

NAFR**HIGH COURT of CHHATTISGARH, BILASPUR****Writ Petition (S) No. 5558 of 2016**

Manish Sharma S/o Shri Gulab Chand Sharma aged about 41 years, R/o Village Mendra, Post- Saida, Tahsil Takhatpur, Police Station Chakarbhata, District - Bilaspur, (Chhattisgarh).

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Home/police, Secretariat, Mahanadi Bhawan, New Raipur, Police-Station and Post Rakhi District - Raipur, (Chhattisgarh).
2. Director General of Police (D G P), Police Headquarter (P H Q), Near Mahanadi Bhawan, Police-Station and Post Rakhi, New Raipur, District - Raipur, (Chhattisgarh).
3. Additional Director General of Police (A D G P), Chhattisgarh Armed Force (C. A .F.) Police Headquarter (P H Q), Near Mahanadi Bhawan, Police-Station. and Post-Rakhi, New Raipur, District-Raipur, (Chhattisgarh).
4. Inspector General of Police (I G P), Chhattisgarh Armed Force (C. A. F.) Police Headquarter (P H Q), Near Mahanadi Bhawan, Police-Station and Post Rakhi, New Raipur, District - Raipur, (Chhattisgarh).
5. Commandant, 11th Battalion, India Reserve, Chhattisgarh Armed Force (C. A. F.) Putpura, Police Station Janjgir, District-Janjgir-Champa, (Chhattisgarh).
6. Commandant, 2nd Battalion, India Reserve, Chhattisgarh Armed Force (C. A. F.) Sakri, Police Station Chakrabhatha, District-Bilaspur, (Chhattisgarh).

---- Respondents**Writ Petition (S) No. 6405 of 2016**

M. D. Farid Ansari S/o Shri M. D. Isrial, aged about 31 years, R/o 4th Battalion, Chhattisgarh Armed Force C.A.F. Mana P.S. Mana, Tahsil and District Raipur Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through its Secretary, Department of Home / Police , Secretariat, Mahanadi Bhawan, New Raipur, P.S. and Post Rakhi, District Raipur Chhattisgarh
2. Director General of Police (D G P) Police Headquarter (P H Q) Near Mahanadi Bhawan P.S. & Post Rakhi, New Raipur, District Raipur Chhattisgarh

3. Additional Director General of Police (A D G P), Chhattisgarh Armed Force (C A F) Police Headquarter (P H Q) Near Mahanadi Bhawan, P.S. and Post Rakhi, New Raipur, District Raipur Chhattisgarh
4. Inspector General of Police (I G P) Chhattisgarh Armed Force (C A F) Police Headquarter (P H Q) Near Mahanadi Bhawan, P.S. and Post Rakhi, New Raipur, District Raipur Chhattisgarh
5. Commandant 4th Battalion, Chhattisgarh Armed Force (C.A.F.) Mana Police Station Mana Tahsil and District Raipur Chhattisgarh

---- Respondents

Writ Petition (S) No. 6607 of 2016

Ajay Kumar Singh S/o Late Shri Radheshyam Singh, aged about 42 years, R/o. 2nd Battalion, Chhattisgarh Armed Force (C.A.F.), Sakri, P.S. Chakarbata, Tahsil and District Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh through its Secretary, Department of Home/ Police, Secretariat, Mahanadi Bhawan, New Raipur, P. S. and Post Rakhi District Raipur (Chhattisgarh)
2. Director General of Police (D G P), Police Headquarter (P H Q), Near Mahanadi Bhawan, P. S. and Post Rakhi, New Raipur, District Raipur (Chhattisgarh)
3. Additional Director General of Police (A- D G P), Chhattisgarh Armed Force (C.A.F.) Police Headquarter (P H Q), Near Mahanadi Bhawan, P. S. and Post Rakhi, New Raipur, District Raipur (Chhattisgarh)
4. Inspector General of Police (I G P), Chhattisgarh Armed Force (C.A.F.) Police Headquarter (P H Q), Near Mahanadi Bhawan, P. S. and Post Rakhi, New Raipur, District Raipur (Chhattisgarh)
5. Commandant, 14th Battalion, Indian Reserve, Chhattisgarh Armed Force (C.A.F.) Dalli Rajhara, Balod, Tahsil and District Balod (Chhattisgarh)
6. Commandant, 2nd Battalion, Chhattisgarh Armed Force (C.A.F.) Indian Reserve, Police Station Chakarbata, Tahsil and District Bilaspur (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Rajendra Kumar Patel, Shri Sushil Dubey and Shri Abhishek Pandey, Advocates
For Respondent/State	:	Shri B. Gopa Kumar, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****22/03/2017**

The challenge in these three writ petitions is the order dated 09.08.2016 whereby the order of absorption issued in favour of the petitioners on different dates has been cancelled.

2. Brief facts relevant for adjudication of the present case is that the petitioners were all appointed as Constable in Special Armed Force/ Chhattisgarh Armed Force at different point of time. In due course of time, considering their ability, they were sent for Armourer course at Central Armed Workshop, Raipur (4th Battalion CG Armed Force, Mana, District Raipur). It enables the Constables to undergo specialized training to perform effectively in a situation of counter insurgency and counter terrorism across the country with special reference to counter naxal operations. In addition to the said training at Mana, the petitioners had also been sent for basic training of Armourer Course at 1 EME Centre Secunderabad where also the petitioners had undergone training for about one year period. On successful completion of their training, the petitioners were given respective posting of Constable (Armourer) and they were thereafter known as Constable (MT) in stead of Constable GD. The petitioners were absorbed by different orders passed by the respondents at different point of time. For ready reference, it would be relevant to depict the details of the petitioners in the different writ petitions showing their date of appointment and absorption:

Sl. No.	Name	Date of appointment	Date of absorption
1.	Manish Sharma	28.01.2000	In the year 2013
2.	M. D. Farid Ansari	01.07.2005	In the year 2013
3.	Ajay Kumar Singh	30.09.1998	In the year 2013

3. The above table would reveal that the petitioners in due course of time after their successful training had been absorbed by different orders issued in their favour and since then they have been discharging their duties as Constable Armorer/MT at the different place of posting that were assigned to them. It is pertinent to mention that there are no allegations of any unsatisfactory performance or that the petitioners have been absorbed in the service without undergoing any sort of specialized training. Having put them in regular service on the said post for more than six years of time, suddenly the impugned order dated 09.08.2016 was passed whereby the order of absorption which was issued in favour of the petitioners has been cancelled and they have been reclassified to Constable GD. It is this order of cancellation of absorption which is under challenge in all the writ petitions.

4. The grounds of challenge raised by the counsel for the petitioners are that no opportunity of hearing was granted to the petitioners before issuance of impugned order of cancellation of absorption and the non granting of any opportunity of hearing amounts to violation of the principle of natural justice. The petitioners have not been issued even a notice before issuance of the impugned order canceling the absorption of the petitioners which were made against the sanctioned vacant posts. According to the counsel for the petitioners, all the petitioners were appointed prior to the framing of Rules known as "Chhattisgarh Armed Executive Force (CAF), Constable (General Duty) and Trade Constable (Trained/Untrained) (Recruitment and Conditions of Service) Rules, 2008 (for convenient hereinafter referred as 'the Rules of 2008') which came into force w.e.f. 5th of July 2008. The contention of the counsel for the petitioners is that all the petitioners were in fact fully eligible, trained & competent to be absorbed and it was only after finding them to be suitable that the order of absorption was issued, therefore there was no

occasion for the respondents to cancel the order of absorption. Thus, prayed for quashment of the impugned order.

5. State counsel however, opposing the petitions submits that the absorption on the post of Constable Armorer/MT of the petitioners was contrary to the Rules. Since it was contrary to the rules, the respondents have all the authority for cancelling an order which is found to be in contravention to the Rules governing the service conditions. According to the State counsel, the Rules of 2008 was enacted w.e.f 05.07.2008. As per the Rules of 2008, the post of Constable Armorer/MT was 100% to be filled up by way of direct recruitment. Since it is a post which can be filled up by way of direct recruitment, the service of the petitioners could not have been absorbed as Constable Armorer/MT for the simple reason that the rules do not permit so and therefore the impugned order has been passed.

6. Having heard the counsel appearing for the parties and on perusal of the records, some of the admitted factual positions of the case as it stand are reflected from the table shown in the preceding paragraphs giving the details of the petitioners. Another undisputed fact is that all the petitioners had undergone the specialized training course at Mana, District Raipur and were also sent for further similar training at Secunderabad and only thereafter the orders of absorption have been issued on different dates. It is also not in dispute that before issuance of the impugned order no opportunity of hearing was given to the petitioners.

7. State counsel also fairly admits the fact that before issuance of impugned order cancelling the order of absorption, the petitioners were never noticed. However, he only submits that since the order of absorption was found to be in contravention to the Rules, the impugned order had to be passed.

8. So far as the law in this regard is concerned, it is by now well settled by a series of decisions of the Supreme Court as well as by the High Courts that any act which has a civil consequence adversely affecting the service conditions of an employee, an opportunity of hearing is must. In the instant case also, the absorption of the petitioners was 4-6 years ago and cancelling the same after considerable period of time has definitely adversely affected the service conditions and under the said circumstances, the Authorities ought to have given an opportunity of hearing to the petitioners.

9. Any administrative action having civil consequence, the rule of “Audi Alteram Partem” must be extended. Affording an opportunity of hearing before an order invoking adverse consequence there has to be an insistence of the application of the principles of “Natural Justice”.

10. Principles of natural justice is not a straitjacket formula. If an order adverse to a person is passed, it is expected he ought to have been given an opportunity of hearing. The Hon'ble Supreme Court in the case of **State of Orissa v. Binapani Dei & Ors.**¹ dealing with the issue of natural justice and also carving out a distinction between quasi-judicial and administrative decision held that even in the case of administrative decision where the decision visits civil consequence, the rules of natural justice have to be followed. The said view was further reiterated in the case of **A. K. Kraipal & Ors. v. Union of India & Ors.**² wherein it was observed that the aim of rules of natural justice is to secure justice or to prevent miscarriage of justice. In the case of **Canara Bank v. V. K. Awasthy** reported in **(2005) 6 SCC 321** it has been held as follows:

“Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and

¹ AIR 1967 SC 1269

² 1969 (2) SCC 262

what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil 'liberties, material deprivations, and non pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

11. Likewise, in the case of **Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I and Another** reported in **(2008) 14 SCC 151** in paragraph-19 it has been held as under:

"15. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

12. More recently in the case of **Automotive Tyre Manufacturers Association v. Designated Authority and others**, reported in **(2011) 2 SCC 258** the Supreme Court in para-80 has held as under:

"80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application."

13. In the backdrop of the aforesaid decisions when compared the facts of the present case it apparently reveals that the petitioners were regularized and absorbed in service as Constable Armorer/MT about 4-6 years earlier and they had been enjoying the fruits of the said posts uninterruptedly to the

satisfaction of the Officers of the department till the impugned order under challenge in the present writ petition was passed. It is admitted position on the facts which has come on record that the petitioners were not given an opportunity of hearing before the impugned order was passed. In view of the same, this Court has no hesitation in reaching to the conclusion that the basic principle of "Audi Alteram Partem" not being followed, there has been a violation of principles of natural justice.

14. For the aforesaid reasons, the impugned order under challenge is not sustainable in the eye of law and the same deserves to be and is accordingly set aside/quashed reserving liberty to the respondents to initiate appropriate proceedings against the petitioners in accordance with law if they feel so.

**Sd/
(P. Sam Koshy)
JUDGE**