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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.216 of 2015**

Awdhesh Dandotiya S/o Shri Mahesh Dandotiya, aged about 38 years, Presently working as Assistant Platoon Commander S.T.F. Baghera, District Durg (CG)

----Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Home (Police), Department, Mantralaya Mahanadi Bhawan, Raipur (CG)
2. Director General of Police, Police Headquarter, Raipur, District Raipur (CG)
3. Additional Director General of Police/Naxal Operation, STF, Police Headquarter Raipur, District Raipur (CG)
4. The Superintendent of Police, STF, Baghera, District Durg (CG)
5. The Commandant, CAF, 13th Battalion, Bango, District Korba (CG)

---- Respondents**Writ Petition (S) No.168 of 2015**

Virendra Yadu S/o Late Ram Khilawan, aged about 35 years, Presently working as Assistant Platoon Commander S.T.F. Baghera, District Durg (CG)

----Petitioner**Versus**

1. State of Chhattisgarh through the Secretary Home (Police), Department, Mantralaya Mahanadi Bhawan, Raipur (CG)
2. Director General of Police, Police Headquarter, Raipur, District Raipur (CG)
3. Additional Director General of Police/Naxal Operation, STF, Police Headquarter Raipur, District Raipur (CG)
4. The Superintendent of Police, STF, Baghera, District Durg (CG)
5. The Commandant, CAF, 13th Battalion, Bango, District Korba (CG)

---- Respondents

Writ Petition (S) No.167 of 2015

Lalit Kumar Yadav S/o Shri Manohar Kumar Yadav, aged about 36 years, Presently working as Assistant Platoon Commander S.T.F. Baghera, District Durg (CG)

----Petitioner

Versus

- 1.** State of Chhattisgarh through the Secretary Home (Police), Department, Mantralaya Mahanadi Bhawan, Raipur (CG)
- 2.** Director General of Police, Police Headquarter, Raipur, District Raipur (CG)
- 3.** Additional Director General of Police/Naxal Operation, STF, Police Headquarter Raipur, District Raipur (CG)
- 4.** The Superintendent of Police, STF, Baghera, District Durg (CG)
- 5.** The Commandant, CAF, 13th Battalion, Bango, District Korba (CG)

---- Respondents

And

Writ Petition (S) No.566 of 2015

Raju Gurung S/o Late Shri Ganga Bahadur Gurung, aged about 38 years, Presently working as Assistant Platoon Commander S.T.F. Baghera, District Durg (CG)

----Petitioner

Versus

- 1.** State of Chhattisgarh through the Secretary Home (Police), Department, Mantralaya Mahanadi Bhawan, Raipur (CG)
- 2.** Director General of Police, Police Headquarter, Raipur, District Raipur (CG)
- 3.** Additional Director General of Police/Naxal Operation, STF, Police Headquarter Raipur, District Raipur (CG)
- 4.** The Superintendent of Police, STF, Baghera, District Durg (CG)

5. The Commandant, CAF, 13th Battalion, Bango, District Korba (CG)

---- Respondents

For Petitioner	:	Mr.Sushil Dubey, Advocate
For Respondents	:	Mr.P.K.Bhaduri, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/02/2017

1. With the consent of learned counsel appearing for the parties, the matters are heard finally.
2. Since common question of law and fact are involved, therefore, these cases are heard analogously and are being decided by this common order.
3. The petitioners were promoted on the post of Assistant Platoon Commander vide order dated 19.12.2011 and they were working on the said post after being promoted. By the impugned order dated 3.1.2015 (Annexure P/1), respondent No.3 has revoked the order of promotion. Feeling aggrieved and dissatisfied with the said order, the aforesaid writ petitions under Article 226 of the Constitution of India has been filed by the petitioners.
4. Mr.Sushil Dubey, learned counsel appearing for the petitioners, would submit that the petitioners were promoted on the post of Assistant Platoon Commander and

they were working on substantive promoted post after joining on the promoted post, which cannot be revoked without giving minimal opportunity of hearing to them as they have right to hold the promoted post without interference and as such, the impugned order is in violation of principles of natural justice and deserves to be set aside on this ground alone.

5. Mr.P.K.Bhaduri, learned Government Advocate appearing for the respondents/State, would submit that promotion of the petitioners on the post of Assistant Platoon Commander is governed by Standard Operating Procedure 2009 in which para 6 it has clearly been provided that after promotion the Assistant Platoon Commander were required to serve on naxalite area, otherwise, they will be liable to be reverted and since the petitioners failed to serve in naxalite area as provided in SOP their promotion on higher post have rightly been revoked, therefore, no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and also gone through the documents appended with the petition.
7. It is not in dispute that the petitioners were promoted to the post of Assistant Platoon Commander by order dated

1912.2011 and since then, they were working on the substantive promoted post. It is also not in dispute that while revoking the order of promotion vide order dated 3.1.2015 they have not been served with notice nor they have been given minimal opportunity to make representation against their revocation from promoted post of Assistant Platoon Commander. Once the petitioners are promoted on the promotional post of Assistant Platoon Commander and they are holding the post validly and substantially, revocation of their promotion could necessarily involve civil consequence, therefore, they ought to have been heard before revocation of their promotion from promoted post.

8. The law in this regard is no longer res-integra. Their Lordships of the Supreme Court in the matter of **Shrawan Kumar Jha and others Vs. State of Bihar and others**¹ have held that holders of appointment orders are entitled to opportunity of hearing before cancelling their appointments. Cancellation orders without complying with rules of natural justice is liable to be set aside. It was observed as under:-

“3..... we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the

¹ 1991 Supp (1) SCC 330

detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground."

9. Their Lordships of the Supreme Court in the matter of **D.K. Yadav Vs. J.M.A. Industries Ltd.**² have held that order involving civil consequence must be in consonance with principles of natural justice. It was observed as under:-

"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.³ the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or

2 (1993) 3 SCC 259

3 (1978) 1 SCC 405

country they include rights capable of being enforced or redressed in a civil action. In *State of Orissa v. Dr. (Miss) Binapani Dei & Ors.*,⁴ this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

10. In *State of West Bengal v. Anwar Ali Sarkar*⁵, per majority, a seven Judge bench held that the rule of procedure laid down by law comes as much within the purview of Art. 14 of the Constitution as any rule of substantive law. In *Maneka Gandhi v. Union of India*⁶ another bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Art, 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

4 (1967) 2 SCR 625

5 1952 SCR 284

6 (1978) 1 SCC 248

11. The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry. It must logically apply to both.

12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable."

10. Similar is the proposition of law laid by the Supreme Court

in the matter of **Nisha Devi Vs. State of Himachal Pradesh and others**⁷ in which Their Lordships have held that principle of audi alteram partem admits of no exception, and has to be adhered to in all circumstances. It was observed as under:-

“5 Trite though it is, we may yet again reiterate that the principle of audi alteram partem admits of no exception, and demands to be adhered to in all circumstances. In other words, before arriving at any decision which has serious implications and consequences to any person, such person must be heard in his defence. We find that the High Court did not notice the violation and infraction of this salutary principle of law. Accordingly, on this short ground, the impugned judgments and orders require to be set aside, and are so done.....”

11. In the light of law laid down by Their Lordships of the Supreme Court in the aforesaid judgments, if the facts of the present cases are examined, it is quite vivid that the promotion order of the petitioners have been revoked without giving any opportunity of hearing and to make representation before revoking their promotion and thereby that has caused prejudice to them as it is their case that they have fulfilled the criteria laid down in Standing Operative Procedure.
12. In view of above, the impugned order dated 3.1.2015 (Annexure P/1) passed by respondent No.3 is hereby set aside. However, liberty is reserved to the respondents to

⁷ (2014) 16 SCC 392

proceed in accordance with law after following the principles of natural justice.

13. The writ petitions are allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-