

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7168 of 2007**

- H.R. Chauhan, S/o late Shri Puni Ram Chauhan, aged about 48 years, Collectorate New Colony, Mahasamund (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh, through its Secretary, Tribal Welfare Department, Ministry, DKS Bhawan, Raipur.
2. Additional Secretary, Government of Chhattisgarh, Tribal Welfare Department, Ministry, DKS Bhawan, Raipur.

---- Respondent

For Petitioner : Shri Vinod Deshmukh, Advocate.

For Respondents : Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****17/05/2017**

1. The petitioner has called in question the order (Annexure-P/3) dated 22.11.2007 whereby his promotion on the post of Assistant Commissioner, Tribal Development has been cancelled for the reason that on the date of consideration by the DPC, a criminal case was already instituted by filing charge sheet against him for commission of offence under Sections 420, 409, 467, 468 and 471/34 of the IPC at Police Station Jaijaipur, District Janjgir Champa, therefore, he was not eligible for promotion on the said date.

2. It is argued that once the petitioner has been promoted on 7.9.2006, the same could not have been cancelled without giving any show cause notice or opportunity of hearing. It is also argued that criminal case is still pending and there is no conviction against the petitioner, therefore, at best, the respondents could have adopted the sealed cover procedure. Lastly, it is argued that on the date of issuance of order of promotion charges were not framed against the petitioner.
3. Per contra, learned State Counsel would submit that on account of pendency of criminal case the petitioner was not entitled for promotion, therefore, the State Government has corrected the mistake by canceling the order of promotion. It is further submitted that the order of cancellation has not occasioned as a result of any act attributed to the petitioner after promotion, therefore, it is not a case where principles of natural justice have been violated.
4. Admittedly, offence under Sections 420, 409, 467, 468 and 471/34 of the IPC has been registered against the petitioner in Crime No.59/2002 at Police Station Jaijaipur, District Janjgir Champa. Charge sheet against the petitioner and other accused persons was filed on 30.12.2005. Thus, in view of the pendency of criminal case on the date of promotion i.e. 7.9.2006 the petitioner was not eligible or suitable for promotion. True it is that the respondents should have adopted the sealed cover procedure, however, the clock cannot be set back as that stage having already gone and now, once the promotion order having been issued, sealed cover procedure could not be adopted. The petitioner may be entitled to promotion from the date the order was issued but that can happen

only when the petitioner is acquitted in the criminal case but as long as the criminal case is pending, the petitioner is not entitled to be promoted.

5. It is not a case where pendency of any minor enquiry or show cause notice has been overlooked and the petitioner has been granted promotion or for any subsequent act of the petitioner the order of promotion is sought to be cancelled. Therefore, principle of natural justice is not needed to be adhered. In a case of present nature, when the fact of pendency of criminal case against the petitioner is not in dispute, there was no answer with the petitioner which could have persuaded the authorities not to cancel the order of promotion.
6. It is settled that principles of natural justice are not unruly horse, as has been held by the Supreme Court in **Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and Others;** (2010) 13 SCC 216}in paras 31 to 33 which read thus:-

“31. The principles of natural justice cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. Thus, they cannot be put in a straitjacket formula.

“13.....Natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of.”

32. The two rules of natural justice, namely, *nemo judex in causa sua*, and *audi alteram partem* now have a definite meaning and connotation in law and their contents and implications are well understood

and firmly established; they are nonetheless non-statutory. The court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of the particular case. (Vide **Board of Mining Examination and Chief Inspector of Mines Vs. Ramjee**¹, SCC p.262, para 13; **Union of India Vs. Tulsiram Patel**²; and **ECIL Vs. B. Karunkar**³.)

33. There may be cases where on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. (Vide **State of U.P. Vs. Om Prakash Gupta**⁴, **S.L. Kapoor Vs. Jagmohan**⁵ and **U.P. Junior Doctors' Action Committee Vs. Dr. B. Sheetal Nandwani**⁶.)”

7. Had it been a case where the criminal case would have ended in his acquittal as on the date when this Court is disposing of the writ petition, this Court would have quashed the order because the petitioner is enjoying the interim order but since the criminal case is still pending, it is not open for this Court to take other view of the matter to allow the petitioner to enjoy the promoted post on the basis of order for which the petitioner was not eligible on the date of consideration.
8. For the foregoing, the Writ Petition is dismissed. However, the trial Court where the petitioner's trial is pending is directed to conclude the trial at the earliest, preferably within a period of 6 months from today. If the criminal trial ends in his acquittal, the petitioner may prefer a representation for according him promotion from the date the impugned order was passed. Since the petitioner

1 (1977) 2 SCC 256

2 (1985) 3 SCC 398

3 (1993) 4 SCC 727

4 (1969) 3 SCC 775

5 (1980) 4 SCC 379

6 (1990) 4 SCC 633

has worked on the promoted post on the strength of interim order passed by this Court, no recovery of the payment of salary etc. paid to him for the promoted post shall be made from the petitioner.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve