

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.4163 of 2013**

Jay Kumar Pawar, aged 35 years, S/o Late Shri Balwant Pawar A.S.I. (M) Unit, 1st BN. CAF, Bhilai, District Durg, C.G., P.S. Supela, Bhilai.

-----Petitioner

Versus

1. State Government of Chhattisgarh, Through the Secretary, Home Department Ministry, Mantralaya Mahanadi Bhawan, New Raipur P.S. Rakhi, New Raipur (CG)
2. Director General of Police Police Head Quarter, Raipur (CG)
3. Up-Mahanirikhhak Police Durg Range
4. Senani, Pratham Wahini, Chhattisgarh Sashttra Bal Durg, District Durg (CG)

----- Respondents

For Petitioner	: Mr.Vinod Kumar Sharma, Advocate
For Respondents	: Mr.Animesh Tiwari, Dy.A.G. with Mr. Sanjay Pathak, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

16/9/2021

1. The petitioner herein calls in question Note No.1 at page 2 of the impugned order dated 03.10.2013 (Annexure P-1) by which it has been mentioned that a person / petitioner against whom the departmental proceeding is pending be not relieved for joining on promoted post at new place.
2. Mr.Vinod Kumar Sharma, learned counsel for the petitioner, would submit that though the petitioner by the impugned order was promoted to the post of Sub-Inspector from Assistant Sub-Inspector and he was transferred to District Mahasamund from District Durg and he was required to

relieve for that promotional post at District Mahasamund, but he was not relieved pursuant to the note made in the impugned order that a person against whom the departmental proceeding is pending be not relieved. Such a condition is totally arbitrary, discriminatory and violative of his right guaranteed under Article 14 and 21 of the Constitution of India as he has right to hold promotional post which he has found eligible on the post of Sub-Inspector on a fair consideration of his excellent service record for last five years, as such, condition of non-relieving merely on the ground of alleged pendency of departmental proceeding is totally unsustainable and bad in law.

3. On the other hand, Mr. Animesh Tiwari, learned Deputy Advocate General ably assisted by Mr. Sanjay Pathak, learned Panel Lawyer for the respondents/State, would submit that since the departmental enquiry against the petitioner was already pending w.e.f. 18.4.2013 i.e. prior to the date of passing of the impugned order dated 03.10.2013 and though the petitioner was promoted by order dated 03.10.2013, but yet in view of the pendency of departmental proceeding, he was not allowed to join on transferred place on the promoted post which is in accordance with law. However, Mr. Tiwari, on instructions, would further submit that the petitioner has only imposed with a fine of ₹5000/- in that departmental enquiry after its conclusion on 19.9.2014, as such, there is no

arbitrariness in imposing such condition and condition No.1 of impugned promotion order is in accordance with law.

4. Mr.Sharma submits that as per instructions, the petitioner is still working on the post of Assistant Sub-Inspector as he was not allowed to join.
5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove also went through the records with utmost circumspection.
6. Admittedly and undisputedly, the petitioner was promoted from the post of Assistant Sub-Inspector to Sub-Inspector on a fair consideration of service record along with other Assistant Sub-Inspector by order dated 03.10.2013 passed by the competent authority and he was transferred from Durg to Mahasamund to join at promotional post, but note No.1 of the impugned order would show that a person/Assistant Sub-Inspector/petitioner against whom a departmental proceeding is pending or criminal case is pending, he should not be relieved pursuant to the order of promotion, which has been called in question in the instant writ petition.
7. The petitioner's right to be considered objectively and fairly for the promotional post is fundamental right of the concerned Government servant though the concerned Government servant has no right of promotion. The

petitioner was considered objectively and fairly by the competent authority though the departmental proceeding admittedly was pending on the date of consideration and promotion (03.10.2013) and he was granted promotion by order dated 03.10.2013. It is not the case of the respondents that the petitioner has suppressed any material fact or order of promotion was obtained by misrepresentation or pendency of departmental proceeding was not within the knowledge of the competent authority and it is stated at the Bar that the departmental proceeding has concluded on 19.9.2014 and it has resulted in only imposition of penalty of ₹5000/-, but thereafter also, it is not the case of the respondents that the order of promotion has been withdrawn, but the fact remains that the petitioner still continues as Assistant Sub-Inspector (original post) and his order of promotion has not been withdrawn at present and as such condition No.1 of impugned order is ex-facie arbitrary and illegal.

- 8.** Consequently, the impugned order dated 03.10.2013 (Annexure P-1) is partly set-aside to the extent directing the official respondents to relieve the petitioner for joining to the promoted post within 10 days from today. However, the competent authority is also at liberty to pass the order afresh giving joining to the petitioner on promoted post at district

Mahasamund or any other place where the post is vacant as it was passed on 03.10.2013 and more than seven years has already expired.

9. The petitioner has also claimed back-wages and all other services benefits from 03.10.2013. It will be considered by the competent authority in accordance with law on representation being made by the petitioner within three weeks from today by passing a reasoned and speaking order within six weeks from the date of receipt of representation.

10. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-