

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 2780 of 2009

Damodar Rout

.....

Petitioner

Mr. P.K. Rath, Advocate

Vs.

State of Orissa and others

.....

Opposite parties

Mr. N.K. Praharaj,
Standing Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

24.01.2022

Order No.

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This matter is taken up by video conferencing mode.

2. Heard Mr. P.K. Rath, learned counsel for the petitioner and Mr. N.K. Praharaj, learned Standing Counsel for the State.

3. The petitioner, who was working as Superior Field Worker (SFW) in the office of the District Malaria Officer, Keonjhar, has filed this writ petition seeking to quash the order dated 09.11.2009 under Annexure-6, by which the promotion given to the petitioner has been cancelled as per the instructions of the Collector and District Magistrate, Keonjhar.

4. Mr. P.K. Rath, learned counsel for the petitioner contended that since the petitioner has got regular promotion from the post of Peon to Superior Field Worker, his promotion cannot and could not have been cancelled merely on the basis of the instructions issued by the Collector and District Magistrate, Keonjhar without giving opportunity of

hearing to him, as the same is in gross violation of principles of natural justice. It is further contended that the order impugned under Annexure-6 has been passed by the authority without assigning any reason. Therefore, the order so passed by the authority cannot sustain in the eye of law.

5. Mr. N.K. Praharaj, learned Standing Counsel for the State, referring to the counter affidavit, contended that the provisional promotion given to the petitioner has been cancelled as per the instructions of the Collector and District Magistrate, Keonjhar even though the selection was made through the selection committee. It is contended that since provisional promotion was given to the petitioner, cancellation of promotion cannot be said to be illegal and arbitrary so as to cause interference of this Court.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was initially appointed as a peon under the rehabilitation assistance scheme consequent upon death of his father while serving in the office of the ADMO (PH), Keonjhar. Since two posts of Superior Field Worker (SFW) was lying vacant, opposite party no.3 in the exigency of public service and for management of office work formed a selection committee consisting of the CDMO as the Chairperson along with other district level officers and pursuant to the proceeding dated 22.05.2009 of the committee, the petitioner, along with one Taranisen Mohanta, was selected for promotion to the post of Superior Field Worker. Accordingly, the petitioner was promoted to the post of Superior Field Worker in the pay band of Rs.4400-7440/- with grade pay of Rs.1650/- and

posted against the vacant post at District Malaria Office, Keonjhar on 23.05.2009 pursuant to the recommendation made by the selection committee. In compliance of the order of promotion, the petitioner was relieved vide Annexure-4 and joined in his new assignment and, as such, his joining was accepted vide Annexure-5 dated 30.10.2009. Consequent upon joining of the petitioner on the promotional post of Superior Field Worker, he was allowed to draw the scale of pay admissible to the promotional post as per Rule-74(b) of the O.S.C. But all on a sudden, on 09.11.2009 vide Annexure-6 communication was made by opposite party no.3 stating therein that the order of provisional promotion made on 23.05.2009 promoting the petitioner was cancelled as per the instructions issued by the Collector and District Magistrate, Keonjhar. As it appears, the petitioner has not been given provisional promotion rather Annexure-3 clearly indicates that the petitioner was promoted to the post of Superior Field Worker and nowhere it has been stated that the petitioner was promoted provisionally. When there is no such provisional promotion given to the petitioner, merely because instructions issued by the Collector and District Magistrate, Keonjhar, the promotion given to the petitioner has been cancelled and while cancelling such promotion nothing has been placed on record to indicate that any opportunity of hearing was given to the petitioner.

7. Pursuant to notice issued, opposite party no.3 has filed counter affidavit by taking a specific stand at paragraph-3, which is extracted hereunder:-

“3. That the then I/C CDMO (K) has cancelled the provisional promotion of the applicant as per the

instruction of the Collector and District Magistrate, Keonjhar (under Annexure-6 of the Original Application). Though the Selection was made through a Selection Committee the reason for cancellation of such promotional order is based on instruction of the Collector & District Magistrate, Keonjhar, which was stated in the said cancellation order by the I/C CDMO (K). Hence the order under Annexure-6 is neither illegal nor arbitrary.”

8. As it appears, opposite party no.3 reiterated the same stand, which was taken in the order impugned under Annexure-6 and, as such, nothing has been spelt out with regard to giving opportunity of hearing to the petitioner in compliance of the principles of natural justice, as averred in paragraph-6.9 of the writ petition. More so, no reasons have been assigned by the authority while passing the order impugned under Annexure-6 and, as such, in the counter affidavit also no reply has been given to paragraph-6.10 to the writ petition. Since no material is placed by the authority with regard to giving any opportunity of hearing to the petitioner and also the order impugned, on the face of it, has been passed without assigning any reason, the order cancelling the promotion given to the petitioner cannot sustain in the eye of law.

9. The soul of natural justice is ‘*fair play in action*’

In ***HK (An Infant) in re***, 1967 1 All ER 226 (DC), Lord Parker, CJ, preferred to describe natural justice as ‘*a duty to act fairly*’.

In ***Fairmount Investments Ltd. v. Secy of State for Environment***, 1976 2 All ER 865 (HL), Lord Russell of Killowen somewhat picturesquely described natural justice as ‘*a fair crack of the whip*’

In *R. v. Secy. Of State for Home Affairs, ex p. Hosenball, Geoffrey Lane, LJ*, 1977 3 All ER 452 (DC & CA), preferred the homely phrase ‘*common fairness*’ in defining natural justice.

10. *A.K. Kraipak and others v. Union of India*, AIR 1970 SC 150= (1969) 2 SCC 262, is a landmark in the growth of this doctrine. Speaking for the Constitution Bench, Hegde, J. observed thus:

“If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have far reaching effect than a decision in a quasi-judicial enquiry”.

In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 = (1978) 1 SCC 248, law has done further blooming of this concept. This decision has established beyond doubt that even in an administrative proceeding involving civil consequences doctrine of natural justice must be held to be applicable.

11. In *Swadeshi Cotton Mills v. Union of India*, AIR 1981 SC 818, the meaning of ‘natural justice’ came for consideration before the apex Court and the apex Court

observed as follows:-

“The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self evident and urarguable truth”. “Natural justice” by Paul Jackson, 2nd Ed., page-1. In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the administration of justice.”

12. In **Basudeo Tiwary v Sido Kanhu University** and others (1998) 8 SCC 194, the apex Court held that natural justice is an antithesis of arbitrariness. It, therefore, follows that audi alteram partem, which is facet of natural justice is a requirement of Art.14.

13. In **Nagarjuna Construction Company Limited v. Government of Andhra Pradesh**, (2008) 16 SCC 276, the apex Court held as follows:

“The rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power should be exercised in conformity with the principles of natural justice. Thus, whenever a man’s rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice. It is important to note in this context the normal rule that whenever it is necessary to ensure against the failure of justice, the principles of

natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration.”

14. The apex Court in ***Uma Nath Panday and others v State of U.P.*** and others, AIR 2009 SC 2375, held that natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

15. Natural justice, another name of which is common sense justice, is the name of those principles which constitute the minimum requirement of justice and without adherence to which justice would be a travesty. Natural justice accordingly stands for that “*fundamental quality of fairness which being adopted, justice not only be done but also appears to be done*”.

16. Reasons being a necessary concomitant to passing an order, the appellate authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original authority.

17. In ***Union of India v. Mohan Lal Capoor***, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus

between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken by the apex Court in *Uma Charan v. State of Madhya Pradesh*, AIR 1981 SC 1915 and also by this Court in the cases of *Patitapaban Pala v. Orissa Forest Development Corporation Ltd. & another*, 2017 (I) OLR 5 and in *Banambar Parida v. Orissa Forest Development Corporation Limited*, 2017 (I) OLR 625.

17. In view of the aforesaid law laid down by the apex Court and applying to the present context, this Court is of the considered view that since the order of promotion has been cancelled without affording opportunity of hearing to the petitioner in compliance of the principles of natural justice and also without assigning any reason the order impugned has been passed, the same cannot sustain in the eye of law and the same is liable to be quashed. Accordingly, the order dated 09.11.2009 under Annexure-6 is hereby quashed. The petitioner is entitled to get the promotional benefits from 09.11.2009, when the order of promotion has been cancelled. As a consequence thereof, the opposite parties are directed to extend the benefit to the petitioner as due and admissible to the post, as expeditiously as possible, preferably within a period of four months from the date of communication/production of certified/ authenticated copy of this order.

18. The writ petition is accordingly allowed.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed, vide Court's Notice No.4587 dated 25th March, 2020, as modified by Court's notice no. 4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

Ashok

(DR. B.R. SARANGI)
JUDGE

