

HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (S) NO. 659 OF 2010**

Ghanshyam Dewangan, S/o Shri Girdharlal Dewangan, aged about 57 years,
Executive Engineer, Office of Development Commissioner, Raipur, District
Raipur (C.G.)

... Petitioner

versus

1. State of Chhattisgarh, through the Principal Secretary, Panchayat and Rural Development Department, D.K.S. Bhawan, Raipur, District Raipur (C.G.)
2. Additional Secretary, Panchayat and Rural Development Department, D.K.S. Bhawan, Raipur, District Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate.
For Respondents	:	Mr. S.P. Kale, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/06/2018

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 Petitioner on 7.8.2004 vide Annexure P-4 stood cancelled and the Petitioner 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 Petitioner who was appointed as a Sub Engineer in December, 1978 was promoted to the post of Assistant Engineer vide Annexure P-3, dated 1.3.1996. Subsequently, the Petitioner was promoted vide Annexure P-4, dated 7.8.2004 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 Petitioner was erroneous to the extent that the Petitioner was 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 Petitioner vide Annexure P-4 was cancelled and the Petitioner was ordered to be posted back as an Assistant Engineer. By this time the Petitioner had already put in 5 years and 9 months of service as an Executive Engineer.

3. The contention of the learned Counsel appearing for the Petitioner 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 Petitioner was 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 Petitioner 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 Petitioner was 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 Petitioner in the Gradation List as it stood prior to the issuance of the impugned order.

4. Learned Counsel for the Petitioner 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 Petitioner were subsequently given promotion to the post of Executive Engineer and wherein also the name of the Petitioner 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 Petitioner to be an officer 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 Petitioner was not considered.

7. Another fact which is borne in mind is that the Petitioner 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 Petitioner 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 Petitioner continuously discharged the 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 Petitioner 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 Petitioner had already been promoted on 7.8.2004, the impugned order has been passed only on 2.2.2010 and before issuance of the impugned order the Petitioner was not given an opportunity of hearing to defend his 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 Petitioner further finds strength from the second limb of arguments which the Petitioner has 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 Petitioner was considered there were sufficient vacancies available and that the promotion granted to the Petitioner 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 Petitioner on the post of Executive Engineer granting him 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 Petitioner to post of Executive Engineer was cancelled is bad in law deserve to be and are accordingly set aside/quashed entailing the Petitioner for all consequential benefits. For all practical purposes the Petitioner would be treated as an Executive Engineer and his 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