

O R D E R

Amar Nath Sharma.                      **vs.**                      State of Raj. & Anr.

S.B. CIVIL WRIT PETITION NO.414/93

under Article 226 of the  
Constitution of India.

Date of order : 22<sup>nd</sup> Nov., 2004

**PRESENT**

**HON'BLE MR. JUSTICE RAJESH BALIA**

Mr. Anil Bhandari for the petitioner.  
Mr. B.L. Bhati, Addl. G.A.

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**BY THE COURT :-**

Heard learned counsel for the parties.

The facts of the present case are that the petitioner was promoted as Executive Officer from Assessor in the office of Municipal Board, Abu Road. While the petitioner was working as permanent Revenue Officer Class II, at Municipal Board, Abu Road, by order dated 5.10.1991, the Director, Local Self

Government accorded promotion to the petitioner on the post of Executive Officer (Class III Municipality) against the vacancies of 1984. By order dated 29.10.1991, the Director, Local Self Government transferred the petitioner from Abu Road to Municipal Board, Padampur as Executive Officer. However, it appears that the petitioner was unable to join his duties at Padampur because he was not relieved from his parent Municipality.

In this case, the show cause notice was issued on 10.4.1995 after the petitioner submitted an Additional Affidavit in pursuance of a query raised by the Court that why he did not join at Padampur when the order was given to him and a notice was given to him alleging that while he was asked to join as Executive Officer, Municipal Board, Padampur, the Municipal Board Abu Road addressed a communication to the Director, Local Bodies on 23.11.1991 giving the reason for retaining him at Abu Road for the time being. Along with the additional affidavit, he also submitted a copy of letter issued by the Chairman, Abu Road to Director, Local Self Government dated 23.11.1991 that for certain reason he cannot be immediately relieved. It was also stated in the additional affidavit that when the impugned order dated 6.11.1992 was served upon him, he again approached the Chairman, Municipal

Board, Abu Road, and he again asked that till new person is not posted, he shall not be relieved.

In the meantime, the respondents have issued a telegram (Annex.3A) to the petitioner on 15<sup>th</sup> Sept., 1992 asking the petitioner that unless he joins at the place of his new posting, his promotion shall be cancelled, and finally by order dated 6.11.1992, the promotion order dated 5.10.1991 was cancelled. Hence, this petition.

The respondents in their reply, which was filed in 1999, has supported the order dated 6.11.1992 on the ground that since the petitioner has failed to join his new posting on promotion, his promotion was cancelled as he never joined at the place of posting.

The chain of events show that the promotion order has been made as a result of recommendations made by the Departmental Promotion Committee against the vacancies of 1984 w.e.f. 1.4.1984 on probation and he was confirmed on 1.4.1985 which is clear from Ex.2 dated 5.10.1991. This clearly goes to show that the promotion accorded to petitioner was not prospective in nature or subject to joining at the new place of posting on a transfer order being issued. After the promotion was accorded w.e.f. 1.4.1984 with

retrospective effect on probation and simultaneously on being confirmed on the promotional post w.e.f. 1.4.1985, the promotion became a concluded act w.e.f. 1.4.1984 so far the petitioner is concerned. It was not to be operative from a future date nor its benefits were postponed to a future date. The subsequent transfer order dated 29.10.1991 cannot be linked with the promotion given by the orders issued in pursuance of recommendations made by D.P.C. Its cancellation could only be by way of punishment or basic error in conferring promotion. Either is not the case set up by the respondents. The transfer to Padampur was posting order to a person who was already promoted as an Executive Officer, Class III and acquired a vested right to hold the post w.e.f. 1.4.1984 and on which he was confirmed w.e.f. 1.4.1985, unless reverted in accordance with law. The reversion, in these circumstances, would certainly amount to major punishment which could not have been imposed without holding a proper enquiry in respect of alleged misconduct.

After promotion was accorded to the petitioner and he was confirmed on the post, he was sent a telegram containing a warning that if he failed to join, his promotion shall be cancelled. Thus, the cancellation of promotion was held out as a punishment

for non-complying with the direction of transfer. However, the transfer in 1991 could not be said to be a pre condition for according promotion in pursuance of the recommendations made to the D.P.C. against the vacancies of 1984. The cancellation of such promotion for non-compliance with the transfer order was per se a major punishment of reduction in rank imposed on the petitioner which was in violation of principle of fair play and justice and contrary to provisions of Article 311. Such punishment could not have been imposed without holding an enquiry in accordance with the procedure laid down under the Rules.

The petitioner's contention that he was not relieved by his superior would have been a valid defence and could have been proved by the petitioner had the enquiry held against him, since he has been promoted lawfully.

That being the position, I am of the opinion that the impugned order Annex.4 cancelling the order of promotion of the petitioner w.e.f. 1.4.1984 cannot be sustained for any reason whatever and is hereby quashed. It is further informed that subsequent thereto the petitioner has already been promoted again on the post of Executive Officer and he is currently serving as Executive Officer.

In view thereof, it is further ordered that the promotion of the petitioner be treated as having taken place w.e.f. 1.4.1984 and confirmed on 1.4.1985 and it continued to remain in operation throughout with all consequential benefits.

The petition is accordingly allowed.

No order as to costs.

[ RAJESH BALIA ], J.

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