

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.3410 OF 2011**

Ghaneshwar Das Banjara, aged about 45 years, S/o Amar Das Banjara, Karhi Colony Mungeli Bilaspur (CG).

...**Petitioner(s)**

Versus

1. State of Chhattisgarh through the Secretary, Panchayat & Rural Development Department, Mantralaya, DKS Bhawan, Raipur (CG).
2. Additional Commissioner Revenue Bilaspur Division Distt. Bilaspur (CG).
3. Collector Bilaspur (CG).
4. Chief Executive Officer Janpad Panchayat Mungeli Bilaspur (CG).

... **Respondent(s)**

For Petitioner	:	Shri Mateen Siddique, Advocate.
For Respondent-State	:	Shri DK Wankhede, Govt. Advocate.
For Respondent No.4	:	Shri Mazid Ali, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.10.2018

1. Challenge in this petition is to the order dated 10.05.2011 (Annexure P/1) whereby the promotion order granted to the petitioner on 30.06.2007 was cancelled and recalled. The cancellation has been done on the basis of some inspection conducted by the Additional Commissioner.
2. The primary objection of the petitioner is that the petitioner had already put in about more than 4 years of service on the promoted post and as such substantial right has been created in his favour. That, the impugned order has been passed without providing any opportunity of hearing to the petitioner, nor was any explanation sought for from the petitioner before issuance of the impugned order. Thus, according to the petitioner, the impugned order is

blatant violation of principles of natural justice and prayed for setting aside of the same.

3. The contention of respondent No.4 is that promotion order granted to the petitioner on 30.06.2007 was not in accordance with rules and without proper approval from the competent authority and when this was detected in an inspection, the impugned order was passed. However, the fact that the petitioner was denied opportunity of hearing before the issuance of the impugned order is not disputed by the counsel for the respondent No.4.
4. Given the aforesaid facts of the case that the petitioner had put in more than 4 years of service on the promoted post before issuance of the impugned order, this court has no hesitation in reaching to the conclusion that the impugned order has been passed in total non compliance of the basic principles of natural justice of an opportunity of hearing before the order detrimental to the interest of the petitioner was passed.
5. It does not need much deliberation or discussion as it is by now a well settled position of law that before issuance of any order, the implication of which has an adverse civil consequence, the least that is required is an opportunity of hearing to the concerned person. The Supreme Court as well as this court in a catena of decisions have reiterated the requirement of law for providing opportunity of hearing before issuing any order which has adverse civil consequence.
6. The Supreme Court in Rajasthan State Road Transport Corporation & Anr. Vs. Bal Mukund Bairwa (2), 2009(4)SCC 299, observed as under :

“35. Any order passed in violation of the principles of natural justice save and except certain contingencies of cases, would be a nullity. In A.R. Antulay (supra), this Court held:

55. "No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity."

47. The purpose of principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action. {See Sawai Singh vs. State of Rajasthan and Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors.)”.

7. The Supreme Court in the matter of Prakash Ratan Sinha v. State of Bihar and others, 2009(14) SCC 690, has held as under:-

“9. The respondent is an instrumentality of the State, and therefore, all its administrative decisions would be subject to the doctrine of equality and fair play, as incorporated in Articles 14 and 21 of the Constitution of India. If any of its actions or administrative decisions result in civil consequences, the principles of natural justice. This principle of law has been laid down by this Court in a catena of cases. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made.

8. In the matter of Canara Bank v. Debasis Das, 2003 (4)SCC 557, the Supreme Court has categorically held that an administrative order which involves Civil consequence must be consistent with the principles of natural justice by observing as under:-

“19.....Even an administrative order which involves civil consequence must be consistent with the rules of natural justice.”

The Supreme Court has elaborated the expression “civil consequence” by observing that (Debasis Das case supra) it “encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.

The Court has further stated, that “in its wide umbrella comes everything that affects a citizen in his civil life.”

9. Given the aforesaid legal facts of the case as also the legal position, this court is of the opinion that the impugned order for the aforesaid reasons is not sustainable and the same deserves to be and is accordingly set aside. However, the right of the respondent No.4 shall be reserved, if at all, if they intend to proceed further with the matter, they may do so in accordance with law after giving an opportunity of hearing to the petitioner. As a consequence of setting aside of the impugned order, the position of the petitioner would stand restored on the promoted post.
10. The petition stands allowed and disposed of.

Sd/-
(P. Sam Koshy
Judge