

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 18349 of 2015

*State of Odisha, Works Department,
Bhubaneswar*

Petitioner

Mr. S. Rath, ASC

Vs.

*Registrar, OAT, Bhubaneswar and
others*

*Opposite Parties
Mr. S.B. Jena, Adv.*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

23.06.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Rath, learned Addl. Standing Counsel for the petitioner-State and Mr. S.B. Jena, learned counsel for the opposite party.

3. The State has filed this writ petition seeking to quash the order dated 24.04.2015 passed in O.A. No.2336 of 2014, by which Odisha Administrative Tribunal, Principal Bench, Bhubaneswar has disposed of the original application with a direction to the petitioner-State to open the sealed cover in respect of the promotion of the applicant to the rank of Assistant Executive Engineer (Civil), within a period of one month and to give effect to the recommendation of the DPC dated 14.08.2014, within the same period and to give promotional benefit to the applicant with effect from the date from which his immediate junior was given such promotion, if he is found suitable for such promotion after re-opening the sealed cover.

4. Mr. S. Rath, learned Addl. Standing Counsel for the petitioner-State contended that the tribunal has committed gross error apparent on the face of record by passing the order impugned

that the tribunal has not taken note of the circular dated 28.05.2012, which deals with promotion of government servants against whom disciplinary/criminal proceedings are pending. In the said circular, it has been clarified that the sealed cover procedure shall be adopted in all criminal cases where cognizance has been taken by the court and, as such, the said circular supersedes the department circular dated 15.01.1999. Thereby, the direction issued by the tribunal is contrary to the instructions issued by the Government, as mentioned above.

5. Mr. S.B. Jena, learned counsel for the opposite party no.2 contended that in view of the G.A. Department office memorandum dated 18.02.1994 and relying upon the judgment of the apex Court in the case of *State of Punjab v. Chamanlal Goyal*, (1995) 2 SCC 570, direction has been given to open the sealed cover. Thereby, the tribunal has not committed any error apparent on the face of the record so as to warrant interference of this Court at this stage.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that opposite party no.2 entered into government service as Junior Engineer on 22.11.1982 and subsequently after reorganization of engineering cadre, he got promotion to the rank of Asst. Engineer by way of up-gradation and was placed at sl.no.13. A vigilance case vide Sambalpur Vigilance P.S. Case No.18 dated 17.04.1999 was registered against opposite party no.2 on the allegation of misappropriation of government money to the tune of Rs.68,280/- by falsifying the official records and without construction under million wells and Indira Awas Yojana house scheme for the beneficiaries.

Thereafter, on 17.07.2002, a departmental proceeding under Rule-15 read with Rule-17 of OCS (CC&A) Rules, 1962 was initiated against opposite party no.2 on the selfsame charges, where government has exonerated him from all the charges. A departmental promotion committee was convened during the month of September, 2014 to consider the promotion of Asst. Engineers to the rank of Asst. Executive Engineer. Though the DPC considered the case of the opposite party no.2, the recommendation of the DPC in respect of opposite party no.2 was kept in the sealed cover on the ground of pendency of criminal case against him for which his immediate juniors got such promotion. The criminal case is continuing for last 14 years and till date the same is sub-judice in the court of Special Judge, Vigilance, Cuttack and, as such, it is not known about closure of such proceeding. The Government in its office memorandum dated 18.02.1994 have laid down the guidelines to deal with the promotion of officers against whom departmental proceeding/criminal cases are pending. In paragraph-8 of the said memorandum, it was observed that such cases should be reviewed in every six months and the review should inter alia, take note of the progress made in the departmental proceeding/criminal prosecution and further measures to be taken to expedite their completion. The reliance placed on the circular dated 28.05.2012 by the State Counsel only indicates with regard to the fact that sealed cover procedure shall be adopted in all criminal cases where cognizance has been taken by the court, but the same has nothing to do with the circular dated 18.02.1994 where procedure has been envisaged with regard to the opening of sealed cover

procedure. Reference has also been made to the judgment of the apex Court in the case of **Chamanlal Goyal** (supra), wherein it has been observed that since there is undue delay in disposal of the criminal cases the applicant should not be victimized by keeping his promotion in sealed cover for an indefinite period. Thereby, the tribunal is well justified in passing the order impugned, which does not warrant any interference of this Court. More so, while entertaining this writ petition in the year 2015, opposite party no.2 was of 53 years and, as such, this Court has not passed any interim order protecting the interest of the petitioner. Furthermore, there was direction of the tribunal to implement the order within a period of one month and, as such, the said period has already been over long since and in the meantime opposite party no.2 must have retired from service on attaining the age of superannuation.

7. In such view of the matter, this Court is not inclined to entertain this writ petition, which is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE