HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

SWP No.3039/2001
MP No.3044/2001

Date of order: 20.11.2015

Jagat Paul Singh Cheema, aged 35 years.
Son of Sardar Singh Cheema
R/o 555, Ranibagh, Jammu.

Petitioner

Versus

1. Cantonment Board, Jammu
   Through Cantonment Executive Officer,
   Jammu Cantt., Jammu.
2. President,
   Cantonment Board, Jammu.
3. General Officer Commanding in Chief,
   Northern Command,
   C/o 56 A.P.O.

Respondents

Coram:

Hon'ble Mr. Justice N. Paul Vasanthakumar, Chief Justice

Appearing counsel:

For the petitioner(s) : Mr. Ajay Abrol, Advocate
For the respondent(s) : Mr. N.P.Kotwal, Advocate.

i/	Whether to be reported in Press/Media	:	Yes
ii/	Whether to be reported in Digest/Journal	:	Yes

1. This writ petition is filed challenging the order of dismissal of the petitioner from service which was passed by 3rd respondent while reversing the decision of the Cantonment Board ordering reinstatement of the petitioner.

2. Facts in brief are that the petitioner was working as a Sectional Officer with the respondents. He was subjected to a departmental enquiry and after completion of the enquiry, he was removed from service. He challenged the order of removal

from service before the appellate authority, which dismissed his appeal by order dated 20.11.1998. Aggrieved by order of rejection of his appeal, petitioner filed SWP No.1960/1998 before this Court and the writ petition was disposed of on 04.04.2001 by observing as under:-

> "…….this petition as such is allowed. The punishing authority would re-decide the matter. The petitioner would be afforded reasonable opportunity of hearing and this hearing would be prospective in nature. As to what relief the petitioner is entitled to, would depend upon the decision which the concerned authority takes now. The relationship of master and servant shall stand revived for this limited purpose i.e. for giving opportunity of hearing to the petitioner. As indicated above, what benefit he is to get would depend upon the decision which the respondents may ultimately take. Let the hearing be given on 2nd may 2001. On this date, the petitioner would appear before the punishing authority. The said authority would take the decision on this date or on any other date to which the hearing is adjourned. Effort be made to settle the issue before 31st May 2001."

3. In terms of the judgment of this Court dated 04.04.2001, the matter was considered by the Cantonment Board on 18.05.2001 and after hearing the petitioner, the Cantonment Board decided to re-instate the petitioner in service. However, the President and one ex-officio member of the Board voted against the decision and accordingly, the matter was referred to the General Officer Commanding in Chief, Northern Command. The General Officer Commanding in Chief, Northern Command after considering the matter issued notice to the Cantonment Board and by order dated 22.11.2001 set aside the order of the Cantonment Board ordering reinstatement of the petitioner and

upheld the penalty of dismissal against the petitioner. The petitioner challenged the order of General Officer Commanding in Chief, Northern Command by filing SWP No.3039/2001 and this Court by order dated 15.02.2006 allowed the writ petition and quashed order dated 22.11.2001. The Letters Patent Appeal preferred by the Cantonment Board against the order made by the learned Single Judge, was dismissed on 07.02.2007, against which order the Cantonment Board preferred Civil Appeal No.5820 of 2012 (SLP (Civil) 21824 of 2007) before Hon'ble the Supreme Court and by judgment dated 09.08.2012 Hon'ble the Supreme Court set aside the order of this Court dated 07.02.2007 by holding that power is available with 3rd respondent to consider the matter either by reference or by *suo motto*. Hon'ble the Supreme Court remanded the matter to this Court for consideration of all the issues raised in the writ petition by the respondents.

3. Learned counsel for the petitioner has argued that the decision of the Cantonment Board dated 18.05.2001 was reversed by the 3rd respondent in exercise of powers conferred under Section 52 of the Cantonments Act, 1924 and 3rd respondent while issuing notice to the Cantonment Board only passed the order. Learned counsel for the petitioner submitted that no notice was issued to the petitioner who is the beneficiary of the order of the Cantonment Board.

4. Learned counsel for the respondents on the other hand argued that in terms of Section 52 (2) of the Cantonments Act, 1924 no notice is required to be issued to the person in whose favour the order was passed.

5. It is well settled law that the authority concerned who has to pass the order is bound to issue notice to the person who is likely to be affected unless prohibited in the Act or the Statute.

6. The requirement of observance of principles of natural justice, while deciding the rights of parties either by quasi-judicial authority or by an administrative authority is well settled. The Hon'ble Supreme Court in the decision reported in **(1974) 2 SCC 121 (Nawabkhan Abbaskhan v. State of Gujarat)** held that in Indian Constitutional Law, following of the principles of *Audi Alteram Partem* is an independent requirement and the duty to give a fair hearing is a Constitutional requirement and, failure to comply with the same is fatal. The failure of duty to hear is traversity of Constitutional guarantees and any order made without hearing the party likely to be affected and, if there is an injury and then, it is violation of the constitutional right. [See Article 21 of the Constitution of India and **Menaka Gandhi v. Union of India (1978) 1 SCC 248**.

In the decision reported in **(1980) 4 SCC 379 (S.L.Kapoor v. Jagmohan and others),** the Hon'ble Supreme Court held that only in cases of admitted or indisputable facts which speaks for

itself and, only when one conclusion alone is possible, the Court may not issue its writ to compel the observance of principles of natural justice, as in such cases issuing writ for violation of natural justice is futile and the principles of natural justice will satisfy the general principle that justice should not only be done, but must manifestly and undoubtedly be seen to be done.

In the decision reported in **(1981) 1 SCC 664 (Swadeshi Cotton Mills v. Union of India)**, the Hon'ble Supreme Court held as follows:-

> "106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Dr.Bina Pani (1967) 2 SCR 625, Kraipak (1969) 2 SCC 262, Mohinder Singh Gill (1978) 1 SCC 405, Menaka Gandhi (1978) 1 SCC 248. They are now considered so fundamental as to be 'implicit in the concept of ordered liberty' and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. ...."

The Hon'ble Supreme Court, in the decision reported in **AIR 1990 SC 1402 (Km.Neelima Misra v. Dr.Harinder Kaur Paintal and others**) held that an administrative order, which involves civil

consequences must be made consistently by following the principles of natural justice. Paragraph 19 of the said judgment, reads as follows:-

> "19. ..... An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called 'purely administrative' and there is no third category. ...."

In the decision reported in (2002) 3 SCC 302 **(State of Karnataka and another v. Mangalore University Non-Teaching Employees' Association and others**), the Hon'ble Supreme Court held that only in cases where there is no possibility of prejudice by not issuing notice, the High Court under Article 226 of Constitution of India need not set aside the action of the Government for non-compliance of the principles of natural justice.

The Hon'ble Supreme Court in the decision reported in **(2009) 12 SCC 40 (Uma Nath Pandey and others v. State of U.P. and another)**, held that principles of natural justice are those rules, which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure/action taken by a judicial, quasi-judicial and administrative authority, while making an order affecting those rights and, these rules are intended to prevent such authority from doing injustice and will exclude arbitrariness and enhance the quality of administrative justice. The old distinction between

a judicial act and an administrative act has been obliterated, withered away and now even an administrative order, which involves civil consequences must be consistent with the rules of natural justice and civil consequences encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental and, it is fair play in administrative action.

In the decision reported in **(2009) 14 SCC 690 (Prakash Ratan Sinha v. State of Bihar and others)**, the Hon'ble Supreme Court held that the action of cancelling the promotion attaches civil consequences. The persons who are likely to be affected in cancelling the promotion are bound to be heard, if there is a power to decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made. The adherence to principles of natural justice by all civilized Nations is of supreme importance when a quasi-judicial authority or administrative authority is called upon to determine the dispute between the parties involving civil consequences.

The Hon'ble Supreme Court in the decision reported in **AIR 2011 SC 2709 (Kesar Enterprises Limited v. U.P. and others)**, following the earlier decisions, held that following of principles of natural justice will prevent the challenge of the action taken as an arbitrary decision.

6. In this case no notice has been issued to the petitioner who is the beneficiary of the order, therefore, the order passed by the 3rd respondent is contrary to the principles of natural justice and is liable to be quashed.

7. In such circumstances, the order passed by 3rd respondent is set aside directing the 3rd respondent to pass fresh order in accordance with law after issuing notice to the petitioner, calling for objections and after considering the objections to be filed. The said exercise is directed to be completed within a period of two months from the date copy of the order is made available to respondent No.3.

8. No costs.

(N. Paul Vasanthakumar)
Chief Justice

Jammu,
20.11.2015
Vijay