

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 892 of 2009**

1. M.R. Sahu, S/o. Shri Sarjuram Sahu, Aged about 48 years, R/o. Sandha Chowk, Opp. to Kamal Ice-cream, Dhamtari Road, Kurud, Tahsil Kurud, District Dhamtari Chhattisgarh
2. N.P. Bhattacharya, S/o. Late Shri B.C. Bhattacharya, Aged about 54 years, R/o Vrindawan Colony, Ayappa Road, Near Shubham Kirana Store, Nita Niwas, Jagdalpur, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh, through the Secretary, Health & Family Welfare Department, Mantralaya, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. The Director, Health & Family Welfare Department, Premises of Mantralaya Old Nursing Hostel, Raipur Chhattisgarh
3. The Chief Medical Officer, Dhamtari, District Dhamtari Chhattisgarh
4. The District Medical Officer, Jagdalpur, District Bastar Chhattisgarh

----Respondents

For Petitioners	:	Mr. Arvind Dubey, Advocate
For State	:	Ms. Sunita Jain, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06/02/2019**

1. The challenge in the present writ petition is to the order Annexure P/5 dated 28.01.2009, passed by the respondents, whereby the respondents have cancelled the proforma promotion granted to the petitioner 7 years back i.e. on 05.12.2002.
2. The relevant facts for adjudication of the present case is that the petitioner was working as a Lower Division Clerk under the respondents and on 21.02.1986, one of the juniors to the petitioner namely Ashok Tiwari was promoted on the post of Upper Division Clerk. This order of promotion to Ashok Tiwari was questioned by

the petitioner before the State Administrative Tribunal vide O.A. No. 2804/1997.

3. The State Administrative Tribunal allowed the application filed by the petitioner and ordered the State Government to grant promotion to the petitioner on the post of Upper Division Clerk and also ordered for placing the name of the petitioner over and above Mr. Ashok Tiwari. Along with the petitioner there was another applicant namely N.P. Bhattacharya, who also was granted a similar benefit.
4. Pursuant to the order of the State Administrative Tribunal, the respondents in compliance of the order passed an order on 05.12.2002 granting the petitioner as well as Mr. N.P. Bhattacharya notional promotion on the post of Upper Division Clerk from the date his immediate junior Ashok Tiwari was promoted and the gradation list also was rectified by placing the petitioner over and above Mr. Ashok Tiwari. Down the line, the petitioner got a further promotion on the post of Junior Account Examiner/Accountant-cum-Store Clerk vide order Annexure P/4 dated 31.05.2008, on which post also the petitioner immediately assumed the office and was discharging the duties, however abruptly the impugned order Annexure P/5 dated 28.01.2009 was passed, whereby the respondents have cancelled the original order of promotion given to the petitioner vide order dated 05.12.2002. It is this order which is under challenge in the present writ petition.
5. The primary ground, which the petitioner has raised in the present writ petition is that the impugned order has been passed in blatant violation of the principles of natural justice. According to the

petitioner, the respondents themselves in compliance of the order passed by the State Administrative Tribunal in O.A. No. 2804/1997 had granted the relief of a promotion at par with his immediate juniors to the petitioner vide their order dated 05.12.2002.

6. According to the petitioner, respondents never had questioned the competency of either the authority, who has issued the order, nor have they questioned the veracity of the order, so far as granting promotion to the petitioner is concerned. He further submits that no explanation whatsoever was sought for from the petitioner before the impugned order was passed. To add further the impugned order dated 28.01.2009 has been passed after about 7 years from the date the petitioner was granted the promotion and therefore the impugned order deserves to be set-aside/quashed.
7. Per contra, the counsel for the State opposing the petition submits that the petitioner since he was granted promotion erroneously ignoring the seniority list, the impugned order had to be passed. The State counsel further submits that consequent to the petitioner being given the promotion, many of the persons senior to the petitioner stood superseded and a couple of them had filed the writ petitions before this Court i.e. WPS Nos. 3055/2004 and 7494/2007.
8. The State counsel further submits that since undisputedly, there were persons senior to the petitioner in the gradation list available, who were not granted the benefit of promotion and who were also equally eligible for the same and they had protested against granting of promotion to the petitioner ignoring their claim. It was

further the contention of the State counsel that since the petitioner was erroneously granted promotion superseding many of the seniors, even granting of an opportunity of hearing would not have helped the petitioner in any manner, as it would have only been an empty formality of giving an opportunity of hearing, when there was no justifiable ground available for the petitioner to defend his promotion over and above his senior and thus prayed for rejection of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of record, so far as the facts are concerned, there does not seem to be any dispute, so far as the petitioner being granted the promotion on 05.12.2002 w.e.f. 15.03.1986 and the said promotion order being cancelled after about 7 years of time vide the impugned order Annexure P/5 dated 28.01.2009.
10. The only point, which requires a consideration is, whether the action on the part of the respondents in the issuance of the impugned order Annexure P/5 dated 28.01.2009 was proper, legal and justified. So far as the aspect of the said being in violation of the principles of natural justice is concerned, the Hon'ble Supreme Court has on repeated occasions reiterated the settled position that before passing of an order bearing an adverse civil consequence, the least that is required is an opportunity of hearing. In the instant case, the necessity for an opportunity of hearing all the more arises as the petitioner enjoyed the fruits of the promotion for a period of about 7 years, which is quite a considerable period of time. A person, if he is being deprived of his right that he was enjoying for

the last 7 years and the order has since been passed without affording an opportunity of hearing by no stretch of imagination would easily fall within the ambit of an order passed in violation of the principles of natural justice.

11. 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.”

12. 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 nonpecuniary damages.

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

13. 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 -Versus- United India Insurance Co. Ltd. & ors.)”.

14. 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 adverting 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".

15. Another aspect, which needs to be considered is the fact that the impugned order dated 28.01.2009 does not give any reason, as to why the promotion order issued in favour of the petitioner way back on 05.12.2002 is bad in law. The order being without any reason also is not justifiable.
16. As far as the issue of the order being 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."

17. 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....."

18. 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."

19. For the aforesaid reasons, this court is of the opinion that the impugned order passed by the respondents is not sustainable of it being passed in total violation of principles of natural justice.
20. The writ petition thus stands allowed. The order impugned dated 28.01.2009 (Annexure P/5) stands set aside/quashed with consequence to follow.
21. Since the order is being struck down on the technicalities of it being violative of principles of natural justice and being bereft of reasons, the liberty is reserved with the respondents to pass a fresh order, if they deem fit, after granting an opportunity of hearing to the petitioner and by according reasons, as to why the petitioner is not entitled for the said benefit that was given to him way back in the year 2002.

Sd/-
(P. Sam Koshy)
Judge

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