

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2138 of 2021

Ramesh Tiwari S/o Shri Vishwanath Tiwari, Aged About 59 Years Posted As Assistant Manager At C.G. State Civil Supplies Corporation Limited Korba, District Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Principal Secretary Food Department, Mahanadi Bhawan, New Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. C.G. State Civil Supplies Corporation Limited Through Its Managing Director, Block-7 A, 2nd Floor, Office Complex, Sector-24, Atal Nagar, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
3. The Managing Director, C.G. State Civil Supplies Corporation Limited, Block- 7a, 2nd Floor, Office Complex, Sector-24, Atal Nagar, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Rakesh Pandey, Advocate
For State	:	Mr. Rahul Jha, Govt. Advocate
For Respondents No. 2 & 3	:	Mr. Syed Majid Ali, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/04/2021

1. With the consent of the counsel appearing for the parties, the matter was finally heard.
2. Aggrieved by the order dated 03.03.2021 (Annexure P/1) the present writ petition has been filed. Vide the impugned order respondents No.2 & 3 have cancelled the promotion order which the petitioner got as early as on 06.11.2012 to the post of Assistant Manager.
3. The facts of the case in brief is that the petitioner was working under the respondents No. 2 & 3. He was appointed as an Assistant in the

year 1988 and got periodical promotion to the post of Senior Assistant thereafter on 06.12.2012, the petitioner was promoted to the post of Assistant Manager in the payscale of Rs.9300-34800/- with Grade Pay of Rs.400/-. The petitioner immediately assumed the duties of an Assistant Manager and continued to work till the impugned order dated 03.03.2021 has been abruptly passed, whereby the order of promotion dated 06.11.2012 has been cancelled.

The order of cancellation of promotion seems to be on two grounds, firstly the petitioner has been wrongly granted promotion in the year 2012 and there was no vacancy in the unreserved category available in the year 2012 and secondly, the petitioner has been recently inflicted with a punishment of stoppage of two annual increments vide order dated 03.01.2021.

4. The contention of the learned counsel for the petitioner is that he has not been given any opportunity of hearing before the impugned order was passed and as such the same is in blatant violation of the principles of natural justice. According to the petitioner, having enjoyed the fruits of the promotion right from 06.11.2012, the respondents could not have passed the impugned order without any explanation being called from the petitioner. Thus, the same is violation of the basic principles of natural justice, therefore the same should be set-aside.
5. The other contention of the learned counsel for the petitioner is that the second ground of the petitioner having been inflicted with a punishment of stoppage of two annual increments in the year 2021 cannot be a ground for cancellation of promotion that was granted in

the year 2012. The punishment order of the year 2021 would have no implication on the promotion which the petitioner has got as early as on 06.11.2012 i.e. more than 8 years back.

6. The learned counsel for the respondents-Corporation however submitted that it is a case where the petitioner has been found to have been wrongly granted promotion as there was no vacancy to the category to which the petitioner belongs and in the absence of any vacancy the promotion so granted becomes erroneous and the authorities have all the powers to rectify the error. Accordingly, the authorities have passed the impugned order. The contention of the learned counsel for the Corporation is that since it is only the correction of the error on the part of the respondents, the question of compliance of the principles of natural justice does not arise. The counsel for the Corporation in this regard relied upon the judgment of the Hon'ble Supreme Court in the case of **“Union Of India & another v. Narendra Singh” AIR 2008 SC (Suppl.) 240.**
7. From the pleadings and submissions made by the counsel appearing on either side, certain admitted factual position as it stands is that, the petitioner was initially appointed as an Assistant way back in the year 1988, thereafter he got promoted to the post of Senior Assistant in the year 2005 and the next promotion post of the petitioner was that of Assistant Manager. The petitioner on attaining the requisite eligibility criteria for promotion to the post of Assistant Manager, when the Corporation did not promote the petitioner in usual course he had filed a writ petition i.e. WPS No. 4931/2012 challenging an advertisement

issued by the Corporation for filling up the post of Assistant Manager by way of direct recruitment.

8. Pending the writ petition the respondent authorities meanwhile promoted the petitioner to the post of Assistant Manager vide order dated 06.11.2012. Since the petitioner got promoted and his grievance got redressed, the writ petition finally was withdrawn. The petitioner immediately assumed the charge of Assistant Manager and was discharging the duties up till now till the impugned order dated 03.03.2021 was passed where the promotion order of the year 2012 was cancelled.
9. During the course of the hearing, the learned counsel for the Corporation on instructions submits that the petitioner was not given an opportunity of hearing before the promotion order was cancelled vide impugned order Annexure P/1. It is also the contention of the respondents-Corporation that the petitioner admittedly has been discharging the duties of an Assistant Manager since the time of his promotion in the year 2012. The contention of the petitioner is that during all these period, since he was on adhoc promotion, no substantive right was created in favour of the petitioner and no prejudice has been caused by the impugned order in as much as he has been found ineligible for promotion in the year 2012 on account of non-availability of sanctioned vacant post in the unreserved category.
10. What has now to be looked into is that the wordings of the impugned order Annexure P/1 by which the promotion order issued in favour of the petitioner has been cancelled. Plain reading of Annexure P/1 dated

03.03.2021 would show that the petitioner was granted an adhoc promotion in the year 2012 on which post he had assumed his duties and it is this order dated 06.11.2012, which has been canceled. It is not a case, where the petitioner has been found ineligible for confirmation for any reason. It is not a case where the impugned order has been passed on account of any misrepresentation or fraud on the part of the petitioner. It is also a case where, by virtue of the impugned order as a consequence the petitioner stands reverted back to the Senior Assistant, the post which the petitioner was holding around 8-9 years back and during the intervening period the petitioner has been discharging his duties on the promoted post.

11. It is a settled position of law that any decision which has an adverse civil consequence, the least that is expected from the authorities is abiding by the principles of natural justice. The doctrine of equality and fair play also requires that all administrative decisions should be keeping in mind the procedure of the principles of natural justice and it should be all the more borne in mind when the administrative decision has an adverse civil consequence.
12. In the instant case, the adverse civil consequence is the consequent reversion of the petitioner from the post of Assistant Manager to the post of Senior Assistant. It is also a case where the petitioner stands reverted to the post of Senior Assistant after a period of 8-9 years. There is no dispute to the fact that the petitioner has not been granted or afforded an opportunity of hearing before the impugned order was passed.

13. 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.”

14. 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.”

15. 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.)".

16. In the 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 advertng 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".

17. Taking note of the discussions rendered in the preceding paragraphs, if we take note of the judgment relied upon by the counsel for the Corporation in the case of **"Union Of India & another v. Narendra Singh"** (supra), the principles and analogy laid down in the said judgment was only on the question, whether the authorities had a right to correct any error that has occurred in the course of discharge of their duties.
18. There can be no doubt on the principles laid down in the said judgment of the Hon'ble Supreme Court, however even if it be a case of correction of an error, since the respondents themselves permitted the erroneous decision to persist for a period of 8-9 years and if they found

the decision to be erroneous after 8-9 years, atleast a show cause notice could had been given to the petitioner towards compliance of the principles of natural justice, which in the instant case has not been followed. Applying the ratio laid down by the Hon'ble Supreme Court in the judgments referred to in the preceding paragraphs, the impugned order in the instant case also would not be sustainable and the same being in violation of the principles of natural justice deserves to be and is accordingly set-aside/quashed.

19. However, the right of the respondents No.2 & 3-Corporation stands reserved, in the event if they want to take an appropriate decision in respect of the promotion to the petitioner is concerned, after following the principles of natural justice. The authorities would be at liberty to take an appropriate decision in accordance with law.
20. With the aforesaid observations, the present writ petition stands allowed. The impugned order Annexure P/1 stands set-aside/quashed with consequences to follow.

Sd/-
(P. Sam Koshy)
Judge

Ved