

(2024) 05 OHC CK 0148

In the Orissa High Court

Case No : Writ Petition (C) No. 3237 Of 2015

Pradeep Kumar Panda

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-05-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Administrative Tribunals Act, 1985 — Section 19, 20, 20(1)

Citation : (2024) 05 OHC CK 0148

Hon'ble Judges : Dr. B.R.Sarangi, J;G. Satapathy, J

Bench : Division Bench

Advocate : Bigyan Kumar Sharma, A.U. Senapati, K. Mohanty, D. Gochhayat

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. The petitioner has filed this writ petition seeking to quash the order dated 11.02.2015 passed in O.A. No. 260/0071/2015 under Annexure- 13, whereby the Central Administrative Tribunal, Cuttack Bench, Cuttack, taking recourse to Section 20 of the Administrative Tribunals Act, 1985, declined to entertain the Original Application, since other remedies available to the petitioner were not exhausted and, as such, the same is premature one. The petitioner has also prayed to quash the order dated 06.08.2014 under Annexure-6, by which the petitioner, due to medical unfit, has been requisitioned to be spared for de-novo screening for his alternative appointment in similar grade; as well as the office memorandum dated 12.11.2014 under Annexure-7, by which the appointment of the petitioner was approved in alternative category as ECRC in PB-1 with Grade Pay of Rs.2800/- in Commercial Department, consequent upon medical unfit and subsequently re-screened by the duly constituted screening committee on 31.10.2014; and the order dated 14.11.2014 under Annexure-8, whereby it was indicated that the petitioner may be directed to undergo training of Pro. ECRC being medically unfit staff and approved for absorption as ECRC in PB-1 in GP of

Rs.2800. The petitioner has also prayed for a direction to the opposite parties, more particularly opposite party Nos. 2 to 5 not to disturb him from the post of Chief Controller of Sambalpur Division under East Coast Railway and to extend all such service benefits as due and admissible to the post of Chief Controller.

2. The brief fact of the case giving rise to filing of this writ petition is that consequent upon the selection procedure adopted by the opposite parties for appointment to the post of Goods Guard, the petitioner was appointed against the said post in the scale of Rs.4,500-7,000/- at Titilagarh, Sambalpur Division of East Coast Railway. After completion of four years of service, as per the rule, the periodic medical examination (PME) was conducted to examine the fitness of the running staff. Accordingly, he was directed to appear before the Medical Board on 07.09.2007, where he was declared as medically de-categorized from A2 to B1 due to vision problem. Keeping in view the alternative employment rule of the Government of India, Ministry of Railway, i.e., RBE No. 89/99, the medically de-categorized persons, including the present petitioner, were extended with alternative employment. In terms of the said rule, the allied service to the post of Goods Guard was found to be the Section Controller by the Screening Committee and accordingly the petitioner, vide order dated 26.02.2008, was offered with the order of appointment against the post of Section Controller. Thereafter, the petitioner was directed to undergo training of Pro. SCR and after completion of the said training he was released from the Zonal Railway Training Institute on 16.04.2008 and was directed to report before the Sr. D.P.O./ Sr.D.O.M., Sambalpur East Coast Railway, vide order dated 16.4.2008. Accordingly, the petitioner was issued with an order of posting as Section Controller in the scale of Rs.5,500-9,000/- as alternative posting by a duly constituted screening committee and after successful completion of the PCR training, vide office order dated 18.07.2008 issued by the Divisional Railway Manager, Sambalpur. After completion of three years of service as Section Controller, considering his performance, the case of the petitioner was considered along with other similarly placed incumbents and vide office order dated 24.11.2011 he was given promotion to the post of Chief Controller (CHC), Sambalpur in Pay Band-2 with G.P. of Rs. 4600/-.

2.1. After completion of six and half years of service from the date of appointment as Section Controller and three years from the date of promotion to the post of Chief Controller, the office of the Divisional Railway Manager issued a letter on 06.08.2014 to the office of the CHC, Sambalpur and S.M.R., Sambalpur to spare the petitioner along with two other staff to appear before a de-novo screening committee for alternative appointment in similar grades though the same was not permissible under law.

2.2. On 12.08.2014, the petitioner appeared before the screening committee and raised objection to the constitution of such de-novo screening committee nearly after six and half years of service of the petitioner as Section Controller and Chief Controller, to find out alternative employment. The petitioner though gave on

writing to the authorities, but the authorities refused to accept any representation/ letter/ objection from the petitioner and, on the other hand, the petitioner was threatened to lose his job if he will not cooperate, and as such, forced him to participate in the process.

2.3. After two months of working of the petitioner as Chief Controller, he was served with a memorandum dated 12.11.2014, in modification to the earlier Office Memorandum dated 21.02.2008, by virtue of which he was appointed as Section Controller and the petitioner was directed to join against the post of ECRC in Pay Band-I with G.P. of Rs.2,800/- in the Commercial Department consequent upon being declared medically unfit in the de-novo re-screening committee on 31.10.2014. Immediately thereafter, vide office order dated 14.11.2014 of the Divisional Railway Manager, the present petitioner, along with three others, was directed to undergo training of Pr-ECRC for a further period of one year. Aggrieved by the orders dated 06.08.2014, 12.11.2014 and 14.11.2014 under Annexures- 6, 7 and 8 to the present writ petition, the petitioner approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by filing O.A. No. 260/0071 of 2015 with the following prayer:-

"In view of the facts mentioned in para-4 above the applicant prays for the following relief:-

- i) Admit the Original Application;
- ii) Call for the Records;
- iii) Quash the order dt. 06.08.2014, 12.11.2014 and 14.11.2014 under Annexures- 6, 7 and 8 respectively;
- iv) And further pleased to declare the same as illegal and not sustainable in the eye of law;
- v) And further direct the Respondents not to disturb the applicant from the post of Chief Controller of Sambalpur Division under East Coast Railway and the applicant maybe extended all such service benefits as is due and admissible to the post of Chief Controller;
- vi) And also pass any other appropriate order(s)/direction(s) as this Hon'ble Tribunal may deems fit and proper keeping in view the fact and circumstances of the case.?"

The petitioner had also prayed for the following interim reliefs:-

"As an interim measure the Respondent may be directed not to proceed in any manner pursuant to the orders dt. 06.08.2014, 12.11.2014 and 14.11.2014 under Annexures- 6, 7 and 8 respectively and in consequence.

2.4. But the Tribunal, without considering the case of the petitioner in its proper perspective, vide impugned order dated 11.02.2015, declined to entertain the Original Application taking recourse to Section 20 of the Administrative Tribunals

Act, 1985, wherein it has been indicated that the application not to be admitted unless other remedies are exhausted and, accordingly, by holding that the Original Application is premature one, dismissed the same.

3. Mr. B.K. Sharma, learned counsel appearing for the petitioner vehemently contended before this Court that the Tribunal has committed gross error apparent on the face of record by not entertaining the Original Application on the ground of availability of alternative remedy, which is not an absolute bar to entertain such application. Further, while making de-categorisation, no opportunity of hearing was given to the petitioner, nor the medical report was supplied to him and, as such, by making re-screening to the medically de-categorised persons and giving an alternative appointment against a lower rank, which amounts to reversion, no reason has been assigned for the same. Therefore, the action taken by the authority is absolutely misconceived one and cannot be sustained in the eye of law. Non-entertaining of the Original Application by the Tribunal, in view of Section 20 of the Administrative Tribunals Act, cannot have any justification because the expression "ordinarily" in Section 20 (1) of the Act in the context means "generally", but not always or in all cases. In other words, normal rule is that the applicant should first avail of the departmental or other prescribed remedy available to him before applying to the Tribunal under Section 19 of the Act. Therefore, even if Section 20 of the Act puts a mandate to go for alternative remedy, that itself cannot debar the petitioner to approach the Tribunal because the petitioner had already been appointed and rendered service for more than six years and also got a promotion and the action was taken by the authority without giving opportunity of hearing and without complying the principle of natural justice. As such, denial of benefit to the petitioner on the ground of alternative remedy cannot be sustained. To substantiate his contention, learned counsel for the petitioner has placed reliance on *Narendra Kumar Behera v. Orissa Administrative Tribunal*, 89 (2000) C.L.T. 148; *Sanjay Pradhan v. State of Odisha and others*, 2021 (II) OLR-486; *State of Punjab v M/s. Bandeep Singh and others*, (2016) 1 SCC 724; *M/s Ranjit Construction v State of Odisha & others*, 2018 (I) OLR-808; and *Purna Chandra Hota and others v. Sambalpur University and others*, 2019 Vol-1 OLR-5.

4. Mr. D. Gochhayat, learned Central Government Counsel appearing for Railway Department contended that since there is availability of alternative remedy, the petitioner could not have approached the Tribunal by filing Original Application. Apart from the same, since the petitioner, after being de-categorised, was allowed to go for de-novo screening and on re-screening he was given appointment in alternative category as ECRC in P.B.-1 with G.P. of 2800/- in Commercial Department, which has been issued in terms of RBE No. 41/2013 (Estt. Srl. No. 63/2013), thereby no illegality or irregularity has been committed by the authority while passing such order and, therefore, the same does not require interference of this Court at this stage. It is further contended that as per the Railway Board's order bearing RBE No. 41 of 2013, the medically de-categorised employee, who were absorbed under 5th CPC provision, were

required to undergo de-novo screening for alternative absorption in similar post and grade pay and, as such, the petitioner, along with two other medically unfit Goods Guards, who were also declared medically unfit on 23.04.2009 and 18.04.2009, by following the amended guidelines prevailing as per 6th PC, attended the de-novo screening on 31.10.2014. As such, decision has been taken in Zonal Level in the 27th Zonal PNM meeting held on 7th and 8th August, 2013, vide letter dated 23.08.2013, for review of such type of cases. Consequentially, all those three employees, including the petitioner, who were declared medically unfit, attended the screening conducted by the authority and were adjusted against the post of ECRC in PB-1 with G.P. of 2800/- in Commercial Department. It has also been contended that scale of pay, i.e., Rs.4500-7000/-(5th CPC) of Goods Guard has been revised in 6th CPC as PB-1 with G.P.-2800/-. In medical unfit cases they can only be considered in similar G.P. in their suitable alternative medical classification and their absorption in higher G.P. was pointed out as irregular and for that de-novo screening was made and necessary correction was made placing them in similar G.P. relating to their medical classification. Thereby, no illegality or irregularity has been committed by the authority concerned by giving such alternative appointment to the petitioner. It is thus contended that instead of availing alternative remedy against the orders passed by the authority since the petitioner has approached the Tribunal by filing Original Application, the Tribunal is well justified in dismissing the Original Application and permitting the petitioner to pursue the matter before the appropriate forum. Thereby, the order so passed by the Tribunal does not require interference by this Court.

5. This Court heard Mr. B.K. Sharma, learned counsel for the petitioner and Mr. D. Gochhayat, learned Central Government Counsel appearing for the opposite parties in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. Before delving into the core issue involved in this writ petition, it is relevant to quote the different provisions of RBE No. 89/1999 issued by the Government of India (Bharat Sarkar) Ministry of Railway/ Rail Mantralaya (Railway Board) on 29.04.1999.

"1301. A Railway servant who falls in a vision test or otherwise by virtue of disability acquired during service becomes physically

incapable of performing the duties of the post which he occupies should not be dispensed with or reduced in rank, but should be shifted to some other post with the same pay scale and service benefits.

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1303. The railway servants both in group (i) and group (ii) of para 130 above cease to perform the duties of the posts they are holding from the date they are declared medically unfit for the present post. No officer has the authority to permit the Railway Servant concerned to perform the duties in the post beyond

that date. If such a Railway Servant cannot be immediately adjusted against or absorbed in any suitable alternative post he may be kept on a special supernumerary post in the grade in which the concerned employee was working on regular basis before being declared medically unfit pending location of suitable alternative employment for him with the same pay scale and service benefits; efforts to locate suitable alternative employment starting immediately. The special supernumerary post so created will stand abolished as soon as the alternative employment is located.

1304. Disabled Medically decategorised staff to be absorbed in posts they can adequately fill: - In the matter of absorption of disabled/medically decategorised staff in alternative posts, Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilised. While finding alternative posts for absorption of disabled/medically decategorised staff, the Railway Administration should ensure that the interests of other staff in service are not adversely affected and no reversion of any officiating Railway servant is made to absorb the disabled/medically decategorised staff. For this purpose, attempts should be made to absorb the disabled/medically decategorised Railway servant not only within the Unit/Division or Department, but in other Unit/Division or Department.

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1307. Element of Running Allowance to be reckoned while finding alternative post to disabled medically decategorised running staff :-In order to determine the same scale of pay for the purpose of absorbing a disabled/medically decategorised running staff in the alternative employment, an amount equal to such percentage of pay in lieu of running allowance as may be in force may be added to the minimum and maximum of the scale of Pay of the running staff. If the scale of Pay so arrived at not identical with the scale of Pay already existing, the same may be replaced by the equivalent existing scale of pay."

So far as Clause-1306 of the said RBE is concerned, it is provided that with a view to determine the categories, in which the disabled/ medically decategorized railway servant is suitable for absorption, a committee should examine him. After the committee has examined the railway servant and determined his suitability for certain categories of posts, the office, under which the railway servant was working, will proceed to take further action to find suitable alternative for him.

7. Keeping in view of the aforesaid provision providing alternative employment to a de-categorized employee of railway, a committee was constituted in the year 2008 which, in its own wisdom and keeping in view the statutory provisions, declared the petitioner as medically de-categorized, as he was having vision problem, and as a matter of alternative employment, the committee found him

fit to accommodate him against the post of Section Controller in the scale of Rs.5,500-9,000/- and, therefore, the petitioner was allowed to perform for a considerable period of service and his name was recommended by the D.P.C. for promotion to the post of Chief Controller and in the meantime, 6 and half years had been passed and at that point of time in the name of re-screening he was compelled to appear before the Screening Committee. As a matter of fact, while such orders were passed, no opportunity of hearing was given to the petitioner. Such action of the authorities is in gross violation of principle of natural justice.

8. 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, exp. Hosenball*, Geoffrey Lane, LJ, 1977 3 All ER 452 (DC & CA), preferred the homely phrase 'common fairness' in defining natural justice.

8.1. 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".

8.2. In *Swadeshi Cotton Mills v. Union of India*, AIR 1981 SC 818, the meaning of natural justice came up for consideration and the apex Court held as follows:-

"The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of cast-iron formula. Historically, "natural justice" has been used in a way, "which implies the existence of moral principles of self evident and unarguable 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".

8.3. In *Bhagwan v. Ramchand*, AIR 1965 SC 1767, the apex Court held that 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.

8.4. In *Shridhar v. Nagar Palika, Jaunpur*, AIR 1990 SC 307, the appellant was appointed to the post of Tax Inspector. His appointment was cancelled by the

authorities on the representation made by a departmental candidate who contended that a Tax Inspector's post should have been exclusively filled up by promotion. The authority as well as the High Court proceeded on the assumption that the extant Government orders provided for filling up the post of Tax Inspector exclusively by promotion and therefore the appellant's appointment was illegal. The Supreme Court did not agree with the interpretation of the Government order made by the High Court. But, the Court proceeded to observe that since the order of appointment had conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording an opportunity of hearing to him. The Court observed as follows:

"It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's Order had been passed without affording any opportunity of hearing to the appellant therefore the order was illegal and void."

8.5. In *Rajendra v. State of Maharashtra*, (2008) 11 SCC 90, the apex Court held that even if the appointment is by mistake, the abrupt withdrawal of the same after the employee has worked for 17 months amounts to violation of natural justice.

8.6. The aforesaid view has been taken by this Court in the case of *Purna Chandra Hota and others v. Sambalpur University and others*, 2019 (I) OLR-5, where one of us (Dr. Justice B.R. Sarangi) was the member

9. It is also made clear that vide order dated 26.02.2008, after conducting medical examination and having been declared as medically de-categorised, the petitioner was absorbed as Section Controller in the opposite party department, but by virtue of the impugned office orders, he has been directed to work as Enquiry-cum-Reservation Clerk in the Commercial Department, with a lesser scale of pay and grade pay, which also cannot be sustained in the eye of law. Though the petitioner had been given employment but that cannot be in the scale of pay lower to the scale of pay, which he was getting.

10. Reliance has been placed by the opposite parties in their counter affidavit on the Railway Board's circular dated 30.04.2013, in order to justify the impugned office orders, but first of all the said circular dated 30.04.2013 does not deal with the issue involved in the writ petition, rather the said circular may apply prospectively and any amendment cannot be made retrospectively, which curtails the vested right accrued in favour of the petitioner, who had already rendered service for more than six years.

11. In the Constitution Bench decision in the case of *Chairman, Railway Board and others v. C. R. Rangadhamaiah and others*, AIR 1997 SC 3828, the Supreme Court was considering the amendment brought into Rule-2544 of the Indian

Railway Establishment Court, Vol. II (Fifth Reprint), which was given retrospective effect. The said Rule was amended by Notification No. G.S.R. 1143 (E) with effect from 01.01.1973 and by Notification No. G.S.R. 1144 (E), the amendment was made with effect from 01.04.1979. The Supreme Court, in paragraph - 20 of the said judgment held as follows:-

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively".

11.1. Again in paragraph 24 of the said judgment in the case of Chairman, Railway Board and others (*supra*), it was held thus:-

"24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in *Roshan Lal Tandon* (AIR 1967 SC 1889) (*supra*); *B.S. Yadav* (AIR 1981 SC 561) (*supra*) and *Raman Lal Keshav Lal Soni* (AIR 1984 SC 161) (*supra*)".

11.2. Ultimately, it was held by the apex Court that the impugned amendments, in so far as they have been given retrospective operation, are violative of the rights guaranteed under Articles 14 & 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments have the effect of reducing the amount of pension that has become payable to the employees, who had already retired from service on the date of issuance of the notifications as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

11.3. Therefore, in the aforesaid Constitution Bench decision, it has been emphasized that the right of an employee, which has accrued in his favour on the date he retired, cannot be taken away by amending the Rules retrospectively prior to his retirement.

12. In the case of *State of Madhya Pradesh and others v. Yogendra Shrivastava*, (2010) 12 SCC 538, the Supreme Court was considering the amendment brought

to Madhya Pradesh Employees' State Insurance Service (Gazetted) Recruitment Rules, 1981 by Notification dated 20.05.2003 giving it a retrospective effect from 14.10.1982. By the said amendment, the earlier provision in the Rule prescribing payment of None Practising Allowance @ 25% of pay was amended to the effect that "NPA at such rates as may be fixed by the State Government from time to time by the orders issued in this behalf in place of words "NPA @ 25% of the pay" wherever they occurred in the Rules.

12.1. On considering the said question, the Supreme Court, in paragraph-15 of the said judgment in the case of Yogendra Shrivastava (supra) held as follows :-

15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C. Singhal v. Armed Forces Medical Services ; K.C. Arora v. State of Haryana and T.R. Kapur v. State of Haryana). Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to the non-practising allowance @ 25% of their pay up to 20-5-2003."

13. In a large number of cases, the apex Court has categorically laid down that the right of an employee, which accrued in his favour on the date of appointment, cannot be taken away by the amending provisions of the Rules concerning the service with retrospective effect. An employee, while entering into service, is subjected to the condition of service as on the date, when he joins. Any right given to such employee under the provision of any Act or Rules governing the employment, if taken away by amending such Rules with retrospective effect, the same would amount to violating the Rules under Articles 14 & 16 of the Constitution.

14. The aforesaid view was followed by this Court in the case of Shri Anand Dash and seven others v. State of Orissa and others, 2014 (Supp-I) OLR-754 and the said judgment of this Court has been confirmed by the apex Court in Special Leave to appeal (C) No. (s) 35462-35464 of 2014 decided on 09.03.2018.

15. In Sanjay Pradhan (supra), this question has also been considered and it has been held that accrued right cannot be taken away by applying a circular retrospectively, which affects the vested right of an employee.

16. It appears that when illegalities have been committed by giving an alternative employment to the petitioner not befitting to his post and carrying lesser scale of pay and nothing has been placed on record, so far as the impugned office orders are concerned, to indicate that the petitioner has been extended with the benefit at par with the scale of pay which he was getting. But effectively, if we look into the scale of pay granted to the petitioner and the

grade pay attached to the same, it would be evident that it is much less than what he was getting. However, the opposite party-authorities have tried to justify their action by way of counter affidavit. But law is well settled that if any justification is made by way of affidavit subsequently, that cannot have any bearing, because the fresh reasons supplemented in the counter affidavit, bereft of the impugned office orders, cannot be sustained in the eye of law, in view of the judgment of this Court in *M/s Shree Ganesh Construction v. State of Orissa*, 2016 (II) OLR 237, which has been passed by following the judgment of the apex Court in *Mohinder Singh Gill v The Chief Election Commissioner, New Delhi*, AIR 1978 SC 851.

In paragraphs-7 and 8 of the judgment in *Shree Ganesh Construction* mentioned supra, this Court observed as under:-

"7. In the counter affidavit filed, the reasons have been assigned, which are not available in the impugned order of cancellation filed before this Court in Annexure-4 dated 5.2.2016. More so, while cancelling the tender, the principles of natural justice have not been complied with. It is well settled principle of law laid down by the Apex Court in *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others*, AIR 1978 SC 851 that :

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Otherwise an order bad in the beginning may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out."

8. In *Commissioner of Police, Bombay v. Gordhandas Bhanji*, AIR 1952 SC 16, the Apex Court held as follows :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

17. In *Oryx Fisheries Pvt. Ltd v. Union of India* (2010) 13 SCC 427, where reliance has been placed on *Kranti Associates Pvt Ltd v. Masood Ahmed Khan*, (2010) 9 SCC 496, in paragraph-41 it was observed as follows:-

"41. In *M/s Kranti Associates* (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below

a. In India the judicial trend has always been to record reasons, even in

administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ

405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

The above view has also been followed by the apex Court in the case of State of Punjab v M/s. Bandeep Singh and others, (2016) 1 SCC 724, and by this Court in the case of M/s. Ranjit Construction (supra).

18. The petitioner having been duly appointed on 18.07.2008 as Section Controller, on being medically de-categorised, a vested right accrued in his favour and on that basis the petitioner has been given promotion on 24.11.2011. Such right of the petitioner could not have been taken away /disturbed/ changed without complying with the principles of natural justice. Therefore, the action of the authorities is arbitrary, unreasonable and contrary to the provisions of law and cannot be sustained in the eye of law.

19. When the petitioner approached the Tribunal by filing the Original Application, the same was not entertained in view of Section-20 of the Tribunal's Act, which reads as follows:-

20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be of one of the remedies which are available unless the applicant had elected to submit such

memorial.

20. The aforementioned Section 20 of the Tribunal's Act provides that the Tribunal shall not "ordinarily" admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. There is no iota of doubt that against the orders so passed by the authorities, there is availability of alternative remedy of preferring appeal. But fact remains, in the instant case, the Tribunal, having entertained the Original Application, kept it pending and ultimately dismissed the same on the ground of availability of alternative remedy. Therefore, it is to be examined, whether the Tribunal is justified in doing so. On careful appraisal of the provisions contained in Section 20 of the Act, this Court is of the considered view that the Tribunal has lost sight of the word "ordinarily" occurring in Section 20(1) of the Act. The expression "ordinarily" occurring in Section 20 (1) of the Act in the context means generally but not always or in all cases.

21. In *State of Andhra Pradesh v. V. Sharma Rao*, AIR 2007 SC 137, the word 'ordinarily' has been considered by the apex Court. Similarly, in *Kailash Chandra v Union of India*, (1962) 1 SCR 374 :AIR 1961 SC 1346 and *Krishna Gopal v Shri Prakash Chandra*, (1974) 1 SCC 128, it has been observed that the word "ordinarily" means "normally".

22. In *Eicher Tractors Ltd. v. Commissioner of Customs*, (2001) 1 SCC 315: AIR 2001 SC 196 (198), the apex Court held that the word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances.

23. In other words, normal rule is that the applicant should first avail the departmental and other prescribed remedies available to him before applying the Tribunal under Section 19 of the Act. Section 20 of the Act does not oust the jurisdiction of the Tribunal to entertain the application, but it only requires an applicant to exhaust other remedies available to him under the relevant service rules. The Tribunal for the reasons stated above should not have dismissed the Original Application as premature on the ground of availability of alternative remedy.

24. The meaning of premature is happening, or being performed before proper or usual or appointed time. Thereby, the Tribunal has committed gross error apparent on the face of record by holding that the Original Application is premature, because by that time the order has already been passed by medically de-categorising the petitioner on resorting to re-screening by a committee by giving alternative employment in the post of ECRC in PB-1 with Grade Pay of 2800/- in commercial department. Therefore, it cannot be construed to be premature on the ordinary parlance of the meaning attached to the same. As such, the order of the Tribunal cannot be sustained in the eye of law.

25. In view of the facts and law, as discussed above, this Court is of the considered view that the office order dated 06.08.2014 under Annexure-6, the office memorandum dated 12.11.2014 under Annexure-7 and the office order

dated 14.11.2014 under Annexure-8, by which the petitioner was extended with the alternative employment as ECRC in PB-1 with Grade Pay of Rs.2800/-, so far as they relate to the petitioner, cannot be sustained in the eye of law and the same are liable to be quashed and are hereby quashed. Consequentially, the order dated 11.02.2015 passed by the Tribunal in O.A. No. 260/0071 of 2015 under Annexure-13 also cannot be sustained and is liable to be set aside and is hereby set aside. As a consequence thereof, the petitioner is entitled to continue in the post of Chief Controller of Sambalpur Division under East Coast Railway in PB-2 with Grade Pay of Rs.4600/-, on being promoted to the said post on 24.11.2011 from the post of Section Controller having the scale of pay of Rs.5500-9000/- (RPS), which had been extended to him after being medically de-categorised, vide order dated 18.07.2008, basing on the recommendation made on 26.02.2008. Accordingly, the petitioner is entitled to get all consequential benefits as due and admissible to him in accordance with law.

26. In the result, therefore, the writ petition is allowed. But, however, in the facts and circumstances of the case, there shall be no order as to costs.

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