



2025:CGHC:46664-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WA No. 671 of 2025**

Anil Sinha S/o Shri T.R. Sinha, aged about 56 years Presently Working as Deputy Secretary, Law and Legislative Department, Mahanadi Bhawan, Mantralay Nawa Raipur Atal Nagar Raipur District- Raipur (Chhattisgarh) (Appellant)

... Appellant**versus**

State of Chhattisgarh Though Principal Secretary, Law and Legislative Department, Mahanadi Bhawan, Mantralay Nawa Raipur Atal Nagar Raipur District- Raipur (Chhattisgarh) (Non-Applicant)

... Respondent

For Appellant	: Mr. Santosh Kumar Pandey, Advocate
For Respondent/State	: Mr. Y.S. Thakur, Addl. Adv. General

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****11.09.2025**

1. Heard Mr. Santosh Kumar Pandey, learned counsel for the appellant as well as Mr. Y.S. Thakur, learned Additional Advocate General for the State/respondent.
2. This is an intra-Court appeal filed against the impugned order dated 04.08.2025 passed by the learned Single Judge in Writ Petition (S) No. 4850 of 2021 (***Anil Sinha vs. State of***

Chhattisgarh) by which the learned Single Judge has dismissed the writ petition filed by the writ petitioner / appellant herein.

3. Brief facts necessary for disposal of this appeal are that the appellant / writ petitioner was posted as an Under Secretary in the Law and Legislative Affairs Department. He belongs to the other backward class. He was within the zone of consideration for promotion to the post of Deputy Secretary. The Departmental Promotion Committee (for short 'DPC') for promotion to the post of Deputy Secretary was convened in the year 2012, wherein Annual Confidential Report (s) (for short 'ACR or ACRs') of 05 years of the petitioner were considered. The ACR of the petitioner for the Year 2007 was 'Very Good'; Year 2008 was 'Good', Year 2009 was 'Very Good'; Year 2010 was 'Very Good' and ACR of the Year 2011 was not placed, whereas the ACR of 2012 was 'Good' and awarded grades were A, C, A, B and B respectively. It is the further case of the petitioner that he should have been awarded a total of 13 marks according to the schedule, but the Committee awarded him only 11 marks against the ACRs.
4. The petitioner made a representation with a prayer to convene a review DPC, but it was not considered. The petitioner filed WPS No. 96/2021, and it was disposed of vide order dated 25.01.2021. The respondents were directed to decide the pending representation of the petitioner in accordance with the law, preferably within a period of 90 days.
5. In compliance with the order dated 25.01.2021, a review DPC was

convened on 11.05.2021 comprising the Chief Secretary (Chairman), Principal Secretary Law (Member), Manish Kumar Thakur-Additional Secretary (Law) and Umesh Kumar Katiya-Additional Secretary (Law), who were the members of the Committee. The petitioner was found suitable for promotion, and his name was accordingly recommended for promotion to the post of Deputy Secretary. The note-sheet was approved by the Law Minister on 12.05.2021, and on 13.05.2021, it was also approved for the issuance of the promotion order. The promotion order was issued on 17.05.2021 with certain conditions.

6. Being aggrieved by the conditions No. 2 and 3 mentioned in the order of promotion dated 17.05.2021, the appellant has filed a writ petition before this Court which was registered as WPS No. 4850 2021, pleading therein that conditions No. 2 and 3 mentioned in the order of promotion dated 17.05.2021 are arbitrary, illegal and unconstitutional and are unwarranted and uncalled for. In condition No. 2, it is stated that the promotion of the petitioner dated 17.05.2021 would be subject to the final decision of the objection raised with regard to his earlier promotion. It is further stated that if the objection is decided against the petitioner, the promotion of the petitioner to the post of Deputy Secretary would be canceled automatically. Condition No. 3 states that the decision with regard to the grant of annual increment would be taken immediately after the Office of the Accountant General, Raipur decides the issue of excess payment of Rs.10,84,868/-. The further case of the

petitioner is that a representation was made for deletion of conditions No. 2 and 3 on 09.06.2021, and it was rejected vide order dated 23.07.2021. The said writ petition was dismissed by the learned Single Judge vide impugned order dated 04.08.2025. Hence, this appeal.

7. Mr. Santosh Kumar Pandey, learned counsel for the appellant / writ petitioner vehemently argued that the learned Single Judge has not decided the matter on merits in the light of all grounds and arguments at length raised by the appellant/ petitioner. He further argued that it is settled principle of law that, no employee can be reverted without giving proper opportunity of hearing, therefore the condition as para 2 and 3 of the impugned promotion order, is per-se illegal and arbitrary and also against the violation of Article 311 of the Constitution of India. He also argued that the learned Single Judge has failed to appreciate the fact that the review DPC headed by Chief Secretary of the State dated 11.05.2021 has been concluded after due approval of the Law Minister on 12.05.2021, therefore the further condition leveled as para 2 and 3 of the impugned order dated 17.05.2021 is *void-ab-initio* and liable to be set-aside up to the extent of condition of para 2 and 3. It is submitted that both conditions are against the principles of natural justice.
8. Mr. Pandey submitted that the details of the pending cases against the appellant / petitioner were available with the Department, even though the decision was taken to promote the petitioner in review

DPC and thus the DPC ignored the pending inquiries despite its knowledge. He further submitted that the decision to promote the petitioner to the post of Deputy Secretary was approved by the Law Minister as well as the Secretary of the Department; therefore, there was no occasion for the respondent to insert such vague and unwarranted conditions. He also submitted that as per the para 9 of the impugned order, the learned Single Judge has wrongly interpreted the facts of the case and mentioned that, the petitioner had joined the promoted post without raising any objection, ignoring the representation made by petitioner as Annexure P-4 which has been rejected on 13.07.2021. There is no prohibition to challenge the part of order/ condition after joining or compliance of the impugned promotion order.

9. Mr. Pandey contended that the learned Single Judge has wrongly appreciated the fact that the petitioner has failed to disclose two matters which is related with wrongly promotion and recovery ignoring the fact that, the entire correspondence done by the DPC headed by Chief Secretary having the entire records of petitioner and recommended the name of petitioner for grant of promotion. The DPC is not a Court or *quasi judicial* authority which provides the rights of hearing to the petitioner, thus this conclusion drawn by the learned Single Judge is *void-ab-initio*. It is further contended that the learned Single Judge wrongly drawn order sheet in para 10 that, "the Committee considered it necessary to insert conditions No. 2 and 3 in the order of promotion", but here in

this matter, Secretary Law itself inserted that condition illegally in the impugned order.

10. Mr. Pandey submitted that the learned Single Judge has wrongly drawn order sheet in para 11 that, "Conditions No. 2 and 3 were part of the note sheet of the review DPC and the decision to insert conditions was approved unanimously by the Committee" but here in this matter, Secretary Law itself has inserted that conditions illegally in the impugned order and there is no any condition framed by the DPC in the note sheet. With regard to the observation made learned Single Judge in para 12 of the impugned order that, the petitioner accepted the order of promotion and after accepting the order of promotion, moved a representation to quash Condition Nos. 2 and 3, it is submitted that there is no prohibition for it. So far the observation made by learned Single Judge that the pending inquiries against the petitioner cannot be quashed indirectly by allowing this petition is concerned, it is submitted that at the time of issuance of impugned promotion order, there is no inquiry ever been pending against the petitioner and the objection raised by the Accountant General Office has already been rejected by the Department as well as DPC.
11. It has been further submitted by Mr. Pandey that the learned Single Judge has also ignored the argument which is prevail in the matter like as Government Business Rules and Article 166 of the Constitution of India. In the instant case, the review DPC headed

by the Chief Secretary, who approved the promotion of the appellant without imposing any condition, however, the Secretary Law, against the approval of the Chief Secretary, added the condition in para 2 and 3 of the impugned order and the learned Single Judge without appreciating the mandatory law, has wrongly dismissed by writ petition. In support of his contention, Mr. Pandey, placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Central Board of Trustees Vs. Indore Composite Private Limited***, reported in ***(2018) 8 SCC 443***.

12. On the other hand, Mr. Y. S. Thakur, learned Additional Advocate General, appearing for the respondents/State opposed the aforesaid submission and submitted that the learned Single Judge after considering all the aspects of the matter has rightly dismissed the writ petition filed by the writ petitioner / appellant herein which warrants no interference. He further submitted that the name of the appellant for promotion to the post of Deputy Secretary from the post of Under Secretary was considered in the DPC convened in the year 2012, but he was not found fit. Thereafter, in pursuant to the order dated 25.01.2021 passed in WPS No. 96/2021, a review DPC was convened on 11.05.2021 comprising the Chief Secretary (Chairman), Principal Secretary Law and two Additional Secretaries (Law), who were the members of the Committee. The petitioner was found suitable for promotion, and his name was accordingly recommended for promotion to the post of Deputy Secretary. The note-sheet was approved by the Law Minister on

12.05.2021, and on 13.05.2021, it was also approved for the issuance of the promotion order, but, during the course of the meeting of the DPC, the objection of the Accountant General was brought to the notice of the Committee, wherein it is mentioned that the petitioner was wrongly promoted to the post of Under Secretary, there was an order of recovery to the tune of Rs.10,84,868/- also and in light of the objections raised by the office of Accountant General, the authorities took a decision to insert conditions No. 2 and 3 in the order of promotion to avoid the dispute and accordingly, the promotion order was issued on 17.05.2021 with the aforesaid conditions. He would state that there are serious allegations with regard to the financial irregularities, and in this regard, a letter was issued by the office of the Accountant General to the Additional Secretary, Law and Legislative Department on 08.09.2016 and the matter against the petitioner is still pending consideration before the authority concerned.

13. We have heard learned counsel for the parties and perused the impugned order and other documents appended with writ appeal.
14. From perusal of the materials available on record it transpires that the review DPC was convened for the promotion of the petitioner from the post of Under Secretary to Deputy Secretary pursuant to the order passed in WPS No. 96/2021 dated 25.01.2021, whereby the authorities concerned were directed to decide the representation made by the petitioner in accordance with the law

within a period of 90 days. The note-sheet placed on record by the petitioner would show that the Committee of 04 members was constituted to consider the claim of the petitioner. The Chairman of the Committee was the Chief Secretary, whereas the Principal Secretary (Law), Senior Additional Secretary (Law) and Additional Secretary (Law) were members. The ACRs of the petitioner for the years 2007, 2008, 2009, 2010 and 2012 were taken into consideration. It is observed by the Committee that in the year 2012, the petitioner was awarded 11 marks, and he was not found suitable for promotion. In the review DPC conducted in the year 2014, the petitioner was not found eligible for promotion, against which, he has submitted a representation to the Law Department and requested for a review DPC as of 2014. In the writ petition being WPS No. 96/2021 preferred by the petitioner, this Court vide order dated 25.01.2021 has directed to dispose of the petitioner's representation within 90 days. As the said representation can be disposed of only the Promotion Committee, therefore, the file was submitted for considering proceedings for holding a review DPC in the context of the representation of the petitioner regarding the conclusion given by the Promotion Committee in the DPC held on 17.04.2014 and accordingly, review DPC was conducted on 11.05.2021 and the Promotion Committee after re-appreciating the ACRs of the petitioner against the ACRs of 2007, 2008, 2009, 2010 and 2012 awarded him 13 marks and accordingly, he was found suitable for promotion, and his name was recommended for

promotion to the post of Deputy Secretary. The recommendation made by the Committee was approved by the Principal Secretary (Law) and the concerned Minister on 13.05.2021.

15. The Committee further considered letters issued by the office of Accountant General dated 20.04.2016 with regard to the petitioner's illegal promotion to the post of Section Officer, and further the order of recovery to the tune of Rs.10,84,868/-. It is also observed that the petitioner was not eligible for promotion to the post of Section Officer. A letter was issued by the office of the Accountant General on 17.03.2021 in this regard, and the matter is still pending consideration. In these circumstances, the petitioner was temporarily promoted to the post of Deputy Secretary with a further condition in para-2 that if any decision affecting his earlier promotion is taken by the office of the Accountant General, the promotion granted to the petitioner to the post of Deputy Secretary would be canceled automatically. In para-3, it is stated that the decision with regard to the excess payment to the tune of Rs.10,84,868/- shall remain stayed till the decision is taken by the office of the Accountant General. The note-sheet was signed by the members of DPC, and thereafter, the order of promotion was issued, stipulating the above-stated conditions.
16. The documents annexed to the petition would show that the order of promotion was issued on 17.05.2021, and the petitioner had joined the promoted post without raising any objection. A

representation was made by the petitioner on 09.06.2021 assailing conditions No. 2 and 3 of the order of promotion. The representation of the petitioner was rejected by respondent No. 1 vide order dated 23.07.2021.

17. Admittedly, when the claim of the petitioner for promotion to the post of Deputy Secretary was considered by the DPC, two matters were pending consideration before the office of the Accountant General, Raipur, the first matter relates to the wrong promotion granted to the petitioner to the post of Section Officer. The note-sheet would show that the petitioner was promoted to the post of Section Officer contrary to the service rules, whereas the second matter relates to the recovery of Rs.10,84,868/-. It appears that initially neither the aforesaid facts were brought to notice before the DPC nor the Department has taken into consideration of the aforesaid facts and accordingly, recommendation was made by DPC to given promotion to the petitioner, and recommendation made by the Committee was approved by the Principal Secretary (Law) and the concerned Minister on 13.05.2021 and when the Committee came to aware about the fact that a notice was issued by the office of the Accountant General in the year 2016 and thereafter on 08.02.2021 and note-sheet was signed by the members of DPC, and thereafter, the order of promotion was issued, stipulating the above-stated conditions. The case law relied upon by learned counsel for the appellant in the matter of ***Central Board of Trustees*** (supra) is distinguishable on the facts

and circumstances of the present case.

18. It is settled principle of law that a subordinate authority cannot typically impose conditions in a promotion order that negate or contradict a recommendation made by a higher authority, such as a Departmental Promotion Committee (DPC), unless there are specific rules or a prior disciplinary action involved. The promotion order must align with the DPC's assessment of the employee's fitness and seniority. If a subordinate authority attempts to add conditions outside the established DPC process, it may be considered an improper action and potentially invalid.
19. Admittedly, in the present case, a letter was issued by the office of Accountant General dated 20.04.2016 with regard to the petitioner's illegal promotion to the post of Section Officer, and further the order of recovery to the tune of Rs.10,84,868/-. It was also observed that the petitioner was not eligible for promotion to the post of Section Officer. Moreover, a letter was issued by the office of the Accountant General on 17.03.2021 in this regard. But, initially neither the aforesaid facts were brought to notice before the DPC nor the Department has taken into consideration of the aforesaid facts and accordingly, recommendation was made by DPC to given promotion to the petitioner on 12.05.2021 and recommendation made by the Committee was approved by the Principal Secretary (Law) as well as the concerned Minister on 13.05.2021 and thereafter, when the Committee came to know about the fact that there were serious objections raised by the

Accountant General, including financial irregularities and wrongful earlier promotion of the appellant to the post of Under Secretary, therefore, in order to protect the State's interest and avoid future complications, conditions No. 2 and 3 were lawfully inserted.

20. We also find no merit in the argument that the Secretary (Law) lacked authority to insert the conditions. The decision to impose conditions was taken at the highest level, considering the seriousness of the allegations and in the interest of administrative propriety.
21. The learned Single Judge has rightly held that the insertion of conditions was neither arbitrary nor unconstitutional. The appellant, having accepted the promotion order, cannot now challenge its conditions after availing the benefits.
22. In view of the above discussion, we find no infirmity in the order of the learned Single Judge warranting interference by this Court.
23. Accordingly, the writ appeal fails and is hereby **dismissed**. No order as to costs.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice