

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16327 of 2012

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Narendra Pd. Singh S/O Late Baidyanath Prasad Singh R/O Village and P.O.-
Gangeya, P.S.- Katara, District- Muzaffarpur, At Present Residing At
Mohalla- Srikrishna-Nagar, Ward No. 4, P.O. and P.S.-Dumara, District-
Sitamarhi

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary, Law Department, Bihar, Patna.
2. The High Court Of Judicature at Patna, Through Registrar General, Patna.
3. The Registrar General, Patna High Court, Patna.
4. District Judge, Civil Court, Sitamarhi.
5. Judge In Charge, Administration, Civil Court, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bikash Kumar Sharma, Advocate
For Respondent Nos.2-5	:	Mr. Piyush Lal, Advocate
For the State	:	Mr. Sunil Kr. Mandal, SC-3
	:	Mr. Bipin Kumar, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 17-05-2024

Heard Mr. Bikash Kumar Sharma, learned counsel
appearing on behalf of the petitioner; Mr. Piyush Lal, learned
counsel appearing on behalf of the respondent nos.2 to 5 and
Mr. Sunil Kr. Mandal, learned SC-3 along with Mr. Bipin
Kumar, learned AC to SC-3.

2. The petitioner has prayed for the following
relief(s) in paragraph no.1 to the writ petition:

*"1.1. To issue a writ in the nature of
Certiorari to quash the order no.27/2010 dated 19.06.2010
passed on administrative side by learned District Judge,
Sitamarhi (Annexure-9), whereby and where under benefits
of 2nd ACP (assured career progression) has been denied to
the petitioner on erroneous grounds and that too without
holding any enquiry or giving any opportunity of being*



heard to him (petitioner).

1.2. To issue a consequential writ in the nature of mandamus directing and commanding the respondent authorities to grant the benefits of 2nd ACP (pay scale of Rs.9300/- to 34,800/-) to the petitioner with effect from 22.01.2000 i.e. the day on which he (petitioner) completed the qualifying service of 24 years with consequential benefits.

1.3. To any other reliefs for which the petitioner may be found entitled to."

BRIEF FACTS

3. The petitioner was appointed in the year 1976 as Lower Division Clerk (LDC) in the Muzaffarpur Judgeship, by the then District Judge and communicated vide letter no.64 dated 10.01.1976, issued under the signature of Registrar Civil Courts, Muzaffarpur. The petitioner had joined on 22.01.1976. Petitioner having become eligible was granted first time bound promotion w.e.f. 22.01.1986. The petitioner was promoted to Senior Selection Grade w.e.f. 01.10.1996 vide District Judge's order No.26 of 1997 dated 08.04.1997 in pay scale of Rs.5,000/- 150-8000/- w.e.f. 01.10.1996. Thereafter, in the light of Finance Department resolution contained in Memo No.10932(F-2) dated 24.12.2008 and 362(F-2) dated 17.01.2009, his pay scale was re-fixed in the scale of Rs.9300/- to 34,800/-, vide District Judge's Appointment order no.3 of 2010 dated 08.01.2010, and got revised in pay scale of Rs. 9300/- to 34,800/- w.e.f. 01.01.2006. It is the case of the petitioner that after completion



of 12th and 24th years of service, he had become entitled for First ACP and Second ACP.

SUBMISSION

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed on 22.01.1976 and he became entitled for grant of First ACP with effect from 09.08.1999. Since the petitioner was receiving a pay scale of Rs. 5,150-8000/-, the consideration of First ACP was not required, however, the petitioner became entitled for 2nd ACP with effect from 22.01.2000 and the District Judge, having not considered the said fact and the ACP scheme, had passed an adverse order against him considering certain adverse remarks contained in PCR and the report submitted by the Screening Committee in respect of the petitioner. In support of his argument, learned counsel submitted that the adverse remarks which desentitled him from benefit of Second ACP, penalty is infact penal in nature. He submitted that the order contained in appointment order no. 21 of 2006 dated 22.06.2006 was passed before order dated 23.06.2006 by which, the petitioner was issued a show cause by the Judge In-Charge alleging the same charges. It is the case of the petitioner that before the authority proceeded to pass a penalty order and the show cause followed



by it, can only be said to be that Disciplinary Authority was pre-determined to impose penalty and the show case in that case has become mere formality as post decisional hearing is in violation of principal of natural justice. Learned counsel, however, admits that the petitioner had not challenged the order dated 22.06.2006 but he had given his written explanation on 26.06.2006 and even though he sought apology admitting the guilt he has committed, which will amount to qualified explanation and not admission of guilt. Learned counsel in this regard has relied upon a ***Division Bench Judgment of this Court passed in CWJC No. 329 of 2016 (Rajendra Pratap Singh vs. the State of Bihar & Ors.)*** and also relied on law laid down in the Apex Court in case of ***Indu Bhushan Dwivedi vs. State of Jharkhand & Anr.*** reported in ***AIR 2010 SC 2472*** and in support he has relied on paragraph no. 20, 24 and 25, which are reproduced hereinafter:

“20. An analysis of the two judgments shows that while recommending or imposing punishment on an employee, who is found guilty of misconduct, the disciplinary/competent authority cannot consider his past adverse record or punishment without giving him an opportunity to explain his position and considering his explanation. However, such an opportunity is not required to be given if the final punishment is lesser than the proposed punishment.

24. The inquiry was held against the appellant on three charges, the most serious of which was that after having consumed liquor, he had misbehaved and manhandled an accused and a constable. That charge was not found proved. The other two charges were that he had left headquarter without seeking permission from the Registrar General of the High Court in violation of the direction contained in order dated 5.7.2003 and that he had used derogatory words (merciless direction) qua the communication sent by the High Court. There cannot be



two views that being a member of the subordinate judiciary, the appellant was bound to comply with the direction given by the High Court to stay at the headquarters but singular violation of such directive or use of intemperate language in representation dated 19.7.2003 were not that serious which warranted imposition of the extreme penalty of dismissal from service. In our view, the adverse remarks recorded in the Annual Confidential Reports of the appellant seems to have weighed heavily with the High Court while recommending his dismissal from service.

25. Since the un-communicated adverse remarks contained in the Annual Confidential Reports of the appellant became foundation of the decision taken by the High Court to recommend his dismissal from service and he was not noticed about the proposed consideration of those remarks, it must be held that the appellant was seriously prejudiced. We have mentioned all this only to reinforce the ratio of the judgment in Manche Gowda's case, (AIR 1964 SC 506) that consideration of the past adverse record without giving an opportunity to the delinquent to explain the same can cause serious prejudice to him."

5. Learned counsel has also relied on a judgment passed in case of ***Sukhdev Singh vs. Union of India*** reported in ***AIR 2013 SC 2741*** and has relied to the observations made in paragraph nos. 8 and 9 to submit that the adverse entry is required to be communicated to the employee, against whom it has been passed and non-communication would be arbitrary and as such violative of Article 14 of the Constitution of India. Paragraphs no. 8 and 9 of *Sukhdev Singh (Supra)* are reproduced hereinafter:

"8. In our opinion, the view taken in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work



harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good—must be communicated to him/her within a reasonable period.

9. The decisions of this Court in Satya Narain Shukla v. Union of India [(2006) 9 SCC 69 : 2006 SCC (L&S) 1599] and K.M. Mishra v. Central Bank of India [(2008) 9 SCC 120 : (2008) 2 SCC (L&S) 833] and the other decisions of this Court taking a contrary view are declared to be not laying down good law."

6. Learned counsel submitted that subsequent order, which has been taken into consideration for denying the 2nd ACP to the petitioner, as contained in Appointment Order No. 21 of 2008, is based on the allegation that the petitioner has committed an act of forgery, indulging in gross indiscipline, misconduct and negligence in his duty, which amounts to unbecoming of a government employee, can only be considered to be taken note of, in continuation of the earlier order passed by the then District Judge dated 22.06.2006. Learned counsel relying on the principal of res judicata submitted that for the same misconduct for which the petitioner has already apologized and his guilt was considered and ignored, he cannot be subjected to 2nd order of penalty dated 31.07.2008. Learned



counsel further submitted that, so far as, the next part of the order dated 31.07.2008 is concerned that he got his earned leave cancelled and joined as Saristedar, which is evident example that he did not go to work as Accountant, is only to fortify the remark, entered into the PCR, as well as, by the 'Three Men Committee' to conclude arbitrarily that his conduct has become unbecoming of a government employee. Learned counsel further submitted that the Apex Court, in ***Indu Bhushan Dwivedi (Supra)*** has held that no one should be unheard before subjected to penal action. Learned counsel submitted that in such circumstances, the order contained in Appointment Order No. 27 of 2010 dated 19.06.2010, cannot be sustained, in the eye of law and as a consequence of the same, the petitioner becomes entitled for 2nd ACP from the date of his entitlement, with statutory interest and all consequential financial benefits accruing, as a result of same is required to be paid to him.

7. *Per contra*, Mr. Piyush Lal, learned counsel appearing on behalf of the Patna High Court, submitted that as far as submission of the petitioner is that before imposing penalty vide order dated 22.06.2006, no show cause was issued to the petitioner is concerned, petitioner own conduct shows that the petitioner had admitted his guilt and had sought apology and



the same would not amount to denial of opportunity of hearing. He next submitted that the contention of the petitioner that same would amount to be qualified explanation and it would not amount to admission of guilt is totally misconceived and in support of the same, learned counsel has relied on paragraph nos. 4 to 6 to a decision of the Apex Court passed in ***Channabasappa Basappa Happali Vs. State of Mysore*** reported in ***(1971) 1 SCC 1*** to contend that in the said case, a police constable was proceeded for a month and applied for extension of leave was subjected with penalty order after he had admitted his guilt. Learned counsel clarified that even though the petitioner was not in disciplined service but the discussions made in paragraph nos.4 and 5 and the proposition of law laid down in paragraph nos. 6, of the said judgement, goes to show that the admission of fact on the basis of which a charge is framed, amounts to admission of guilt, as such, the contention of the petitioner that mere apology and explanation given by the petitioner will only amount to qualified explanation and it will not amount to admission of guilt, can not be sustained considering the clarification and the law laid down by the Apex Court in the said case. Learned counsel further submitted that in the later judgement in case of ***Rajendera Pratap Singh Vs. The***



State of Bihar and Ors. passed in CWJC NO.329 of 2017, this Court has reiterated the said proposition of law. Learned counsel further informs that the another District Judge had also not found the conduct of the petitioner satisfactory. He has relied on the observation made in order dated 31.07.2008 (Appointment order no.21 of 2008) that the petitioner had committed the act of forgery, indulging in gross indiscipline, misconduct and negligence to his duty, which is unbecoming of a Government employee. Learned counsel in these backgrounds emphatically submitted that the learned District Judge had refused to give petitioner the Second ACP, after giving opportunity of hearing to the petitioner and adverse remark recorded in the PCR that the petitioner did not improve his conduct. It has also been observed that during his period of service, he showed his disinclination to work as an Accountant and he used to go on leave. Learned counsel further informed that it has also been recorded in the said order that after the petitioner was posted as *Sarishtedar*, he got his Earned Leave cancelled, such conduct shows that the petitioner did not want to work as Accountant and in spite of the fact that the petitioner was provided with enough opportunity, he had not improved his conduct. Learned counsel further clarified that the show cause, which has been



issued subsequent to the order dated 22.06.2006, just a day after on 23.06.2006, can only amount to caution him in future that he must be sincere and work with due diligence and as such the same will not amount that the authority was pre-determined to impose penalty and post-decisional hearing becomes unwarranted.

8. Learned counsel in above background submitted that after the petitioner had admitted his guilt, no disciplinary proceeding was required to be initiated and the petitioner was cautioned which facts are the basis of order dated 31.07.2008 affecting adversely his service condition, but the petitioner never challenged the orders at the relevant point of time or in the present writ petition. Based on these two orders, the PCR of the petitioner was recorded and the same remain existing till date and considering the PCR and the orders, the Screening Committee has rightly recommended that the petitioner is not entitled for 2nd A.C.P. Learned counsel in support of the impugned order dated 19.06.2010 has referred to Sub-Rule-5 of Rule-4, along with its explanation-2, in support of refusal of grant of 2nd A.C.P. to the petitioner, which explains that Sub-Rule-5 and explanation-II, is self-explanatory to the extent that the petitioner was not found fit for promotion. Learned counsel



in these backgrounds submitted that the impugned order dated 19.06.2010 cannot be faulted for.

ANALYSIS

9. The petitioner is aggrieved by Appointment Order No. 21 of 2006 dated 22.06.2006, Appointment Number or Order No. 21 of 2008 dated 31.07.2008 and finally the petitioner is aggrieved by the Appointment order no.27 of 2010 dated 19.06.2010 passed by the respondent no.4 by which he has been denied the benefit of Second ACP and has also sought for grant of Second ACP on completion of 24 years of service w.e.f. from 22.01.2000 in pay scale of Rs.9300-34800/-. In respect of the claim with regard to the above two reliefs it is necessary to appreciate some important facts to judge the legality of appointment order no.27 of 2010 dated 19.06.2010. While the petitioner was posted as head clerk in the office of District and Sessions Judge, Sitamarhi, he was transferred to the post of Accountant, Civil Court, Sitamarhi vide appointment order no.21/2006 dated 22.06.2006 (Annexure-12 to the writ petition). It has been mentioned in the transfer order that the transfer was necessitated with immediate effect to maintain the decorum and confidentiality of establishment department of the judgeship of Sitamarhi. On account of the fact that the petitioner



had anti-dated receipt application falsifying the official work which he had received on 21.06.2006 but he had endorsed receiving as on 20.06.2006. The petitioner was given show cause notice bearing Memo No.1160 of 2006 dated 23.06.2006, as to why, departmental proceeding be not initiated against him on account of the above falsification. In reply, the petitioner admitted that though the above leave application was submitted on 21.06.2006 but he got it received mentioning the date 20.06.2006 admitting that he had anti-dated and he had given undertaking that he will not repeat the mistake again in the future. Secondly, by appointment order no. 21/2008 dated 31.07.2008 (Annexure 8 to the writ petition), the District and Sessions Judge, Sitamarhi- Respondent no.4 has refused to grant Second ACP to the petitioner on the ground that there was no improvement in the conduct of the petitioner even after the earlier District and Sessions Judge, Sitamarhi had refused the said benefit and there was adverse remarks against the petitioner, as would appear from appointment order no.21/2006 dated 22.06.2006. It is admitted fact that the petitioner after he was transferred on the post of Accountant he never joined and used to take leave and he only accepted joining when he was directed to join as *Saristedaar* in the court of Munsif and



thereafter, he filed his application to cancel the application for Earned Leave. The petitioner was given warning for improvement but his conduct remained undesirable and adverse remark was entered into his PCR and based on the said PCR vide appointment order no.21/2010 dated 19.06.2006 (Annexure 9 to the writ petition), the District and Sessions Judge, Sitamarhi found the petitioner not fit to be granted the benefits of Second ACP on the recommendation of the 'Three Men Screening Committee'.

10. The petitioner has challenged the order dated 19.06.2010 on the ground that the adverse remark for which the petitioner has been desentitled is penal in nature as it appears from the order contained in Appointment Order No. 21 of 2006 dated 22.06.2006 and after passing of the said order, the petitioner was issued show cause by the Judge In-Charge on 23.06.2006 which is against the settled principle of law that post-decisional hearing is a mere formality and in violation of principle of natural justice can not be sustained as the petitioner, has admitted his guilt and he has not challenged the order dated 22.06.2006, but the petitioner has sought apology. In my opinion, the act of the petitioner can not amount to '*qualified explanation*' and the submission of the petitioner that his case is



covered by discussion of a Division Bench of this Court in CWJC No. 329 of 2016 (***Rajendra Pratap Singh vs. the State of Bihar & Ors.***) and discussion of the Apex Court passed in ***Sukhdev Singh (Supra)***. A reliance has been made, which are reproduced hereinafter:

"8. In our opinion, the view taken in Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771] that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good—must be communicated to him/her within a reasonable period.

9. The decisions of this Court in Satya Narain Shukla v. Union of India [(2006) 9 SCC 69 : 2006 SCC (L&S) 1599] and K.M. Mishra v. Central Bank of India [(2008) 9 SCC 120 : (2008) 2 SCC (L&S) 833] and the other decisions of this Court taking a contrary view are declared to be not laying down good law."

11. Considering the fact that the petitioner had not challenged the two Appointment Orders No. 21 of 2006 dated 22.06.2006 and 21 of 2008 dated 31.07.2008 on the said ground, at any point of time. Both the Appointment Orders stand till date against the petitioner, as he has not chosen to challenge before the Court of law, including in the present writ petition, and they



clearly show that his conduct and work were both found unsatisfactory by two successive District and Sessions Judges. It is settled law that even wrong order continues to be effective unless it is set aside by a Court of law.

12. As a consequence of two Appointment Orders dated 22.06.2006 and 31.07.2008 continued to exist and continued to be effective against the petitioner, the Screening Committee found the petitioner not fit to be granted the benefit of 2nd A.C.P. in its report dated 27.04.2010 considering the remark entered in P.C.R. of the petitioner.

13. In view of the above discussion, I find that the ratio laid down by the Apex Court in case of *Indu Bhushan Dwivedi (Supra)*, order dated 05.07.2017 passed in CWJC No. 329 of 2016 and *Sukhdev Singh (Supra)* are distinguishable from the facts of the present case and are not applicable to the case of the petitioner.

14. This Court appreciates the explanation given by Mr. Piyush Lal, that the order was passed by the first District Judge on 22.06.2006 and a day after on 23.06.2006, a show cause was issued to the petitioner, can only be considered to be in the form of warning to the petitioner, as the petitioner has accepted his guilt and in this regard, he has relief on the



observation made by the Apex Court in paragraph nos. 4, 5 and 6 of ***Channabasappa Basappa Happali (supra)*** are worth to be taken note of, which are reproduced hereinafter:

"4. The pleas of the petitioner are quite clear; in fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold, that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of every one of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desparately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not and acted upon it. He did go on a fast. His later explanation was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given before him. On the whole therefore the admission was one of guilty in so far as the facts on which the enquiry was held and the learned Single Judge in the High Court was, in our opinion, right in so holding.

5. It was contended on the basis of the ruling reported in Regina v. Durham Quarter Sessions Ex-parte Virgo [1952 (2) QBD 1] that on the facts admitted in the present case, a plea of guilty ought not to be entered upon the record and a plea of not guilty entered instead. Under the English law, a plea of guilty has to be unequivocal and the Court must ask the person and if the plea of guilty is qualified the Court must not enter a plea of guilty, but one of not guilty. The police constable here was not on his trial for a criminal offence. It was a departmental enquiry, on facts of which due notice was given to him. He admitted the facts. In fact his counsel argued before us that he admitted the facts but not his guilt. We do not see any distinction between admission of facts and admission of guilt. When he admitted the facts, he was guilty. The facts speak for



themselves. It was a clear case of indiscipline and nothing less. If a police officer remains absent without leave and also resorts to fast as a demonstration against the action of the superior officer the indiscipline is fully established. The learned Single Judge in the High Court was right when he laid down that the plea amounted to a plea of guilty on the facts on which the petitioner was charged and we are in full agreement with the observations of the learned Single Judge.

6. The case really is not one of any merit; the plea raised before us was in ad misericordiam. We were asked to take the view that this man was actuated by his own feeling that leave would be extended and further that his going on fast was not for the purpose of the administration but for some other purpose. Even if we were to take the admission as a whole with all its qualifications, we are quite clear that he admitted the facts necessary to establish the charge against him."

15. In the present case, as stated above Appointment Order No. 21 of 2006 dated 22.06.2006 and Appointment Order No. 21 of 2008 dated 31.07.2008 clearly show that the service of the petitioner was not satisfactory and thus he was found unfit to be granted 2nd A.C.P. in the pay scale of Rs. 5000-9000 on completion of 24 years of service on 22.01.2000 by the Screening Committee and accepted by the District and Sessions Judge, Sitamarhi by impugned Appointment Order No. 21 of 2010 dated 19.06.2010.

16. It is well settled law that once there is an entry of integrity 'doubtful' in service record of an employee, then it is considered to be in larger public interest. In this regard, reliance may be placed to the judgment of the Hon'ble Supreme Court in case of ***Union of India v. Ajoy Kumar Patnaik, 1995***



(4) SCT 692 (SC) and Jugal Chandra Saikia v. State of Assam, (2003) 4 SCC 59. In para 5 of the judgment in Jugal Chandra Saikia's case (supra), it has been noticed that “the review committee had concluded that the delinquent employee had outlived its utility and was of doubtful integrity. Hon'ble the Supreme Court has followed and applied the principles of law as laid down in **Baikuntha Nath Das and Anr. vs. Chief District Medical Officer, Baripada and Anr.** reported in **(1992) 2 SCC 299**. In the fact of the present case, it would not mean that the integrity of the petitioner was not conveyed to him and according to the petitioner because he has given written apology, the same will be considered as ‘*qualified explanation*’ for denial of his guilt cannot be sustained.”

17. So far as, contention of the petitioner that there has been violation of principle of natural justice and the order dated 10.06.2019 passed by the learned District and Sessions Judge is to be set aside is concerned on the ground that same lacks consideration that order no. 21 of 2006 dated 22.06.2006 has been passed earlier and any post-decisional hearing after the authority having passed the order is futile exercise is also not sustainable. A reference in this regard, can be taken to the case of **Karnataka Public Service Commission ... vs B.M. Vijaya**



Shankar And Ors reported in *1992 (2) SCC 206* wherein Hon'ble Supreme Court noted that "Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment."

18. In the instant case, the impugned order dated 22.06.2006 has been passed not by way of punishment and penalty but by way of interim measure in respect of



manipulation in interpolating the date in the official record. The petitioner instead of subjected to disciplinary proceeding and presenting his case was waved out as the action contemplated when it tendered apology by accepting his guilt which would result into some remark or censure against the petitioner. The requirement of natural justice that a party affected by administrative action should have a reasonable opportunity of presenting his case in such circumstances would be waived of where the action contemplated was merely provisional as would appear from order dated 22.06.2006. In such circumstances, the contention of the petitioner that after penalty order dated 22.06.2006 and show cause dated 23.06.2006 will amount to empty formality cannot be sustained as I have already observed that the successor District Judge too have found the petitioner to be unbecoming or a government servant.

19. In this regard, I find it apt to quote the observation and law laid down in *Liberty Oil Mills Vs. Union of India* reported in (1984) 3 SCC 465, the Hon'ble Supreme Court has held "it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation or enquiry. Ad interim orders may always be made ex parte and such orders



may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of a principle of natural justice if an ex parte ad interim order is made unless of course, the statute itself provides for a hearing before the order is made as in clause 8-A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim orders.”

20. In view of the above admitted positions, I proceed to analyse whether petitioner is entitled for 2nd ACP.

21. The petitioner is aggrieved by the appointment order no.27 of 2010 dated 19.06.2010 passed by the learned District & Sessions Judge by which his claim of the Second ACP has been rejected. The record reveals that rejection is based on the report of the screening committee dated 27.04.2010, wherein it has been recorded that the case of the



petitioner was considered for grant of Second ACP along with one Sri Shambhu Prasad Mehta. The Case of the petitioner has been discussed and considered by the Screening Committee, which is reproduced hereinafter:

“D.J.’s Appointment Order No.21/06 is passed against him showing that his act is to falsify the official work of District Judge and his statement and action taken in official capacity is mischievous etc. The report of Screening Committee dated 06.11.2007 regarding grant of his Second ACP and D.J.’s Appointment order No.21/08 dated 31.07.2008 is fully against him.”

22. On the basis of the said remark the conclusion has been drawn, which is as under:

“In the light of the facts stated above regarding rest four employees, the committee is not of opinion to grant Ist and IInd ACP to Sri Suresh Chandra Gupta, Sri Shive Prakash Singh and 2nd ACP to Sri Narendra Pd. Singh and Sri Shambhu Pd. Mehta.”

23. It is the case of the respondent nos. 2 and 3 that as per sub-clause 5 of Rule 4 of Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 (hereinafter referred to as the ‘Rules, 2003’), which prescribes that for any promotion passing of the Departmental Examination



or any other eligibility has been prescribed then the same would also be the necessary condition for grant of benefit under scheme, if such, condition is prescribed under Rules/Circular/Resolutions. The prescribed service condition in this regard applicable in the case of the petitioner, is Bihar Civil Court Staff (Class-III and Class-IV) of Rules, 1998. Rule 21 of the Rules, 2003 relates to promotion, which is reproduced hereinafter:

“21. Promotion.

(1) A candidate shall not be promoted to the Junior Selection Grade or to a Supertime Scale in service unless he qualifies in the examination as prescribed by the High Court.

(2) Appointment to the higher grade of the ministerial establishment should ordinarily be made by seniority from lower grade provided they possess the prescribed educational and other qualification as laid down in these Rules or any other existing law that may be applicable and are otherwise fit to perform the duties attached thereto and pass the test, if any, prescribed under these Rules.

(3) Typist before his promotion to the Junior Selection Grade must pass another test of typing, the minimum speed of typing would be 50 words per minute in English or 35 words per minute in Hindi. Mistakes at the rate of ½ words per hundred words shall only be allowed. Before a typist can be promoted to a Supertime Scale, he will have to pass an examination in practice and procedures and on such other papers as may be prescribed by the High Court from time to time.

(4) Before a Stenographer is promoted to the Junior Selection Grade, he will have to pass the test of Stenography at the rate of 100 words per minutes in English and 80 words per minute in Hindi and only 5% mistakes shall be allowed.

Before a Stenographer is promoted to the Supertime Scale he will have to pass the examination of practice and procedure and such other papers which may be specified by the High Court from time to time.



(5) Before a Clerk is promoted to the Junior Selection Grade, he will have to pass an examination in- (i) Civil Court and Criminal Court Rules framed by the High Court, (ii) Accountancy, (iii) Knowledge of drafting of correspondence and order sheets, and (iv) Practice and procedure.
(6) A Clerk before his promotion to Supertime Scale shall have to pass an examination on procedure (Civil and Criminal), Stamp Act, Court-fee Acts, Suits Valuation Act, Correspondence and Noting and Drafting. Junior Selection Grade Typist/Stenographers may be transferred to the post of Clerks if they pass the necessary examination as mentioned hereinbefore.
(7). If suitable persons are not available for promotion to the Supertime Scale of Clerk, it would be opened to the Appointing Authority to fill up the said post by direct recruitment subject to the prior concurrence of the High Court. The qualification for direct recruitment in the post of Supertime Scale shall be B.A., B.Sc. And B.Com. or an equivalent degree from the recognized University and also degree in Bachelor of Law.”

24. From bare perusal of Sub-rule 2, it appears that for appointment to the higher grade of the ministerial establishment should ordinarily be made by seniority from lower grade provided they possess the prescribed educational and other qualification as laid down in these Rules or any other existing law that may be applicable and are otherwise fit to perform the duties attached thereto and pass the test, if any, prescribed under these Rules. The Rule specifically provides the quality which are required from a ministerial staff, who are required to be promoted on a higher post.

25. Bihar State Employees Service Condition



(Assured Career Progression Scheme) Rules, 2003 which provides for grant of two financial upgradations by way of 1st and 2nd ACP to an employee to remove stagnation does not mandate that the same are to be granted automatically on completion of 12 and 24 years of service respectively. Rather it clearly provides the terms and conditions on the basis of which these benefits are to be granted and having been issued under proviso to Article 309 of the Constitution of India from a part of service condition of employees.

26. An English translation of Rule 4 (5) and Explanation (II) thereto of Bihar State Employees Service Condition (Assured Career Progression Scheme) Rules, 2003 has been provided by Mr. Lal and relevant extracts are reproduced.

(4) Eligibility and conditions

(5) The requirements and manner of grant of financial progression under the Scheme shall be the same which have been prescribed for regular promotion against vacancies under recruitment/ appointment Rules. If for any promotion passing of departmental examination or any other eligibility has been prescribed then the same would also be necessary condition for grant of benefit under the Scheme if such



condition is prescribed under Rules/Circulars/Resolutions.

Explanation (II) – If first financial progression under the A.C.P. Scheme is not granted exactly after 12 years but it granted with delay to a government servant on account of departmental proceeding, etc. or on account of not having been found fit for promotion then the second financial progression under the A.C.P. Scheme would be granted after 12 years from the date of first financial progression.

27. The terms and conditions, as per Rule 4(5) of the 2003 Rules, is that the requirement for grant of financial progression would be the same as prescribed for grant of regular promotion under service rules/orders governing grant of regular promotion. Another terms and condition, as per Explanation (II) to the said Rule 4(5), is that if grant of 1st A.C.P. is delayed beyond 12 years due to a departmental proceeding or due to not having been found fit for promotion, then the date of grant of 2nd A.C.P. would be accordingly delayed beyond 12 years thereafter. The applicable Rule governing grant of regular promotion to the petitioner as an employee of Civil Court of Bihar was the Bihar Civil Court Staff (Class-III and Class-IV) Rules, 1998. Under Rule 21 (2) of the 1998 Rules one of the conditions for grant of regular promotion is that an employee



cannot be promoted to a higher grade unless he is otherwise found fit to perform duties attached thereto. This shows that an employees is mandatorily required to be adjudged fit to be promoted before grant of regular promotion i.e. in other words his service should not be unsatisfactory for an employee with unsatisfactory service cannot be said to be fit to discharge the duties of higher post if granted regular promotion.

28. As per pleadings in paragraph no. 4.5 of the writ petition, the petitioner has admitted that in light of Resolution bearing Memo Nos. 10932 (F2) dated 24.12.2008 and 362 (F2) dated 17.01.2009 of the Finance Department, Bihar, he was granted pay scale of Rs. 9300-34800 vide Appointment Order No. 3/2010 dated 08.01.2010. It is made clear that the said pay scale is the revised pay scale of employees of Civil Court of Bihar w.e.f. 01.01.2006. Thus, the petitioner cannot claim the said pay scale w.e.f. 22.01.2000 i.e. prior to 01.01.2006 even before it was made effective. The claim of the petitioner for grant of 2nd A.C.P. would be in the pay scale of Rs. 5500-9000 as would be evident from the report dated 27.004.2010 of the Screening Committee, as well as, from his above representation dated 26.07.2010 and on these grounds also the claim of the petitioner fails.



29. It may be pointed out here that the petitioner has restricted his claim for grant of 1st A.C.P. This is because he became eligible for it w.e.f. 09.08.1999 in the pay scale of Rs. 5000-8000 as he had already completed 12 years of service as on 22.01.1988. However, the petitioner was already in this pay scale of Rs. 5000-8000 from before 09.08.1999 as it was granted to him with effect from 01.10.1996 vide Appointment Order No. 02 of 2021 dated 19.01.2021 (Annexure-5 to the writ petition) against need based post. The same would also be evident from pleadings in paragraph no. 4.4 of the writ petition. In view of the above said Rule position and facts, the petitioner is not entitled for the reliefs prayed for in the present writ petition.

30. For the above reasons, the writ petition stands dismissed but in circumstances of the case, there shall be no order as to costs.

(Purnendu Singh, J.)

Niraj/-
ashishsingh/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	24.06.2024
Transmission Date	N/A

