

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 664 of 2014**

- Kamal Kishore Soni S/o Late Shri D.P. Soni, Aged About 58 Years Presently Posted As Administrative Officer, State Institute Of Health And Family Welfare, Raipur, Distt. Raipur, C.G., R/o Sector 2, Block 8/68, Kashiram Nagar, Ring Road, Raipur, Distt. Raipur, C.G., Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh S/o Through The Principal Secretary, Govt. Of C.G., Health And Family Welfare Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, P.S. Rakhi, C.G., Chhattisgarh
2. The Director Directorate Of Health Services, Raipur, C.G., District : Raipur, Chhattisgarh

-----Respondents

For the Petitioner	:	Mr. Sabyasachi Bhaduri, Advocate
For the State	:	Mr. Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/04/2021**

1. Aggrieved by the orders Annexure P-2 and Annexure P-1 dated 27.01.2014, the present writ petition has been filed vide the impugned order. The respondents have cancelled the promotion granted to the petitioner firstly on the post of Superintendent w.e.f. 01.11.2000 and promotion on the post of Administrative Officer w.e.f. 01.01.2008 have been cancelled.
2. The brief facts of the present case are that the petitioner was initially appointed under the erstwhile Madhya Pradesh in the office of the Divisional Electrical Inspector, Ujjain vide order dated 19.06.1981 as a Lower Division Clerk. State Government thereafter established DANIDA Health and Family Welfare Project at Bhopal the petitioner vide order dated 24.11.1982 was appointed in the said project as an

Upper Division Clerk, he was relieved for joining at the said post on 01.12.1982. As per the order dated 24.11.1982, the lien of the petitioner stood protected in the office of the Divisional Electrical Inspector. However, the petitioner subsequently got periodical promotion at the DANIDA project first as an Assistant Superintendent, further he got promoted on the post of Superintendent. The DANIDA project came to an end in August, 1996.

3. The State Government took a decision for absorbing the employees working at the DANIDA Health and Family Welfare Project in the Health Department of the State Government. Accordingly, on 02.08.1996 the service of all the employees of DANIDA including the petitioner working on the post of Superintendent was handed over to the Directorate of Health services erstwhile State of Madhya Pradesh. The petitioner assumed his duties under the Directorate of Health services as a Superintendent. That upon the reorganization of the State of Madhya Pradesh and carving out of the new State of Chhattisgarh, the petitioner stood allocated along with his post of Superintendent as allocated by the Government of India to the State of Chhattisgarh and the petitioner accordingly stood allocated to the State of Chhattisgarh as a Superintendent.
4. Down the line the petitioner got further promoted on the post of an Administrative Officer in the pay scale of Rs.8000-275-13500 vide order dated 01.01.2008. On 15.03.2011 State Government further granted an administrative sanction of absorption of the petitioner in the cadre she was working i.e. in the cadre of the Superintendent and later on as an Administrative Officer.
5. The petitioner continued to discharge his duties as an Administrative Officer uninterruptedly till abruptly when the impugned orders Annexure P1 and P2 were passed cancelling the order of promotion to the post of superintendent as also to the post of Administrative Officer.
6. The writ petition was immediately filed and by virtue of an interim order dated 06.02.2014 this High Court had Stayed the effect and operation of the impugned order by virtue of the interim order the petitioner continued to discharge his duties as an Administrative Officer and in due course of time he has retired from service on attaining the age of superannuation w.e.f 30.09.2017. The ground of challenge in the

present writ petition to the impugned order firstly is that of the impugned order being passed in total contravention to all the principles of natural Justice.

7. According to the learned counsel for the petitioner no opportunity of hearing whatsoever was provided to the petitioner before the impugned orders of cancellation of the promotion order were passed. It was the further contention of the petitioner that not even a show cause notice to the petitioner seeking his explanation as to why the promotion firstly to the post of Superintendent and secondly to the post of Administrative Officer be not cancelled so that the petitioner could have got an opportunity to explain that he has been promoted to the post of Superintendent in the DANIDA Health and Family Welfare Department Project.
8. According to the petitioner even the erstwhile employer i.e. the State of Madhya Pradesh had accepted the promotion of the petitioner to the post of Superintendent when his services were absorbed from DANIDA Health and Family Welfare project to the Health and Family Welfare Department under the State Government. Further according to the petitioner when the petitioner was allocated to the State of Chhattisgarh he was on the post of Superintendent and he was sent to the State of Chhattisgarh against the sanctioned post of Superintendent as would be evident from the document Annexure P-12 dated 04.07.2006 enclosed along with the writ petition which clearly supports the petitioners contention. The learned State counsel fairly submits that from the available material on record including the impugned order and the reply of the State Government there does not appear of any pre-decisional hearing given to the petitioner.
9. Learned State counsel tries to provide reasons on the basis of the pleadings in the reply to the writ petition. However, the learned State counsel tries to justify the action on the part of the respondents on the ground that the petitioner does not otherwise qualify to hold the post of firstly as an Administrative Officer and secondly as a Superintendent. Therefore, since he was not qualified and competent, the promotions were apparently bad in law.
10. From the aforesaid contention this Court has no hesitation in reaching to the conclusion that the impugned order per se is illegal and violative

of principle of natural justice. It is by now well settled proposition of law that any action on the part of respondents even if it is an administrative decision but if the same is having an adverse civil consequence the least that is required is an opportunity of hearing. In the instant case not just the impugned order of cancellation of promotion but as a consequence of the cancellation the repercussions are that of reverting the petitioner to the post of Upper Division Clerk which by itself is a substantial adverse/detrimental consequence. The second ground of challenge is that the impugned order is not a speaking order in as much as no reason whatsoever has been reflected in the two impugned orders which has led the respondents reach to the conclusion that of the promotions having been wrongly granted to him.

11. So far as the order requiring to be a reasoned speaking order, on this issue also the law is by now well settled that the reasons are a backbone of an order and the reasons are required for enabling the persons to know under what circumstances the impugned order has been passed so that he can challenge the same before the appropriate forum, substantiating his contention on the ground the reason by which the impugned order has been passed. In the absence of any reasoned order the petitioner himself or for that matter any person could not be in a position to effectively defend the order as he himself does not know why the impugned order has been passed.
12. So far as the issue of the order to be a speaking order is concerned, the requirement of the same is for the reason that the delinquent employee should know the reasons on which his appeal is either allowed or rejected. The question regarding recording of reasons, its importance and necessity came up for consideration before the Hon'ble Supreme Court in case of **Kranti Associates Private Limited & Another v. Masood Ahmed Khan & Others**, 2010 (9) SCC 496, wherein the Hon'ble Supreme Court has extensively and elaborately dealt with the issue of need of giving reasons.
13. Similarly, in the case of **East Coast Railway and Another v. Mahadev Appa Rao and Others** with **K. Surekha Vs. Mahadeo Appa Rao and Others**, 2010 (7) SCC 678, the Hon'ble Supreme Court in very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different forms. Every

order passed by a public authority must disclose due and proper application of mind by the persons making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.

14. Likewise, again in case of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers, 2010 (4) SCC 785**, the Hon'ble Supreme Court has held that, recording of reasons is an essential feature of dispensation of justice. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighted with the authority in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that order.
15. Thus, this Court is of the view, that the impugned order issued also is one which is a non speaking order, as no reasons has been assigned. Under the given facts and circumstances of the case, this Court finds it difficult to sustain the impugned order and the same deserves to be and is accordingly set aside/quashed.
16. That under the normal circumstances when an order is set aside/quashed on technical ground of non granting an opportunity of hearing and also on the ground of the order being a non-speaking order, the matter would stand remitted back to the authorities for a fresh passing of order. However, in the instant case since the impugned order has been passed as early as in the year 2014 and by virtue of the interim protection granted by this Court, the petitioner has discharged his duties on the promoted post of Administrative Officer till

he has attained the age of retirement on 20.09.2019 and he now stands retired for more than 4 years. No fruitful purpose would be served in remitting the matter to the Authorities for a fresh order.

17. Accordingly, it is ordered that the petitioner shall be allowed to retire treating him to have retired on the post of Administrative Officer and his retiral dues have to be settled accepting his retirement on the post of Administrative Officer. However, it is made clear that this shall not be treated as a precedent for any other matters.

18. The writ petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
Judge

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