

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.222 of 2014

Order reserved on: 25-4-2017

Order delivered on: 4-5-2017

1. Chhattisgarh State Power Holding Company Limited, Daganiya,
Through its Managing Director, Raipur (C.G.)
2. Chhattisgarh State Power Distributing Company Limited,
Through its Managing Director, Raipur (C.G.)

---- Petitioners

Versus

1. Johri Lal Sharma, S/o Shri Jagarnath Sharma, Office Attendant
Grade-I, Office of Superintendent Engineer (RECE), R/o House
No.11/361-363, Halwai Line, Raipur (C.G.)
2. M.P. State Electricity Board (Now known as M.P. State Power
Holding Company Limited), Through its Managing Director,
Jabalpur (M.P.)
3. State Industrial Court of Chhattisgarh, Mahanadi Khand, D.K.S.
Bhavan, Raipur (C.G.)
4. Labour Court, Raipur, Anand Nagar, Raipur (C.G.)

---- Respondents

For Petitioners: Mr. N.K. Vyas, Advocate.

Respondent No.1 in person.

For Respondent No.2: Mr. Ravindra Sharma, Advocate, on behalf of
Mr. Rajesh Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. This petition is directed against the order passed by the
Industrial Court dated 31-7-2014 by which the said Court has
affirmed the order passed by the Labour Court dated 9-1-2014
granting an application under Section 31 (3) read with Sections

61 and 34 of the Chhattisgarh Industrial Relations Act, 1960 (for short, 'the CGIR Act') and thereby directed the petitioner Board to grant notional promotion and all consequential benefits to respondent No.1 on the post of U.D.C. with effect from 1-4-1980 and further directed that if respondent No.1's junior Sirajuddin Qureshi has been promoted then respondent No.1 is also entitled for promotion on the post of Office Superintendent and Accounts Officer.

2. The aforesaid challenge has been made on the following backdrop: -

2.1) Respondent No.1 filed an application on 26-4-1996, immediately prior to his retirement, contending that he was charge-sheeted on 27-10-1980 and for which, departmental enquiry was conducted in violation of the principles of natural justice and he was awarded punishment of deduction of seniority and withholding of promotion for 5 years by order dated 7-7-1989. Respondent No.1 preferred an appeal and by order dated 27-1-1990, the appellate authority reduced the punishment and thereby only directed withholding of promotion for one year. In the appeal, he prayed that the punishment be set aside and he be given all benefits of promotion on the post of U.D.C. with effect from 1-4-1980, on the post of Grade-I with effect from 31-1-1985 and also on the post of S.O. / Accounts Officer with effect from 2-1-1992 with all consequential benefits.

2.2) The petitioners herein filed written statement contending that the application is barred by limitation as final punishment has been imposed on 27-1-1990 whereas, Section 62 (i) (a) of the CGIR Act provides limitation of filing application within one year. The petitioners further averred that there is no provision of representation and successive representation will not extend the period of limitation as provided in the Act and enquiry was conducted in accordance with the principles of natural justice. Respondent No.1 has participated in the enquiry and thereafter, punishment has been awarded. Other allegations were denied.

2.3) The Labour Court by its order dated 12-3-2013 declared the departmental enquiry vitiated and directed the petitioners to prove the misconduct of respondent No.1 which could not be proved by the petitioners. Thereafter, respondent No.1's application dated 8-1-2014 clarifying the relief claimed in the application was allowed and on 9-1-2014, final order was passed by the Labour Court setting aside the order of punishment passed by the disciplinary authority as well as the appellate authority.

2.4) Respondent No.1 preferred an appeal under Section 65 of the CGIR Act before the Industrial Court mainly contending that the Labour Court without considering the material on record passed the order therefore, the order passed by the Labour Court deserves to be set aside. The Industrial Court dismissed the appeal holding that the application filed by respondent No.1

was within limitation and respondent No.1 is entitled for the reliefs claimed in the application.

3. In this writ petition filed by the petitioners/employer, two fold contentions have been raised by the petitioners that the Labour Court and the Industrial Court have committed illegality in directing monetary benefit on the promotional post even without considering that the application filed by respondent No.1 is barred by limitation and the promotion is managerial function, the Labour Court can only direct for consideration but cannot direct to grant promotion. The petitioners placed reliance in the matter of **Management of Brooke Bond India (P) Ltd. v. Their Workmen**¹ and also in the matter of **State of Uttaranchal and another v. Shiv Charan Singh Bhandari and others**².
4. Respondent No.1 appearing in person would submit that his application was well within time and against the appeal, he preferred a revision which was admitted and was kept pending and ultimately, after six years he was informed that no such representation is pending consideration, therefore, both the Courts below are justified in holding that the application filed under the provisions of the CGIR Act was within limitation. Both the Courts below are further justified in holding that respondent No.1 is entitled for service benefits and as such, the writ petition deserves to be dismissed.

1 AIR 1966 SC 668

2 (2013) 12 SCC 179

5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the records with utmost circumspection.
6. The first submission raised on behalf of the petitioner is that the application filed by respondent No.1 was barred by limitation. The punishment awarded by the disciplinary authority was modified by the appellate authority. The Labour Court entertained the application and set aside the order imposing punishment by the disciplinary authority as modified by the appellate authority, and in consequence, directed for notional promotion and service benefits flowing thereto. Once the order imposing punishment is set aside, the delinquent employee is automatically entitled for consequential service benefits. It is not a case where claim was made only for grant of promotion. It is a case where respondent No.1 not only claimed setting aside of the order of punishment successfully, but thereby granted consequential benefits. Therefore the plea of limitation has rightly been turned down by the Labour Court and duly affirmed by the appellate Court.
7. It is not in dispute that respondent No.1 was charge-sheeted on 27-10-1980, he was awarded punishment of deduction of seniority and withholding of promotion for five years by order dated 7-7-1989, however, in appeal, the appellate authority reduced that punishment of withholding of promotion to one year against which respondent No.1 made representation but

ultimately, he challenged the order dated 27-1-1990 by filing an application under Section 31 (3) read with Sections 61 and 34 of the CGIR Act only on 26-4-1996. It is also not in dispute that the learned Labour Court by its order dated 12-3-2013 declared that departmental enquiry against respondent No.1 is vitiated on account of non-compliance of the principles of natural justice and also granted opportunity to prove the misconduct of respondent No.1 which the petitioners failed to prove that respondent No.1 is guilty of misconduct, and on that basis, the Labour Court has declared the order dated 7-7-1989 and the order dated 27-1-1990 to be illegal and granted respondent No.1 the notional promotion and all service benefits on the post of office Assistant Grade Grade-I with effect from 1-4-1980, on the post of Superintendent with effect from 31-1-1985 and on the post of Accounts Officer with effect from 2-1-1992.

8. The submission of learned counsel for the petitioners is that promotion is a managerial function and as such, the court can only direct for consideration and the court could not have directed to promote respondent No.1 which runs contrary to the decision of the Supreme Court in **Management of Brooke Bond India (P) Ltd.** (supra).
9. On the contrary, respondent No.1 appearing in person would submit that in case of victimisation and acting contrary to law, the Court can direct even for promotion without directing consideration. He would further submit that promotion can be

directed to a person superseded on account of mala fides or victimisation. He relied upon the judgments of the Supreme Court in the matters of **Sulekhchand & Salekchand v. Commissioner of Police and others**³, **Union of India, etc. etc. v. K.V. Jankiraman, etc. etc.**⁴, **Divisional Manager, Plantation Divison, Andaman and Nicobar Islands v. Munnu Barrick and others**⁵, **State of Tamil Nadu v. Thiru K.V. Perumal and others**⁶ and **Kashinath Dixit v. Union of India**⁷, to buttress his submissions.

10. Respondent No.1 was by order dated 7-7-1989, punished with penalty to reduce seniority and to withhold his next promotion for a period of five years from that date and that was modified in appeal by order dated 27-1-1990 to reduce the punishment so as to withhold his next promotion for a period of one year. By the order of the Labour Court, both the orders dated 7-7-1989 and 27-1-1990 were set aside and he has been directed to be promoted on the post of AG-I with effect from 1-4-1980, the date from which he was entitled to be promoted, by way of notional promotion with all service benefits. Thereafter, the Labour Court also directed that if his junior Sirajuddin Qureshi has been promoted to the post of Office Superintendent and Accounts Officer, then respondent No.1 shall also be granted notional promotion and consequential benefits on the said post.

3 1995 M.P.L.S.R. 189

4 AIR 1991 SC 2010

5 2005 (25) AIC 25 (S.C.)

6 AIR 1996 SC 2474

7 AIR 1986 SC 2118

11. Definitely, since departmental enquiry conducted by the petitioners has been held to be vitiated against respondent No.1, the order dated 7-7-1989 and the appellate order dated 27-1-1990, both, have been set aside and respondent No.1 will be entitled to be considered and to be promoted on the post of Assistant Grade-I and thereafter, further entitled to be promoted on the post of Office Superintendent and Accounts Officer. But the question would be whether such a direction can be given by the Labour Court to directly promote without leaving the discretion on the part of the employer.

12. In a Constitution Bench decision of the Supreme Court in **Management of Brooke Bond India (P) Ltd.** (supra), the Constitution Bench has held that promotion is a managerial function and has to be left mainly to the discretion of the management which has to make the choice from amongst the employees to promotion, but in appropriate case, it may be directed for promotion where the person superseded has been so superseded on account of mala fides or victimisation after recording a finding to that effect.

13. In the matter of **The State of Mysore and another v. Syed Mahmood and others**⁸, the Supreme Court has held that the High Court can issue a writ to the State Government compelling it to perform its duty and to reconsider their case on merits, but the High Court cannot issue a writ directing the State Government to promote with retrospective effect, it has to give

8 AIR 1968 SC 1113

opportunity to the State Government in the first instance to consider their fitness for promotion.

14. Thereafter, in the matter of **State of Mysore and another v. P.N. Nanjundiah and another**⁹, the Supreme Court while following the decision of **Syed Mahmood's** case (supra) clearly held that the High Court ought not to issue writs directing the State Government to promote the aggrieved officers with retrospective effect. The correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the 1st respondent should have been promoted on the relevant dated and so what consequential benefits should be allowed to him. The Supreme Court in **P.N. Nanjundiah's** case (supra) observed as under: -

“As to the issuance of *mandamus* by the High Court, the High Court ought not to issue writs directing the State Government to promote the aggrieved officers with retrospective effect. The correct procedure for the High Court was to issue a writ to the State Government compelling it to perform its duty and to consider whether having regard to his seniority and fitness the 1st respondent should have been promoted on the relevant date and so what consequential benefits should be allowed to him.”

15. In a land mark decision of Justice V.R. Krishna Iyer in the matter of **State of Mysore v. C.R. Sheshadri and others**¹⁰, the Supreme Court has held that the power to promote an officer belongs to the Executive and the judicial power may control or review government action but cannot extend to acting as if it

9 1969 (3) SCC 633

10 (1974) 4 SCC 308

were the Executive and the judiciary cannot promote or demote officials. The Supreme Court observed as under: -

“... In our constitutional scheme, a broad three-fold division exists. The power to promote an officer belongs to the Executive and the judicial power may control or review government action but cannot extend to acting as if it were the Executive. The Court may issue directions but leave it to the Executive to carry it out. The judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles. What has been done here is in excess of its jurisdiction. Assuming the petitioner's seniority over Venkataraman, how can the Court say that the former would have been for certain, promoted? Basically, it is in government's discretionary power, fairly exercised, to promote a government servant. If the rule of promotion is one of sheer seniority it may well be that promotion is a matter of course. On the other hand if seniority-cum-merit is the rule, as in the Supreme Court decisions cited before us, promotion is problematical. In the absence of positive proof of the relevant service rules, it is hazardous to assume that by efflux of time the petitioner would have spiralled up to Deputy Secretaryship. How could we speculate in retrospect what the rule was and whether the petitioner would have been selected on merit, and on the strength of such dubious hypothesis direct retro-active promotion and back pay? The frontiers of judicial power cannot be stretched thus far. The proper direction can only be that Government will reconsider the case of the petitioner afresh for purposes of notional promotion. If the service rule entitles him to promotion on the ground of seniority alone, Government will, except for the strongest reason, grant the benefit of promotion with effect from the date Venkataraman became Deputy Secretary. ...”

16. In the matter of **Government of Andhra Pradesh and others v.**

A.P. Jaiswal and others¹¹, the Supreme Court relying upon **P.N.**

Nanjundiah's case (supra) held that court cannot issue mandamus to promote.

11 (2001) 1 SCC 748

17. It is well settled law that every Government servant has only right to be considered objectively and fairly, there is no right to promotion on the post.

18. On the basis of the principles of law laid down in aforecited cases, it is quite vivid that the Labour Court could not have issued a straightway direction to promote respondent No.1 on the post of AG-I, Office Superintendent and Accounts Officer. The Labour Court could have directed the petitioner Board to consider his case in accordance with the applicable rules and regulations and his suitability for that post leaving it open to his employer for such promotion after setting aside the order of punishment dated 7-7-1989 affirmed by the Industrial Court by order 27-1-1990. The only direction the Labour Court otherwise entitled to make was to consider his case for the post of AG-I / Office Superintendent / Accounts Officer, the date on which respondent No.1 is entitled and what consequential benefits respondent No.1 is entitled to. But ignoring the settled principles of law, the Labour Court has straightway directed for promotion as well as for grant of consequential benefits which is in teeth of the principles laid down by the Supreme Court in aforecited cases (supra). Not only this, the Industrial Court has also did not look into the same in its proper perspective and in a very casual and perfunctory manner affirmed the order of the Labour Court.

19. As a fallout and consequence of aforesaid discussion, the order of the Labour Court and the Industrial Court to the extent of

giving promotion to promote respondent No.1 and grant all consequential benefits on the post of AG-I / Office Superintendent / Accounts Officer are hereby set aside. Thus, the petition is allowed in part. Setting aside of orders dated 7-7-1989 and 27-1-1990 is maintained, but the order directing the petitioners to promote respondent No.1 on the post of AG-I / Office Superintendent / Accounts Officer is hereby set aside. Further, it is directed that the petitioners will consider the case of respondent No.1 for promotion as per the applicable rules and regulations on the said post at par and / or with the junior(s), if any, promoted and also consider grant of consequential benefits, if any, to the petitioner in accordance with law, if he is found fit to be promoted on the said post(s). The writ petition is allowed in part.

20. No order to costs.

Sd/-
(Sanjay K. Agrawal)
Judge