

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14913 of 2014

Devjeet @ Debjit Nandy ***Petitioner***
Mr. H.K. Mohanty, Advocate

Vs.

State of Orissa & Ors. ***Opposite parties***

Mr. A.K. Mishra, AGA
(O.Ps.1, 3 & 4)
Mr. B.B. Mohanty, Advocate
(O.P.2)

CORAM:

DR. JUSTICE B.R. SARANGI
MISS JUSTICE SAVITRI RATHO

ORDER
29.03.2022

Order No.

11

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Mishra, learned Addl. Government Advocate for the State-opposite parties and Mr. B.B. Mohanty, learned counsel for opposite party no.2.

3. In the present writ application the petitioner has challenged the order dated 02.07.2014 passed by the Odisha Administrative Tribunal, Bhubaneswar in O.A No. 3261 of 2013 whereby the Tribunal was pleased to conclude as follows:-

“We are, therefore, of the clear opinion that by the date the D.P.C. was convened no disciplinary proceeding was pending against the applicant. The sealed cover procedure adopted in his case, therefore, appears to be unauthorized and against the Rules. Accordingly, we direct the respondents to open the sealed cover so far as it relates to the applicant in the D.P.C. proceeding dtd. 16.09.2013 and to take follow up action thereon. In case it is found after opening the sealed cover that the applicant is found to be suitable for promotion, he be promoted with retrospective effect i.e. with effect from the date from which his juniors have been promoted with all consequential service and financial benefits.”

4. The Tribunal relying on the judgment of the Hon’ble Supreme

Court of India rendered in the case of *Union of India vs. K.V.Janki Raman*, AIR 1991 SC 2010 came to hold that it can be said that the memorandum of charge was served on the applicant prior to the date of DPC or promotion order was issued. Consequently, the Tribunal came to hold that the order dated 02.07.2014 under Annexure-2 was not sustainable in the eye of law and the Tribunal directed the same to be quashed.

5. Mr. B.B. Mohanty, learned counsel for private opposite party No.2 submits that during the pendency of the writ petition before this Court, the departmental proceeding which had been initiated against the opposite party has also concluded and there exists no legal impediment for consideration of the opposite party (applicant in the O.A.) for promotion in accordance with law, while reserving his rights seeking challenge to the order of the disciplinary authority, if he is so advised.

6. After hearing the learned counsels for respective parties and perusing the order passed by the Tribunal, we are in respectful agreement of the points raised before the Tribunal and its determination vis-à-vis the scope for consideration of pendency of the disciplinary proceeding and for the purpose of denying promotion, We respectfully agree with the view expressed by the Tribunal in the order impugned and further keeping in view the subsequent event which have occurred, we find no reason whatsoever to entertain the present challenge to the order of the Tribunal.

Hence, the writ petition is dismissed.

Interim order, if any, stands vacated.

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(**DR. B.R. SARANGI**)
JUDGE

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(**SAVITRI RATHO**)
JUDGE

