

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 203 of 2006**

Sanat Kumar Shukla, aged about 53 years, S/o Late Shri Ram Kishore Shukla, Occupation-Revenue Inspector, R/o Collector, Distt, Kabirdham (Kawardha) (CG)

---- Petitioner**Versus**

- 1.** The State of Chhattisgarh, Through Secretary, Ministry of Revenue, Raipur (CG)
- 2.** Commissioner Land Record, Raipur
- 3.** The State of Madhya Pradesh, through Secretary, Revenue Department Mantralaya, Bhopal
- 4.** Ramshran Agrawal, Asstt. Superintendent Land Record, Office of Settlement Officer, Surguja (CG)
- 5.** Omprakash Pandey, Asstt. Superintendent Land Record, Office of Settlement Office, Mandsaur
- 6.** Ramchandra Tripathi, Asstt. Superintendent Land Records, Office of Settlement Officer Bhind (MP)
- 7.** Ramesh Kumar Pandey, Asst. Superintendent Land Records Office of Settlement Officer Bhind
- 8.** R.C. Sinha, Secretary Cum Commissioner, Land Records, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Parag Kotecha, Advocate
For State	:	Mr.Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****29/08/2017**

1. By way of this writ petition, the petitioner is seeking direction to the respondents to consider the case of the petitioner for promotion on the post of Assistant

Superintendent Land Records. The State Administrative Tribunal in O.A.No.1365 of 1998 filed by the petitioner directed the State Government to convene a meeting of Review DPC within a period of two months. In a review DPC convened on 10.11.2005 the petitioner was not found fit for promotion for the said post, which was communicated to him on 3.2.2006, which he has challenged by way of this writ petition.

2. Mr.Parag Kotecha, learned counsel appearing for the petitioner, would submit that uncommunicated adverse remark has been acted upon to deny the petitioner's promotion on the post of Assistant Superintendent Land Records, therefore, the impugned order dated 3.2.2006 is liable to be set aside.
3. Mr.Gary Mukhopadhyay, learned Deputy Government Advocate, appearing for the respondents No.1 to 4, would submit that no such plea is taken by the petitioner in the writ petition filed before this Court and therefore, such a plea is not available to the petitioner.
4. Mr. Parag Kotecha would draw attention of this Court of para 5.3 and 5.13 of the writ petition to show that such a plea has been taken. He would submit that in rejoinder filed on 2.8.2007 plea has been taken that adverse remark has not been communicated to the petitioner and such a remark has been acted upon in denying the promotion to the

petitioner.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the documents appended with the petition with utmost circumspection.
6. The question is whether the petitioner has taken a plea that uncommunicated adverse remark has been considered and he has been denied promotion upon consideration of adverse remarks.
7. In para 5.3 of the writ petition, the petitioner has simply stated that there is no adverse remark except one against him, which has been challenged in WP No.1813/2005 and that writ petition has been allowed today directing the competent authority to consider the representation of the petitioner afresh. In para 5.13 of the writ petition, general statement has been made, but there is no specific averment with regard to non-communication of uncommunicated adverse remark to him. Rejoinder has been filed on 2.8.2007 in which in para 6 it has been stated as under:-

“6. That it is respectfully submits that the petitioner ACR are upto mark and further there is nothing on record which show that ACR of the year 1996 had been forwarded to the petitioner and it is specific rule that if the adverse ACR is not conveyed to the delinquent than the same shall not be considered at D.P.C., but contrary to that, the respondents had declared the

petitioner as not eligible for promotion. That the respondent no. 8 with the malafide intention, illegally denied the promotion to the petitioner. That from the closed look of the ACR of 1996, it appears that the same had been written afterward without approval of any authority and further because it was written afterwards, it was not conveyed to the petitioner."

8. Leave for taking rejoinder on record has been sought, but no leave has been granted by this Court and rejoinder has not been taken on record.
9. Rule 52 and 53 of the High Court of Chhattisgarh Rules, 2007 (hereinafter called as 'Rules of 2007') provides as under:-

"52. An answer to the rule nisi or the notice to show cause shall be made supported by an affidavit, and by serving a copy thereof along with the copy of annexure(s), if any, upon the petitioner or his Advocate, as the case may be, not later than the date fixed for showing cause.

53. No further return, affidavit or document shall be filed by any party except with the leave of the Court."

The aforesaid rule clearly provides that filing of the counter-affidavit is right of the respondents and thereafter no further return, affidavit or document shall be filed by any party except with the leave of the Court.

10. Now the question is whether a plea raised in the rejoinder can be said to be a part of the writ petition.
11. As back as in the year 1958, the Constitution Bench of the

Supreme Court in the matter of **Pandit M.S.M. Sharma Vs. Shri Sri Krishna Sinha and others**¹ has held that plea not raised in the writ petition cannot be allowed to be raised in the rejoinder by the petitioner, by observing as under:-

“The case of bias of the Chief Minister (respondent 2) has not been made anywhere in the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply.”

12. In the matter of **B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd. and others**² the Supreme Court has observed as under:-

“Before we embark upon the respective contentions made before us on the said issue, we may notice that although the point was urged during hearing before the High Court, the first respondent in its writ application did not raise any plea in that behalf. The High Court was not correct in allowing the first respondent to raise the said contention. (See Chimajirao Kanhojirao Shirke Vs. Oriental Fire & General Insurance Co. Ltd.,³ SCC at p. 625.)”

13. In the matter of **The tropical Insurance Co. Ltd. and others Vs. Union of India and another**⁴, the Constitution Bench of the Supreme Court has held that the petitioner cannot be allowed to urge the grounds which he had not

1 AIR 1959 SC 395

2 (2006) 11 SCC 548

3 (2000) 6 SCC 622

4 AIR 1955 SC 789

taken in the petition. It was observed as under:-

“3. As to the first two contentions, they were urged in Petitions Nos. 94 of 1934 and 183 of 1954, but were not allowed to be put forward by this Court as these questions had not been specifically raised in the petitions under Article 32 of the Constitution of India and they were accordingly dismissed. The position is similar in this respect so far as the present applications are concerned and consequently it must be held that the petitioners cannot be allowed now to urge grounds which they had not taken in their petitions.”

14. In the matter of **S.S. Sharma and others Vs. Union of India and others**⁵, the Supreme Court has observed as under:-

“6..... We are of opinion that the courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response.”

⁵ AIR 1981 SC 588

15. In the matter of **Arun Kumar Sinha Vs. The State of West Bengal**⁶, the Supreme Court observed as under:-

“5. The second ground was that a First Information Report was lodged in respect of incidents set out in the grounds for the purpose of initiating a prosecution against those responsible for them and yet that documents did not contain the petitioner's name. This ground, however, was not taken by the petitioner in the petition with the result that the respondent State had no opportunity or occasion to deal with it. That being so, it is not possible, in the absence of any materials before us, to deal with such a contention urged for the first time in the course of arguments. ”

16. The Constitution Bench of the Supreme Court in the matter of **Kavalappara Kottarathil Kochuni @ Moopil Nayar Vs. The State of Madras and Ors.**⁷ has observed as under:-

“14.....But that in itself does not conclude the matter. Ordinarily, when a question raised depends upon elucidation of further facts not disclosed in the statements already filed, we would be very reluctant to allow a party to raise such a plea at the time of arguments..... ”

17. Likewise, in the matter of **Union of India (UOI) and Ors. Vs. Devjee Mishra**⁸, the Supreme Court observed as under:-

“36... Notably such case we not made out even in the original writ petition for reasons best known to the Respondent. Obviously, taking that plea in the rejoinder affidavit for the first time was with a

6 (1973) 4 SCC 54

7 AIR 1960 SC 1080

8 (2016) 10 SCC 445

view to confuse the issue, so as to resile from the voluntary confession already given in the Court Martial Proceedings. That cannot be countenanced. For, such a belated plea ought not to be entertained by the High Court, that too in a casual manner; and especially when the Appellants in further affidavit had mentioned the circumstances in support of the ascertain that the document relied by the Respondent is a forged document..... The High Court should not have entertained the plea of the Respondent that he was pressurized to give confession, in absence of disclosure of names of those officials and who had no opportunity to counter the allegations made against them. Hence, this reason weighed with the High Court must also fail.”

18. In the matter of **Ashok Lanka Vs. Rishi Dikshit and others**⁹, the Supreme Court observed as under:-

“43. In the writ petition, the writ petitioners have not disclosed as to how each one of the licensees who had appeared as respondents therein were ineligible or otherwise disqualified and/or did not fulfil the conditions therefor. Had such opportunities been given, the State as also the said respondents could have met the said allegations. Such allegations were made only in the rejoinder. Now new plea ordinarily could have been permitted in the rejoinder without the leave of the Court. We would not have commented upon this as the High Court does not appear to have placed reliance upon the additional affidavit filed by the State, inter alia, on the ground that the same being surrejoinder could not have been filed. The High Court's attention was evidently not drawn to the fact that writ petitioners brought on record new facts for the first time in the rejoinder and, thus, the State was entitled to file a surrejoinder controverting the allegations made therein.”

19. In view of the aforesaid judgments, it is quite vivid that the
petitioner was required to set out such a ground in the writ

⁹ (2006) 9 SCC 90

petition filed and if such a ground has come to the notice of the petitioner later on, he ought to have amended the writ petition with the leave of the Court. The petition is pending since 2006, then also the petitioner has not resorted to the procedure well known to law and rules framed by this Court under Article 227 of the Constitution of India, which is binding to the parties and as such, no new ground is permitted to be raised by way of rejoinder.

20. In the considered opinion of this Court, the petitioner having failed to raise a plea of non-communication and acting upon the uncommunicated adverse remark in the writ petition or by subsequent amendment, a plea taken in the rejoinder cannot be considered in support of the writ petition in view of principle of law laid down by the Supreme Court in the above-stated judgments (supra). No other point was pressed into service.
21. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-