

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 2917 of 2009

Saroj Kumar Behera

....

Petitioner

Mr. D.K. Mohapatra, Advocate

-Versus -

State of Odisha and Ors.

....

Opp. Parties

State Counsel

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

24.01.2022

Order No.
01

This matter is taken up through video conferencing mode.

2. Heard Mr. D.K. Mohapatra, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

3. The petitioner has filed this writ petition seeking to quash the order of reversion dated 15.10.2009 under Annexure-2, as the same has been passed without following due procedure of law.

4. Mr. D.K. Mohapatra, learned counsel for the petitioner contends that the petitioner was given promotion by order dated 20.08.2009 under Annexure-1 and while continuing in promotional post he was reverted vide order dated 15.10.2009 as at Annexure-2 without giving opportunity

of hearing to the petitioner and without assigning any reason thereof.

5. Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State, on the other hand, contends that since promotion was given without following due procedure of law, thereby the same was cancelled and the petitioner was reverted back to his original post and, thereby, no illegality or irregularity has been committed by the authority in passing the order impugned.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner, while continuing as Senior Assistant under the administrative control of opposite party no.2, was considered for promotion to the post of Section Officer Level-II, by duly constituting departmental promotion committee. As against 7 number of vacancies in the post of Section Officer Level-II, 4 vacancies were meant for reserved category and 3 vacancies meant for unreserved category. As the petitioner belonged to SC category, he was given promotion vide office order dated 20.08.2009 at Annexure-1 and on being promoted he joined the promotional post and continued to render service. But reason best known to the opposite party no.2, vide order dated 15.10.2009, declared the order of promotion under Annexure-1 as void and accordingly passed order of reversion vide Annexure-2 directing the petitioner to join as Senior Assistant. While entertaining this application on 26.11.2009 an interim order was passed staying operation of the order as at Annexure-2, so far as it relates to the petitioner, till

10.12.2009, and the said interim order was allowed to continue from time to time. But fact remains, while passing the order of reversion under Annexure-2 which has been impugned herein, principle of natural justice has not been complied nor any reason has been assigned.

7. 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.

8. ***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.

9. 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.”

10. 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.

11. 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.”

12. 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.

13. 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”*.

14. 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.

15. 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.

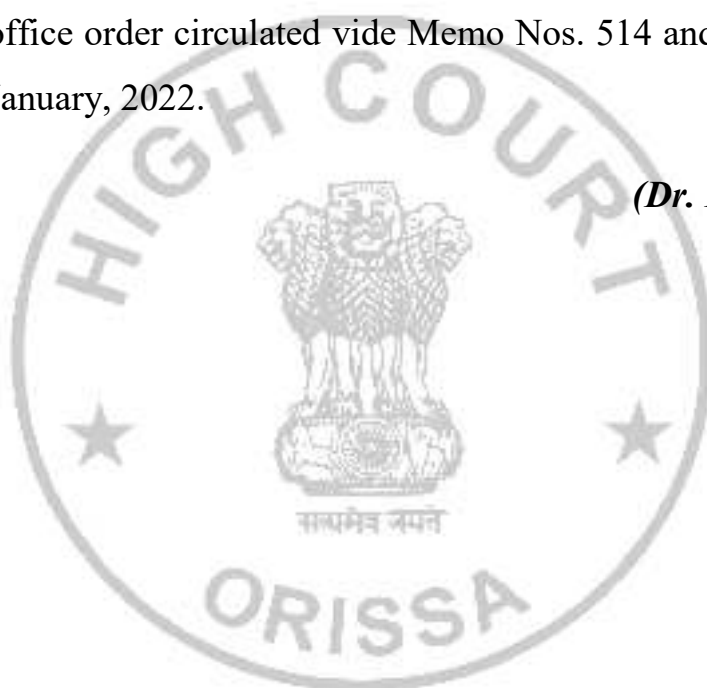
16. In view of such position, this Court is of the considered view that Annexure-2 dated 15.10.2009 reverting the petitioner cannot sustain in the eye of law and the same is liable to be quashed and hereby quashed. The petitioner is entitled to get benefits as due and admissible to him in

accordance with law in the promotional post pursuant to Annexure-1.

17. 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 printout 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.

GDS



(Dr. B.R. Sarangi)
Judge