

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2265 of 2009**

Jagdish Prasad Pandey, aged about 49 years, S/o Shri Narayan Prasad Pandey, R/o Thana Road, Bilaigarh, District Raipur (CG).

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Panchayat Department, DKS Bhawan, Raipur (CG).
2. The Secretary, Finance Department, D.K.S. Bhawan, Raipur, C.G.
3. Development Commissioner, Vikas Bhawan, Raipur, C.G.
4. Joint Commissioner, Development Commissioner Office, Vikas Bhawan, Raipur, C.G.
5. Director, Panchayat and Social Welfare Directorate, DKS Bhawan, Raipur, C.G.
6. Deputy Director, Panchayat and Social Welfare, Directorate, DKS Bhawan, Raipur, C.G.
7. Chief Executive Officer, Zila Panchayat, Raipur, C.G.
8. Chief Executive Officer, Janpad Panchayat Bilaigarh, Distt. Raipur, C.G.
9. Janpad Panchayat Bilaigarh, Through The Chief Executive Officer, Bilaigarh, Distt. Raipur, C.G.

---- Respondents

For Petitioner	:	Shri Prateek Sharma, Advocate.
For Respondent-State	:	Shri SP Kale, Dy. Advocate General.
For Respondent No.8	:	Shri Sushil Dubey, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order on Board****13.09.2018.**

1. Challenge in this petition is to the impugned order dated 13.03.2009 (Annexure P/1) whereby the respondents have cancelled the order of promotion which was issued in favour of the petitioner on 04.07.2005.
2. The brief facts relevant for proper adjudication of the case is that, the petitioner is the employee under Janpad Panchayat. The petitioner was initially appointed as Lower Division Clerk (LDC) and in due course of time got promoted on the post of Upper Division Clerk

(UDC) on 01.03.1988. Thereafter, again the petitioner was considered for promotion and was promoted as Accountant on 01.02.1991. The next promotional post under the service conditions governing the services of the employees under Janpad Panchayat was that of Assistant Accounts Officer. The petitioner was considered and granted promotion on the said post on 04.07.2005 and in due course of time he was issued with an order of confirmation on the said post vide order dated 08.07.2008. However, vide impugned order dated 13.03.2009 (Annexure P/1) the order of promotion granted to the petitioner about 3 and ½ years back on 04.07.2005 has been cancelled.

3. It is relevant at this juncture to refer to the contents of the order impugned dated 13.03.2009, which reads as under:

“श्री जगदीश कुमार पाण्डेय, लेखापाल, जनपद पंचायत बिलाईगढ़, जिला रायपुर को मुख्य कार्यपालन अधिकारी, जनपद पंचायत बिलाईगढ़ जिला रायपुर के आदेश दिनांक 04.07.2005 द्वारा सहायक लेखाधिकारी के पद पर दी गई पदोन्नति नियमानुकूल नहीं होने के कारण एतद् द्वारा निरस्त की जाती है।”

4. It is this order dated 13.03.2009 which is under challenge in the present writ petition.
5. The contention of the petitioner is that the order is bad in law for more than one grounds. Firstly, the order impugned has been passed in violation of the principles of natural justice in as much as no opportunity of hearing whatsoever was provided to the petitioner before the impugned order was passed. Secondly, the impugned order has been assailed on the ground that the petitioner has been

rightly granted promotion to the post of Assistant Accounts Officer as he fulfills all the requisite eligibility criteria under the rules, but the respondents have relied upon a different rule which is not applicable on the employees of Janpad Panchayat and has issued the impugned order and therefore the same deserves to be set aside/quashed.

6. It was also contended that though the impugned order has been passed without affording an opportunity of hearing, the authorities concerned have not given any reasons whatsoever while reaching to the conclusion that the promotion earlier granted to the petitioner was erroneous in any manner. According to him, it was incumbent upon the authorities to have granted an opportunity of hearing before the impugned order was passed. Specific reasons also was not given as to what compelled them to pass the impugned order and what were the reasons the petitioner is not entitled for or was wrongly granted promotion on 04.07.2005.
7. It was also the contention of the petitioner that there are similarly placed persons in different Janpad Panchayat where also the employees who were initially working as Accountant have been granted promotion, but it is only in case of the petitioner that the respondents have applied some rules which is not applicable upon the service conditions of the petitioner while cancelling the promotion order which was earlier granted to the petitioner.
8. The State counsel opposing the petition submits that it is a case where the petitioner does not fulfill all the requisite eligibility criteria

on two grounds firstly that the petitioner did not possess five years of experience after having undergone accounts training course and secondly, since the petitioner does not belong to Subordinate Account Service cadre, he is ineligible under the rules for promotion to the post of Assistant Accounts Officer as is otherwise prescribed under the rules.

9. So far as the employees of Janpad Panchayat is concerned, it is Chhattisgarh Panchayat Service (Recruitment and General Conditions of Service) Rules, 1999 (in short, the Rules, 1999) which would be applicable. Schedule-IV of the said rules, 1999 provides for details of the feeder post and qualification prescribed for the promotion and next promotional post. So far as Janpad Panchayat is concerned, the feeder post to the post of Assistant Accounts Officer is UDC-cum-Accountant (Accounts trained) and the experience required for the said post is of five years.
10. The respondents relying upon Schedule-II of the Rules, 1999 referring to the employees under Zila Panchayat refers to the post of Assistant Accounts Officer where under the Schedule it has been reflected to be a post to be filled up 100 percent by promotion from among the persons from the Subordinate Accounts Services. It is this rule which the respondents are banking upon holding that the petitioner had been wrongly granted promotion on 04.07.2005.
11. It was also argued by the State counsel that under Schedule-IV, the qualification prescribed is that of five years of experience after having undertaken accounts training.

12. Having heard the contentions put forth on either side and on perusal of records, what is undisputed from the records is the fact that the petitioner got promoted on the post of UDC on 01.03.1988 thereafter he was also made UDC-cum-Accountant vide order dated 01.02.1991. The requisite experience under the Rules for promotion to the post of Assistant Accounts Officer is five years. The petitioner became eligible for promotion in the year, 1996, but he was promoted only on 04.07.2005 after he had undertaking accounts training i.e. in the year, 2004. Nowhere in the schedule or in the rules itself has it been prescribed that experience of five years would be after having undertaken accounts training course.
13. The requisite experience prescribed under schedule-IV for the existing employees of the Janpad Panchayat is five years on the post of UDC-cum Accountant (Accounts trained). This by itself mean that persons who had undertaken accounts training and has five years of experience on the post of UDC-cum-Accountant, he would be eligible for promotion to the post of Assistant Accounts Officer. The analogy which the State counsel tried to canvass of the requirement of five years of experience after accounts training, if it would had been the requirement for promotion then the rules would had been specifically mentioned that length of service or length of experience should be five years as Accountants trained UDC-cum-Accountant. In the absence of which, the analogy which the State counsel tried to canvass may not be sustainable. So also the argument that the post of Assistant Accounts Officer can be filled up in the Janpad

Panchayat among the employees from the Subordinate Accounts Services is concerned, this again would not be sustainable for the reason that the Schedule which has been relied upon by the State was a Schedule which would be applicable so far as the post of Assistant Accountants Officer in the Zila Panchayat is concerned and that cannot be brought into force for the post of Assistant Accounts Officer in Janpad Panchayat as there is an altogether different provision for Janpad Panchayat i.e. Schedule-IV.

14. Another aspect which is more important than what has been discussed in the preceding paragraphs is as to whether the respondents could have passed the impugned order cancelling the promotion granted to the petitioner 3 and ½ years back without granting any opportunity of hearing.
15. Dealing with the issue of doctrine of equality and fair play and also the principles of natural justice, the Supreme Court in case of Prakash Ratan Sinha Vs. State of Bihar and others, 2009 (14)SCC 690, 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.

13. 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.”

16. Similarly, in case of Canara Bank Vs. Debasis Das, 2003 (4) SCC 557, the Supreme Court again dealing with action of the authorities

having adverse civil consequence in paragraph 19 held 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.”

17. Later on, reiterating the same principles, the Supreme Court again dealing with same issue of violation of principles of natural justice in case of 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.)”.

18. In case of Radhy Shyam and Ors. Vs. State of Uttar Pradesh and Others, 2011(5)SCC 553, discussing the rule of hearing, the Supreme Court in paragraph 40 referring to English judgments held as under:

“40. Before advertng to the precedents in which Section 5A has been interpreted by this Court, it will be useful to notice development of the law relating to the rule of hearing. In the celebrated case of Cooper v. Wandsworth Board of Works (1863) 143 ER 414, the principle was stated thus:

".....Even God did not pass a sentence upon Adam, before he was called upon to make his defence.

"Adam" says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".

19. Taking note of the discussions rendered in the judgments quoted above and the ratio laid down therein, it clearly reflects that the least that is required before passing of an order which has adverse civil consequence is of an opportunity of hearing to be provided to the concerned person. In the instant case, if we apply the said analogy, it would reveal that the petitioner herein got promoted way back on 04.07.2005. He started getting benefits attached to the post of Assistant Accounts Officer from the said date. He got the benefit for about more than 3 and ½ years. The impugned order cancelling the promotion order granted on 04.07.2005 was passed abruptly without any opportunity of hearing being provided to the petitioner.
20. In the opinion of this court, the impugned order is not sustainable only on the ground of the same being in violation of principles of natural justice. There is another aspect which needs discussion at this juncture is that in the light of the aforesaid factual matrix of the case if we look into the impugned order which has been reproduced in paragraph 2 of this order, it would clearly reflect that the impugned order bears only ½ line order saying that the order of promotion dated 04.07.2005 stands cancelled on account of the same being not in accordance with rules. As such, the impugned order also was totally an unreasoned order.
21. If the petitioner who has already put in 3 and ½ years of service on promoted post and if that promotion is being cancelled by the respondents more particularly when it has been cancelled without

any opportunity of hearing, it was required for the authorities to have given some reasons for cancelling the promotion order. The impugned order is totally bereft of reasons.

22. So far as bereft of reasons are concerned, the Supreme Court in case of Rani Laxmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney, 2009 (4)SCC 240 while discussing on the issue of providing reasons while passing the order in paragraph 8 held as under:

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India (1990 (4) SCC 594), is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

23. Likewise in Siemens Engineering and Manufacturing Co. of India Ltd. Vs. Union of India, 1976 (2)SCC 981, discussing the issue of providing reasons in paragraph 6 held as under :

"6.....If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, [pic]with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi- judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....."

24. Recently, in B.A. Linga Reddy Vs. Karnataka State Transport

Authority, 2015(4)SCC 515 the Supreme Court in paragraphs 17 and 20 held as under:

“17.The State is supposed to be acting in public interest while exercising the power under the provision. However, that does not dispense with the requirement to record reasons while dealing with objections. The rule of reason is anti-thesis to arbitrariness in action and is a necessary concomitant of the principles of natural justice.

20. A Constitution Bench of this Court has laid down in Krishna Swami v. Union of India & Ors., 1992 (4) SCC 605, that if a statutory or public authority/functionary does not record the reasons, its decision would be rendered arbitrary, unfair, unjust and violating Articles 14 and 21 of the Constitution. This Court has laid down thus :

"47.....Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. But exceptions are envisaged keeping institutional pragmatism into play, conscious as we are of each other's limitations."

25. For the aforesaid reasons, this court is of the opinion that the impugned order passed by the respondents is not sustainable either on merits or on technicalities of it being passed in total violation of principles of natural justice.

26. The writ petition thus stands allowed. The order impugned dated 13.03.2009 (Annexure P/1) stands set aside/quashed with consequence to follow.

Sd/-
(P. Sam Koshy)
Judge