

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

217-5

Decided on :12.02.2024

CWP-15026-2018 (O&M)

SANDEEP DHILLON AND ANR

Petitioners

V/S

STATE OF HARYANA AND ORS

Respondents

CWP-14223-2018 (O&M)

ZILE SINGH

Petitioner

V/S

STATE OF HARYANA AND ORS

Respondents

CWP-28849-2018

BALWANT SINGH

Petitioner

V/S

STATE OF HARYANA AND OTHERS

Respondents

CWP-30530-2018

ZILE SINGH

Petitioner

V/S

STATE OF HARYANA AND OTHERS

Respondents

CWP-25106-2017 (O&M)

ZILE SINGH

Petitioner

V/S

STATE OF HARYANA AND ORS.

Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. D. S. Patwalia, Senior Advocate with
Ms. Rishu Bajaj, Advocate
for the petitioner(s) in CWP-15026-2018.

Mr. Rajender Kumar, Advocate for
Mr. R. R. Kaushik, Advocate
for the petitioners in CWP-30530-2018 and

CWP-15026-2018 (O&M) & connected petitions

-2- 2024:PHHC:020179

CWP-25106-2017 & CWP-14223-2018.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Sunil Kumar Nehra, Advocate
for respondents No. 9, 11, 13 to 18 in CWP-15026-2018.

Mr. R. K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate
for the petitioner in CWP-28849-2018

Mr. Abhilaksh Grover, Advocate
for respondents No. 19 to 23 in CWP-15026-2018.

HARSIMRAN SINGH SETHI , J. (Oral)

1. By this common order, above mentioned writ petitions are being disposed of as all the writ petitions involve the same question of law on similar facts.
2. In the bunch of present petitions, the grievance of the petitioners is that vide impugned order dated 14.05.2018 (Anenxure P-11), the petitioners have been reverted back from the post of Executive Engineer to that of Sub-Divisional Engineer by altering the seniority and that too without giving them a show cause notice.
3. Learned Senior counsel for the petitioners submits that without giving hearing to the petitioners they have been reverted, which action of the respondent amounts to violation of rules of natural justice, hence, the impugned order dated 14.05.2018 (Anenxure P-11) cannot sustain on this ground.
4. Learned counsel for the respondents-State submits that keeping in view the reply which has come on record, no show cause notice was given to the petitioners before passing the impugned order dated 14.05.2018 (Anenxure P-11) qua reversion.
5. I have heard learned counsel for the parties and have gone

through the record with their able assistance.

6. It is a settled principle of law that in case, any order which affects the employee with the penal consequences especially reversion, the employee has a right to be heard. The department is liable to bring into the notice of the concerned employee about the proposed action for his/her information and whatever the said employee submits in defence, has to be taken into account so as to decide as to whether the proposed action is to be taken by the department or not.

7. In the present case, it is a conceded position that before passing the impugned order of reversion, no show cause notice was given to the petitioners and a unilateral decision was taken by the department to revert the petitioners from the post of Executive Engineer to Sub-Divisional Engineer.

8. As per the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No. 2265 of 2011 titled as Chamoli District Cooperative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others, 2016(12) SCC 204, decided on 17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another 2019 (12) JT 283, decided on 13.12.2019**, it was held that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally. The relevant para of **Daffodills Pharmaceuticals's case (supra)** is as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities,

that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case. 16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”

9. The relevant paragraph of the **Chamoli's case (supra)** is as under:-

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen reported in (1964) 3 SCR 616 has laid down following:-

“... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in

respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.” it was held that where any order passed by the authority concerned causes prejudice to an employee, especially financial liability, an opportunity of hearing is must and no order causing prejudice to an employee can be passed by an employer unilaterally.

10. It has further come on record that keeping in view the interim order passed, the petitioners, who are in service, are continuing on the post of the post of Executive Engineer. That being so, coupled with the settled principle of law noticed herein-above, the impugned order datd 14.05.2018 reverting the petitioner cannot sustain as the same has been passed in violation of the natural justice.

11. Keeping in view the facts and circumstances noticed here-in before coupled with the settled principle of law, impugned order of reversion dated 14.05.2018 (Anenxure P-11) passed by the respondents is set aside with liberty to the respondents to pass a fresh order as to whether, the petitioners' promotion on the post of Executive Engineer was valid or not and that too by giving due opportunity to the petitioners to represent their case. Any objection raised by the petitioners, be dealt with by forming the opinion as to whether, any action needs to be taken by the respondents-department qua the promotion of the petitioners or not and whether the petitioners can be accommodated by creating supernumerary posts in case permissible, as done in the case of the Executive Engineer.

12. Furthermore, Qua the seniority in the impugned order it has

CWP-15026-2018 (O&M) & connected petitions

-6- 2024:PHHC:020179

already been noticed that the same would be dependent upon the CWP No. 18451-2002 titled as Raja Ram and others v. State of Haryana, decided on 29.05.2015, hence, no observation is being made by this Court qua the seniority between the parties.

13. Pending civil miscellaneous application, if any, also stands disposed of.

14. A photocopy of this order be placed on the files of connected cases.

(HARSIMRAN SINGH SETHI)
JUDGE

12.02.2024

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No