

(2010) 03 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition No. 1742 of 1999

Kanhaiya Singh Netam

APPELLANT

Vs

Madhya Pradesh Rajya Van Vikas Nigam Ltd. and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Madhya Pradesh Van Vikas Nigam Employees Service Regulations, 1984 — Regulation 67

Citation : (2010) 2 CGLJ 221

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Parag Kotecha, for the Appellant;

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.

Heard.

1. Challenge in this petition is to the order dated 30.7.1998 (Annexure P/8), whereby the order granting two advance increments was cancelled and the recovery was directed and the order dated 15.1.1999 (Annexure P/10), dismissing the appeal, passed by the Appellate Authority.

2. Brief facts, in nutshell, are that the Petitioner was initially appointed as Field Assistant in the year 1978. The nomenclature of the post of Field Assistant was later on changed as Assistant Project Ranger. The Petitioner successfully completed the training in the Foresters Training Center, Jagdalpur and got first position. A certificate to that effect was issued to him on 31.3.1989 (Annexure P/1). On the basis of his first rank in the training, the Petitioner was sent for further training to Forest Rangers College, Balaghat. The Petitioner successfully completed the higher training (Annexure P/2). Thereafter, the Petitioner was promoted on the post of Forest Ranger vide order dated 1.12.1992 and his salary

was fixed by order dated 30.12.1992 (Annexure P/3). In the fixation order dated 30.12.1992 the Petitioner was granted two advance increments for successfully completing the higher training of two years from the Forest Rangers College, Balaghat. This order of granting two increments was in accordance with the circular dated 10.12.1972 (Annexure P/4).

3. Two similarly situated persons namely Shri Anoop Datt Shukla and Shri S.A. Khan were also granted two advance increments by order dated 10.2.1994 (Annexure P/5) and 27.7.1993 (Annexure P/6). One of the senior colleagues of the Petitioner namely Shri S.S. Shandilya, raised an objection on the pay fixation of the Petitioner, thus the matter was referred to the Manager (Administration), Bhopal by letter dated 9.3.1998 (Annexure P/7). By the impugned order dated 30.7.1998 (Annexure P/8) the grant of two advance increment was rejected with a further direction to recover the amount paid towards the same from the Petitioner. Being aggrieved the Petitioner filed an appeal on 8.9.1998 (Annexure P/9) to the Chairman, which was dismissed by the second impugned order dated 15.1.1999 (Annexure P/10).

4. Learned Counsel appearing for the Petitioner submits that the impugned order has been passed without affording an opportunity of hearing to the Petitioner. It is a case of gross violation of the principles of natural justice. The impugned order is punitive in nature and visits with civil consequence as not only the increments have been reduced but the amount of increments granted to the Petitioner has been directed to be recovered, without affording an opportunity of hearing to the Petitioner. There is no fault on the part of the Petitioner. He has not made any misrepresentation and the increments were granted to him in accordance with the circular of the State Government dated 18th September, 1973 (Annexure P/4).

5. The Respondents have filed their return on 28.6.1999, stating that the services of the employees working in Forest Development Corporation are regulated by the Madhya Pradesh Van Vikas Nigam Employees Service Regulation 1984. Regulation 67 gives power only to the Board to grant advance increment to any of the employee of the Corporation. The Divisional Manager, Bhanupratappur Project, who had issued the order dated 30.12.1992, granting two advance increments to the Petitioner, was having no authority to sanction such increments.

6. There is no averments in the return with regard to grant of any opportunity of hearing or issue of show cause notice before the impugned order dated 30.7.1998 was passed. According to the return the increments were granted by misinterpreting the provisions as the same was not applicable to the employees of the Respondent/Corporation, therefore grant of increment was without jurisdiction and the same was withdrawn. On the question of principles of natural justice, there is no response in the return.

7. I have heard Learned Counsel appearing for the Petitioner and perused the

pleadings and documents appended thereto.

8. The circular dated 18th September, 1973 (Annexure P/4), issued by the State Government reads as follows:

9. The impugned order dated 30.7.1998, withdrawing benefit of two advance increments, granted earlier, is bad in law, illegal and the recovery thereof is contrary to various judicial pronouncements of the Supreme Court as well as of this Court. There was no fault on the part of the Petitioner. The Respondents cannot recover the amount, already paid to the Petitioner, for no fault of the employee, who has not made any misrepresentation or misled to the employer, without affording an opportunity of hearing.

10. The Respondent-authorities have not followed the principles of natural justice and the impugned action has been taken without affording an opportunity of hearing to the Petitioner. The practice of passing order, involving civil consequences, without show cause notice or without affording an opportunity, is condemned. (See Punjab State Electricity Board and Another Vs. V.N. Sharma, .

11. The Hon"ble Supreme Court in the matter of P. Tulsi Das and Others Vs. Govt. of A.P. and Others, , observed that the benefit accrued earlier by way of grant of higher pay or revised pay, cannot be taken away as the same is violative of Article 14 and 16 of the Constitution of India being arbitrary, unreasonable and expropriatory.

12. In a similar issue, as to whether recovery of excess payment for no fault of the employee can be made without following the principles of natural justice, Hon" ble Supreme Court in Syed Abdul Qadir and Others Vs. State of Bihar and Others, , having considered all the aspects of the matter and the decisions rendered by the Supreme Court in the past, observed as under:

57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar, V. Gangaram v. Director, Col. B.J. Akkara

(Retd.) v. Govt. of India, Purshottam Lal Das v. State of Bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB v. Bijay Bhadur.

13. In view of the foregoing, the impugned orders dated 30.7.1998 (Annexure P/8) and 15.1.1999 (Annexure P/10) are quashed. The petition is allowed with all consequential benefits. If the recovery is already made the same shall be refunded to the Petitioner with interest at the rate of 6% per annum. No order as to costs.

14. Having regard to the facts situation, liberty is reserved to the Respondents to take action, if so advised, in accordance with law, after affording an opportunity of hearing to the Petitioner.