

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 6728 of 2011

Dharmendra Kumar Dwivedi S/o Shri S.N.Dwivedi, aged about 40 years, Occupation Service, Posted as Senior Surveyor Technical and Supervisory, Grade A, Kurjua Colliery, Hasdeo Area, SECL Bijuri, District Anuppur (M.P.).

---Petitioner

Versus

1. South Eastern Coal Field Limited, through the Chairman-cum-Managing Director, Seepat Road, Bilaspur (C.G.).
2. Deputy Chief Personal Manager, Kurja Sub Area, Hasdeo Area, Bijuri, District Anuppur (M.P.).
3. Personal Manager, Kurja Sub Area, Hasdeo Area, Bijuri, District Anuppur (M.P.).
4. The Sub Area Manager, Kurja Sub Area, Bijuri, District Anuppur (M.P.).

---Respondents

For petitioner : Shri Abhishek Pandey, Advocate.
For respondents : Shri Vinod Deshmukh, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/12/2018

1. The challenge in the present Writ Petition is to the impugned order Annexure-P/1 dated 24/03/2010 whereby the respondents have cancelled the earlier promotion order which the petitioner was granted on 01/01/2010 on the post of Senior Surveyor Technical and Supervisory, Grade-A.
2. The facts relevant for adjudication of the instant Writ Petition is that, the petitioner was initially appointed as Surveyor - Grade-B on 28/04/1998. In due course of time, the petitioner was promoted on the post of Supervisory - Grade-1 vide order dated 26/08/1998. Thereafter, the petitioner was

promoted as Senior Surveyor Technical Supervisory - Grade-A/1 on 01/01/2010. The petitioner assumed the duties on the said promoted post on 01/01/2010 itself. Barely did the petitioner work on the said post for about 3 months, the impugned order was passed cancelling the order of promotion earlier granted on 01/01/2010. The cancellation order was on the ground that there was some departmental enquiry which was pending against the petitioner. It is this order dated 24/03/2010 which is under challenge in the present Writ Petition.

3. The only ground which the petitioner has raised in the present Writ Petition is that, the said order is in violation of the principles of natural justice. According to him, before the impugned order was passed, the petitioner was not given an opportunity of hearing and therefore the impugned order suffers violative of the principles of natural justice.

4. Per-contra, the counsel for the respondents opposing the petition submits that, it is a case where the petitioner was wrongly granted promotion on 01/01/2010. According to him, since there was a departmental enquiry pending against the petitioner, under the service rules itself the petitioner could not have got promotion and when the mistake was detected by the department, they have carried out the rectification by issuance of the impugned order and therefore the same cannot be said to be either bad in law or arbitrary.

5. Having heard the contention put forth on either side and on perusal of record what is undisputed is the fact of the appointment of the petitioner on

28/04/1998 and his subsequent promotion on the post of Supervisory – Grade-1 on 26/08/1998. It is also undisputed that, the petitioner was subjected to disciplinary proceedings vide show cause notice-cum-chargesheet dated 29/07/2009. The department also appointed an enquiry officer to conduct an enquiry in respect of the alleged mis-conduct committed by the petitioner.

6. Perusal of record would show that, pending the departmental enquiry, the petitioner was promoted on the post of Senior Surveyor Technical Supervisory Grade-A. While issuance of the said promotion order, the department it appears has slipped of the fact that the departmental enquiry was pending. Later when the fact was brought to the notice of the authorities concerned, they immediately initiated the proceedings and passed an order rectifying the error and recalling the promotion order dated 01/01/2010.

7. On a query being put to the counsel for the petitioner he fairly admits that, even under the service rules, the fact that there was a departmental enquiry pending, the petitioner could not have been promoted.

8. This being the factual matrix of the case, even if the petitioner would had been granted an opportunity of hearing before recalling, things could not have been improved upon and it would had been just an empty formality which the respondents would have done.

9. What is also relevant at this juncture to take note of is the fact that the disciplinary proceedings initiated later on culminated in a major punishment

issued upon the petitioner. Thus, even at a later stage, the petitioner could not have been promoted on account of the said punishment order.

10. Given the said facts, this Court is of the opinion that only on account of the petitioner not being granted an opportunity of hearing before cancellation of appointment order by itself would not be sufficient for interfering with the impugned order.

11. What has to be seen is that, whether the petitioner would had been otherwise entitled for promotion which the petitioner himself fairly submits that he would not had been entitled for promotion because of the pendency of the departmental enquiry.

12. Given the aforesaid facts and circumstances of the case, this Court does not find any strong case made out on behalf of the petitioner calling for an interference with the impugned order and the Writ Petition thus fails and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit