (Annexure P-2) has been issued by respondent No.3 directing respondent No.5 to immediately cancel the promotion order of the petitioner. It is these two orders dated

23.6.2012 and 7.7.2012 which are challenged in the present petition.

2. Counsel for the petitioners submits as under:

(i) that the orders impugned have been passed without affording an opportunity of hearing to the petitioners and on this ground alone the orders impugned are liable to be quashed;

(ii) that the petitioners have already worked on the post of AG-II for more than 11 years and therefore cancelling their promotion in an abrupt manner without there being any justification for the same is bad in the eye of law;

(iii) that in the case of the petitioners Rule 4 (b) of the Chhattisgarh Family Welfare (Directorate of Health Services) Class III, Ministerial Service Recruitment Rules 1989 (for short the Rules of 1989) is applicable and considering the said rule the petitioners were promoted to the post of AG-II but the respondents are wrongly relying on rule 4-A of the Rules of 1989 which in fact is applicable to the employees posted at the Directorate level whereas rule 4-b is applicable in the case of employees posted in the district level;

(iv) that it has not been stated by the respondents in the return that the petitioners were ineligible for promotion and once they were within the zone of consideration, they were otherwise entitled to be promoted irrespective of applying any rule. In support of her submissions, counsel for the petitioners placed her reliance on the decisions of the Apex Court in the matter of **Shekhar Ghosh v. Union of India and another** reported in (2007) 1 SCC 331, in the matter of **Union of India and another**

v. Narendra Singh reported in (2008) 2 SCC 750 and in the matter of **Vikas Pratap Singh and others v. State of Chhattisgarh and others** reported in (2013) 14 SCC 494.

3. On the other hand, counsel for the respondents submits that once the initial promotion of the petitioner itself was bad, the same has rightly been cancelled. It has been argued that as the promotion was *void ab initio*, the petitioners were not entitled for any opportunity of hearing.

4. Heard counsel for the parties and perused the documents on record.

5. Undisputedly, before passing the orders impugned, no opportunity of hearing was afforded to the petitioners though their promotion was cancelled more than 11 years after they had been promoted to the post of AG-II. Cancellation of promotion order of an employee suffers civil consequence and in these circumstances principle of natural justice is required to be complied with. In **Shekhar Ghosh v. Union of India and another** (supra) it has been held by the Apex Court as under:

"17. There is yet another infirmity in the impugned order of reversion. The appellant had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. 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."

18. Curiously Respondents in their counter-affidavits filed before the Tribunal and the High Court did not raise any plea of rectification of any mistake. It was also not stated in the show cause notice issued to the appellant. Only a plea of mistake was taken for the first time before the Tribunal, but no plea was taken that it was entitled to rectify the same or the order impugned before it was capable of being rectified. Thus, it was not a case where an opportunity of hearing was given to Appellant on the premise that a mistake had been committed by the authorities of the first respondent and the same was required to be rectified.

19. If a mistake is to be rectified the same should be done as expeditiously as possible. [See Board of Secondary Education, Assam v. Mohd. Sarifuz Zaman (2003) 12 SCC 408].

20. We are not oblivious that in Ram Chandra

Tripathi v. U.P. Public Services Tribunal IV an order passed by way of a mistake was permitted to be corrected as the same was done in violation of the order of injunction. In such a situation only, this Court held that an opportunity of being heard for correcting such mistake would not arise because there would not have been any occasion to take one view or the other in the matter on the basis of representation to be made by the affected employee.

21. It is also not a case where a mistake was apparent on the face of the records and, thus, compliance of the principles of natural justice would not have made any difference as was in *Ratna Sen nee Roy v. The State of W.B.*

22. Requirements to comply with the principles of natural justice would, therefore, vary from case to case. If upon giving an opportunity of hearing to an affected employee, it is possible to arrive at a different finding, the principles of natural justice must be complied with. We may notice that recently in *Union of India v. Bikas Kuanar* a Division Bench of this Court opined:-

'It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however, may in a given situation require compliance with the principles of natural justice. It is only in a case where the mistake is apparent on the face of the records, a rectification thereof is permissible without giving any hearing to the aggrieved party.'

Further, in the matter of *Union of India and another v. Narendra Singh* (supra) it has been held by the Apex Court as under:

"32. It is true that the mistake was of the Department

and the respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In *ICAR v. T.K. Suryanarayan* it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules.

34. True it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him. But as observed earlier, in the instant case, in accordance with Rule 31-A of the Fundamental Rules, notice was issued to the respondent employee, explanation was sought and thereafter the order was passed. The said order, in our considered view, was just, proper and in consonance with law and it ought not to have been set aside by the Tribunal or by the High Court. To that extent, therefore, the orders impugned in this appeal deserve to be set aside.

35. The last prayer on behalf of the respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so that only few days have remained. He will be reaching the age of superannuation by the end of this month i.e. 31.12.2007. In our view, therefore, it would not be

appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of superannuation i.e. up to 31.12.2007. At the same time, we hold that since the action of the authorities was in accordance with statutory rules, an order passed by the Deputy Accountant General cancelling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all throughout.

36. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. 31.12.2007 and salary paid to him in that capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs."

The aforesaid judicial pronouncement has further been affirmed in the matter of **Vikas Pratap Singh and others v. State of Chhattisgarh and others** (supra).

6. Thus considering the entire factual aspect of the case in the light of the judicial pronouncements detailed above, without further entering in to the merits and demerits including applicability of the rules, this Court wishes to quash the orders (Annexures P-1 and P-2) as they

have been passed without affording opportunity of hearing to the petitioners. It is done accordingly. However, respondents would have liberty to proceed against the petitioners if occasion arises but after giving due opportunity of hearing to them. Though this Court has quashed the orders impugned, it has left open the point of applicability of the rules of 1989 governing the promotions of the petitioners.

7. Petition thus allowed.

Sd/-
Pritinker Diwaker
Judge