

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 665 OF 2010**

1. R.N. Choubey, S/o Shri Jwala Prasad Choubey, aged about 54 years, Executive Engineer, Rural Engineering Services, Division Surajpur, District Surguja (C.G.)

2. L.C. Tamrakar, S/o Shri Biharilal Tamrakar, aged about 53 years, Executive Engineer, Rural Engineer Services, Chhattisgarh Rural Road Development Agency (P.M.G.S.Y.), Headquarter, Raipur, District Raipur (C.G.)

... Petitioners**versus**

1. State of Chhattisgarh, through Principal Secretary, Panchayat & Gramin Vikas Vibhag, D.K.S. Bhawan, Raipur, District Raipur (C.G.)

2. Additional Secretary, Panchayat & Gramin Vikas Vibhag, Chhattisgarh, D.K.S. Bhawan, Raipur, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Vikram Dixit, Advocate.
For Respondent-State	:	Mr. Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****09/07/2018**

1. Challenge in the present writ petition is to the Annexure P-1, dated 2.2.2010, whereby the promotion order issued in favour of the Petitioners on 7.8.2004 and 7.2.2005 stood cancelled and the Petitioners stood demoted from the post of Executive Engineer to the post of Assistant Engineer.

2. Facts leading to the filing of the present writ petition are that the Petitioners, who were appointed as Sub Engineers in December, 1978, were promoted to the post of Assistant Engineer on 1.3.1996. Subsequently, the Petitioners were promoted on 17.9.2004 and 7.2.2005 to the post of Executive Engineer. However, later on, it is said that a Review DPC was held on 6.5.2006 where it was found that the promotion granted to the Petitioners was erroneous to the extent that the Petitioners were granted promotion in spite of the fact that there was no sufficient vacancies available. The recommendations of the Review DPC, dated 6.5.2006, was acted upon by the Respondents vide Annexure P-1 whereby the promotion order granted to the Petitioners was cancelled and the Petitioners were ordered to be posted back as Assistant Engineers. By this time the Petitioners had already put in more than about 5-6 years of service as Executive Engineers.

3. The contention of the learned Counsel appearing for the Petitioners is twofold. Firstly, the impugned order is bad in law for the reason that it is in violation of the basic principles of natural justice. The Petitioners were not granted any opportunity of hearing before the impugned order was passed and therefore the order which has been passed amounts to violation of principles of natural justice and the same deserves to be set aside. He further submits that even otherwise the documents which have been obtained by the Petitioners subsequently from the department would reveal that the finding of the Review DPC itself was bad and the authorities concerned in the department had ordered for recalling of the said order. He referred to the note-sheet of the department dated 27.10.2011 issued by the Joint Secretary, Government of Chhattisgarh, Panchayat and Rural Development Department whereby it has been categorically mentioned by the Joint Secretary of the department that in fact on the date when the case of the Petitioners were considered for promotion, there were 40 posts of Executive Engineer available which was erroneously reflected as 22 posts and therefore the finding of the Review DPC was bad and that the Joint Secretary had also ordered for the withdrawal of the order dated 2.2.2010 and for restoring the seniority of the Petitioners in the Gradation List as it stood prior to the issuance of the impugned order.

4. Learned Counsel for the Petitioners further submitted that the department subsequently on January, 2002 again had ordered for issuance of an order of promotion whereby even the Juniors to the Petitioners were subsequently given promotion to the post of Executive Engineer and wherein also the name of the Petitioners was not reflected and thereby it would have to be presumed that the Respondents by virtue of the departmental note-sheet dated 27.10.2011 referred above had considered the Petitioners to be the officers of the Executive Engineer rank.

5. Learned Counsel for the State on the contrary opposing the petition submits that it is a case where in fact a Review DPC which was conducted on 6.5.2006 found that the number of vacancies were not enough to accommodate the Petitioner on the post of Executive Engineer and that the promotion order so granted to the Petitioner thus was in excess of the vacancies available as per the roster on the said date.

6. However, on a query being put to the learned State Counsel in respect of the note-sheet of the department issued by the Joint Secretary, dated 27.10.2011, whereby they have specifically mentioned of having sufficient vacancies available, the State Counsel could not provide satisfactory explanation to the same neither could he provide any satisfactory explanation as to why when the juniors were promoted to the post of Executive Engineer the case of the Petitioners was not considered.

7. Another fact which is borne in mind is that the Petitioners by efflux of time had crossed the age of superannuation and by virtue of the interim relief that was granted by this Court on 15.2.2010 the Petitioners had enjoyed the benefit of the protection of the stay on the effect and operation of the impugned order dated 2.2.2010 and as such the Petitioners continuously discharged their duties of an Executive Engineer till the date of superannuation.

8. Given the aforesaid facts and circumstances, so far as the first ground of the Petitioners is concerned the same does not need any discussion at length for the reason that it is by now a well settled legal proposition which has been reiterated by a catena of decisions by the Hon'ble Supreme Court and that of the High Court that no order which is punitive in nature and which is adverse to the interest of the employee and which visits with civil consequences can be passed without following the basic principles of natural justice. That is to say that such orders cannot be passed without affording an opportunity of hearing. In the instant case it is evident that though the Review DPC was held on 6.5.2006 and the Petitioners had already been promoted on 17.9.2004 and 7.2.2005, the impugned order has been passed only on 2.2.2010 and before issuance of the impugned order the Petitioners were not given an opportunity of hearing to defend their case or to provide a better explanation to the department in respect of the action proposed. As such the impugned order is per se illegal and bad in law on this ground alone.

9. The case of the Petitioners further finds strength from the second limb of arguments which the Petitioners have raised that a note-sheet was issued by the department from the office of the Joint Secretary, Panchayat and Rural Development Department, dated 27.10.2011, whereby they had specifically mentioned that on the date when the Petitioners were considered there were sufficient vacancies available and that the promotion granted to the Petitioners was not in excess of the vacancy

position. It was also held that the order dated 2.2.2010 was bad in law and was liable to be withdrawn restoring the position of the Petitioners on the post of Executive Engineer granting them the relevant fixation in the Gradation List as it stood prior to the issuance of the impugned order dated 2.2.2010.

10. Given the aforesaid facts and circumstances, this Court is of the opinion that the finding of the Review DPC dated 6.5.2006 as also the impugned order dated 2.2.2010 whereby the promotion of the Petitioners to post of Executive Engineer was cancelled is bad in law deserve to be and are accordingly set aside/quashed entailing the Petitioners for all consequential benefits. For all practical purposes the Petitioners would be treated as an Executive Engineer and their position would be as it stood in the Gradation List prior to 2.2.2010.

11. The writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge