

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 3713 of 2019**

Shrirang Sharad Pathak S/o Shri Sharad Pathak, Aged About 58 Years R/o
H-3, Vishal Nagar, Raipur, District Raipur Chhattisgarh., District : Raipur,
Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Tourism,
Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur District Raipur
Chhattisgarh., District : Raipur, Chhattisgarh
2. Chhattisgarh Tourism Board, Through The Managing Director, Udyog
Bhawan, Second Floor, Ring Road No. 1, Raipur, District Raipur
Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Kshitij Sharma, Advocate
For State	:	Mr. Chandresh Shrivastava, Dy. AG
For Respondent 2	:	Mr. Animesh Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****15/05/2019**

1. With the consent of the parties matter was heard finally at admission stage.
2. The challenge in the present writ petition is to the two impugned orders one Annexure p-1 dated 16.04.2019 and the other been the order Annexure P-2 dated 02.05.2019. Vide the two impugned orders the promotion orders issued to the petitioner on 15.07.2015 from the post of Account Officer to Deputy General Manager and the promotion order dated 25.11.2005 promoting the petitioner from Senior Accountant to Accounts Officer has been cancelled and the petitioner stands reverted back to the post of Senior Accountant.

3. Counsel for the petitioner at the outset submits that the impugned order is per se illegal for the reason that the same is in utter violation of basic principles of natural justice. According to the petitioner he has never been given an opportunity of hearing nor was an explanation sought from him before the two impugned orders Annexure P-1 & Annexure P-2 dated 16.04.2019 & 02.05.2019 were issued. Counsel for the petitioner drew the Court's attention to the order Annexure P-12 dated 25.11.2005 whereby the petitioner had been promoted from the post of Senior Accountant to the post of Accounts officer. According to the petitioner the said promotion was subjected to verification on complaint lodged by some person and the department itself vide Annexure P-18 dated 26.05.2011 had taken a categorical stand that the post on which the petitioner has been promoted is one which could be filled up only by way of promotion and not by deputation.
4. Likewise, the petitioner also drew the attention of the petitioner to Annexure P-20 dated 14.08.2013 which is an order whereby his excellency Governor of the State on thorough verification of facts had affirmed the promotion granted to the petitioner from the post of Senior Accountant to Accounts Officer. In spite of these two orders Annexure P-18 and P-20 the respondents however still ignoring the order of his Excellency, Governor and overreaching the same conducting a sue-motto re-enquiry without giving any opportunity of hearing and have passed an order dated 16.04.2019 and the said order was given effect to vide Annexure P-2 dated 02.05.2019 reverting the petitioner to the post of Senior Accountant.

5. Counsel appearing for the respondents however trying to justify the two impugned orders submitted that it is a case where respondent No. 1 received a complaint so far as the promotion received by the petitioner is concerned and the State had conducted an enquiry and it was found that petitioner was wrongly granted promotion and an order to this effect was also passed on 17.05.2007.
6. According to the State counsel, while passing the said order the petitioner was taken into confidence by calling upon his explanation and he had also been granted an opportunity of personal hearing. Therefore, it cannot be said that the impugned order has been passed without affording opportunity of hearing. He further submits that the petitioner on merits has been wrongly granted promotion as petitioner do not fulfill the requisite eligibility criteria for promotion and therefore the order of cancellation of promotion has been passed is proper, legal and justified.
7. Having heard the contentions put forth on either side and on perusal of record what is undisputed from the pleadings that has been brought on record is that the petitioner was firstly granted promotion to the post of Accounts officer from the post of Senior Accountant on 25.11.2005. Though, there was a complaint lodged so far as this promotion is concerned but department i.e. respondent No. 2 Board itself on an earlier occasion held that the promotion granted to the petitioner was proper, legal and justified and in accordance with the rules.
8. Moreover, there is also an order whereby the office of his Excellency the Governor of the State of Chhattisgarh also had conducted an enquiry on the alleged wrong promotion given to the petitioner and

Governor also had affirmed the order of promotion holding it to be in accordance with the rules. Under the circumstances the earlier complaint received and the earlier enquiry if any conducted gets washed off and has attained its finality. If, at all, if the department now further intended to reopen the issue of alleged wrongful promotion granted to the petitioner they ought to have at least issued a show cause notice to the petitioner seeking his explanation so far as the first promotion that he had got about 14 years back and second promotion that he has got about 4 years back.

9. So far as granting of opportunity of hearing is concerned it would be relevant at this juncture to refer to the some of the judgments of the Supreme Court in this regard.
10. 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.”

11. 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 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.”

12. 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}.”

13. In case of **Radhey 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 advertent 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.”

14. Taking into consideration the aforesaid legal position as it stands and from the pleadings since it is apparently clear that before issuance of impugned order Annexure P-1 & Annexure P-2 the petitioner was not granted an opportunity of hearing, the two impugned orders appears to be in utter violation of principles of natural justice and same is not sustainable. The two impugned orders thus stands set aside/quashed and the status of the petitioner would stand restored to the petitioner as it stood prior to issuance of two impugned orders with all consequential benefits to flow to the petitioner from the said post. Since this Court is setting aside the impugned orders only on the ground of same being in violation of principles of natural justice, the respondent would still be at liberty to take proper action after granting due opportunity of hearing to the petitioner in respect of the alleged wrong promotion which is allowed to have been given to the petitioner, if department so wants.

15. Needless to mention that this Court has not expressed anything so far as the merits of the case is concerned. The writ petition accordingly stands disposed off.

Sd/-
(P. Sam Koshy)
Judge