

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13765 OF 2016

Union of India & Ors.	...Petitioners
Versus	
Ravindra Vishwanath Sonpatki & Ors.	...Respondents

Mr. Y. R. Mishra i/b. Mr. A. A. Garge for Petitioners
Mr. Sandeep Marne for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.
DATE : 16 JULY 2018**

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 23rd March 2016 made by the Central Administrative Tribunal (CAT) allowing Original Application No. 350 of 2011 instituted by the respondents.
- 4] Mr. Y. R. Mishra, the learned counsel for the petitioners relies upon paragraph paragraph 6.4.4 of OM dated 10th

April 1989, which reads as follows :

“3.5 Paragraph No. 6.4.4. of DOP&T OM dated 10.04.1989 reads as follows :

“Promotions only prospective – While promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in case where the vacancies relate to earlier year(s).”

5] Mr. Mishra submits that in terms of the aforesaid paragraph 6.4.4, promotions can be granted only with prospective effect. Since, erroneously, promotions had been granted with retrospective effect, the error was corrected and the excess benefits received by the respondents were recovered. He points out that in such a situation there was no necessity for complying with principles of natural justice and fair play. In so far as the instances cited by the respondents are concerned, Mr. Mishra submits that such instances relate to retrospective promotions granted as per directions of Courts and Tribunals. He therefore submits that the impugned judgment and order is liable to be set aside.

6] Mr. Marne, the learned counsel for the respondents on

the other hand, defends the impugned judgment and order by submitting that the order dated 31st March 2010, by which the respondents notional promotion was withdrawn and benefits of notional promotion were recovered visit the respondents with serious civil consequences. Mr. Marne submits that therefore, compliance with principles of natural justice was a must. Since, there was no compliance, the order dated 31st March 2010 was a nullity and has been rightly set aside by the CAT.

7] Mr. Marne submits that even on merits the view taken by the CAT is legal and proper. He submits that the OM relied upon by Mr. Mishra contains only guidelines. He submits that in the present case, the respondents promotion was withheld on account of pendency of litigations over which the respondents had no control. He submits that there are several instances where the petitioners have themselves granted the benefit of notional promotion with retrospective effect and the case of the respondents is in no manner different. For all these reasons, Mr. Marne submits that the present petition may be dismissed.

8] Rival contentions now fall for our determination.

9] For the view, which we propose to take, detailed reference to the facts and circumstances in which the present challenge arises is not necessary. Suffice to indicate that by order dated 11th September 2009, the respondents, were granted promotions by giving them notional benefits commensurated to the year in which the respondents could have actually been promoted. However, by subsequent order dated 31st March 2010, the petitioners relying upon paragraph 6.4.4 of O.M. dated 10th April 1989 withdrew, not only the benefit of notional promotions granted to the respondents but, in some cases, proceeded to even recover the financial benefits which had been granted to the respondents.

10] The CAT, by the impugned judgment and order has set aside the petitioners order dated 31st March 2010 and issued the following operative directions.

“26. Accordingly, the OA is liable to succeed. The impugned order dated 31.03.2010 is quashed and set aside. All monies paid on the basis of order dated 18.11.2009 and recovered on the

basis of impugned order shall be paid back. The Respondents shall issue an order reviving the order of 18.11.2009 and repayment of recovered amounts within a period of three months from the date of receipt of certified copy of this order. In so doing, the Respondents shall carefully look into the various promotion lists filed before us by the Applicants to ensure that due diligence is expected in scrutinizing the list of names of promotees, such as Applicants, so that right inclusions and exclusions are ensured."

11] In the present case, we find that the impugned order dated 31st March 2010, by which, the petitioners withdrew their earlier order dated 18th November 2009 and consequently, withdrew the notional promotions granted to the respondents and even purported to recover the benefits which the respondents had already availed, visits the respondents with serious civil consequences. Accordingly, the petitioners, before making the order dated 31st March 2010, should have complied with principles of natural justice and fair play. This would involve service of appropriate notice upon the respondents and affording them with opportunity to furnish their say in the matter. Only after consideration of the say of the respondents, could further action have been taken in this matter. Therefore, we are of the opinion that the order dated 31st

March 2010 was required to be set aside and has been correctly set aside by the CAT on account of failure of natural justice.

12] However, in the facts and circumstances of the present case, we are of the opinion that the CAT was not justified in examining the rival contentions on merits and holding that even on merits the order dated 31st March 2010 was required to be set aside. A decision on merits would require in-depth consideration of the rival contentions. The petitioners contend that they are bound by paragraph 6.4.4 of the OM dated 10th April 1989. The petitioners contend that the instances referred to by the respondents where retrospective promotions came to be given by the petitioners themselves, were in pursuance of specific directions issued by the Courts and Tribunals. On the other hand, the respondents contend that the OM dated 10th April 1989 contains merely guidelines, which do not rule out circumstantial flexibility. They contend that even in the absence of directions from courts and tribunals, the petitioners themselves, in similar circumstances have granted retrospective promotions on notional basis. From the perusal of the impugned judgment and order, we find

that these aspects have not been considered in details by the CAT.

13] In the facts and circumstances of the present case, the CAT, could have set aside the order dated 31st March 2010 made by the petitioners on the ground of failure to comply with principles of natural justice and fair play. Thereafter, the matter could have been left to the petitioners to take further action with regard to the order dated 11th September 2009, no doubt, in consonance with the principles of natural justice and fair play. If such a course were to be adopted then, even the respondents would have an opportunity to show cause as to why the order dated 11th September 2009 need not be varied, but, in any case, why no recoveries could have been ordered.

14] On the aspect of recoveries, reference is necessary to the ruling of the Hon'ble Supreme Court in the case of ***State of Punjab & ors. vs. Rafiq Masih (White Washer) & Ors (2015) 4 SCC 334***. For the present, we do not propose to make any final observations. However, now that we are upholding the impugned judgment and

order of the CAT to the extent it sets aside the petitioners order dated 31st March 2010 on the ground of failure to comply with principles of natural justice, as a corollary the petitioners, will have to refund the amounts recovered by the petitioners in pursuance of the order dated 31st March 2010. Such a direction is necessary because, it is not even the case of the petitioners that such benefits were paid to the respondents on account of any misrepresentation or fraud on the part of the respondents.

15] In view of the aforesaid, we dispose of this petition with the following order :

(A) The impugned judgment and order made by the CAT setting aside the petitioners order dated 31st March 2010 on the ground of failure of natural justice is upheld;

(B) The direction of the CAT to refund to the respondents, the amounts which the petitioners have recovered under order dated 31st March 2010 is also upheld. However, the time for refund is now extended for a period of six weeks from today;

(C) The petitioners, if they choose are granted liberty to take appropriate action with regard to order dated 11th September 2009, which now stands restored, no doubt, in consonance with the principles of natural justice and fair play;

(D) All contentions of all the parties are expressly left open in case, the petitioners choose to take some action with regard to the order dated 11th September 2009. However, if ultimately, any decision adverse to the interest of the respondents is taken, the same shall not be given effect to for a period of six weeks from the date of its communication / notification to the respondents;

(E) Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

(F) All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA

Sunita Kishandas
Chandka

Digitally signed by Sunita
Kishandas Chandka
Date: 2018.07.18 09:00:20 +0530