

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 7990 OF 2016

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Ramakanta Parija Petitioner

-Versus-

Deputy Chief Mining Engineer,
Sub-Area Manager, Belpahar,
Sub Area, IB Valley Area,
Jharsuguda Opp. Party

For Petitioner : Mrs. U.R. Padhi,
Advocate

For Opp. Party : M/s. B. Mohanty and T.K.
Pattnayak, Advocates

P R E S E N T:

THE HONOURABLE DR. JUSTICE B.R.SARANGI

Date of hearing and judgment: 14.02.2022

DR. B.R. SARANGI, J. The petitioner, who was working as a Dumper Operator and terminated from service on 07.11.1990 and subsequently reinstated in service on 27.05.2009, has filed this writ petition seeking to quash

the order dated 01.03.2016 under Annexure-1, by which he has been denied the benefit of promotion and other reliefs.

2. The factual matrix of the case, in brief, is that the petitioner was appointed as a Dumper Operator and joined in service on 13.02.1984. After completion of his probation period on 12.02.1985, his post was designated as EPGE (Shovel). At that point of time, he was issued with a charge sheet on the allegation that on 05.05.1986 some tyres were stolen from the store of the company, when the key of the store was with the petitioner-workman. The same was specifically denied by the petitioner and it was stated that he was never handed over with the keys of the store during the relevant period and he never remained in-charge of the store at any point of time. During the enquiry neither the list of documents nor the list of witnesses was supplied to the petitioner and, as such, there was non-compliance of the principles of natural justice in a domestic inquiry. But, thereafter, he has been terminated from service.

2.1 Challenging the order of termination, the petitioner approached the industrial forum by filing conciliation proceeding. Thereafter, the matter was referred to the Industrial Tribunal in Clause-(d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947, for adjudication vide letter dated 11.11.1993 with following terms of reference:-

“Whether the action of the management of the IB vally area of SEC Ltd. in dismissing Sri Ramakanta Parija from company’s service is legal and justified. If not to what the concerned workman is entitled to and from what date?”

On reference being made, the same was registered as I.D. Case No.26 of 1997 (C) before the Presiding Officer, Industrial Tribunal, Rourkela and after due adjudication, the tribunal vide award dated 26.10.1999 held as follows:

“xxx So I find there was no prima facie case against the 2nd party and the domestic enquiry was not conducted properly adhering to the principles of natural justice. So his dismissal basing on this domestic enquiry is not legal and justified.”

The Presiding Officer also stated in the order that the petitioner is entitled to reinstatement in service with full back wages.

2.2 Aggrieved by the order dated 26.10.1999 passed by the tribunal, the opposite party preferred writ petition before this Court in OJC No.4054 of 2001 and this Court, vide order dated 19.02.2009, affirmed the order passed by the industrial tribunal, by holding that no impropriety and illegality can be said to have been committed by the tribunal so as to warrant any interference by this Court.

2.3 Nothing has been placed on record to show that challenging the aforesaid order passed by this Court, the opposite party preferred any appeal before the apex Court. In any case, pursuant to the order dated 19.02.2009 passed by this Court in OJC No.4054 of 2001 and considering the findings arrived at by the tribunal in the impugned award dated 26.10.1999 in ID Case No.26 of 1997, the Project Officer issued a memorandum of settlement, vide letter dated 21.05.2009, as per Rule-58 in Form-H, regarding

reinstatement of the petitioner along with back wages. Accordingly, a sum of Rs.6,52,245.07 was deducted from the net amount of Rs.16,18,124.47 and an amount of Rs.9,65,879.40 was disbursed to the petitioner. As a consequence thereof, the order of the tribunal has not been complied with in full, as the benefit of notional promotion has not been given to the petitioner. Though the petitioner has been reinstated with full back wages, but his entitlement for consequential benefits have not been determined and paid to him. One N.K. Mohapatra, a similarly situated workman, though has been granted the consequential benefits, but the petitioner has been discriminated. It is stated that even though the petitioner is entitled to get promotion, after his reinstatement, but the same has not been given to him and, as such, the same has been kept in a sealed cover, thereby denying him to get the consequential benefits by re-fixing his salary,.

2.4 Thereafter, due to non-extension of the aforesaid benefit, the petitioner filed W.P.(C) No.22316

of 2010, which was disposed of vide judgment dated 09.10.2015 with the following observations:-

“6. The petitioner was made to suffer for no reason by the action of the Management, which has been nullified fully by the Industrial Tribunal. The award of the Industrial Tribunal has been confirmed by this Court in OJC No.4054 of 2001. Had the petitioner worked, he would have reasonably expected to get promotion. Though not a right, promotion is an incidence of service. If a person is entitled to be brought under the zone of consideration, he has a right to be considered for promotion. In the present case, it is alleged by the petitioner that persons similarly circumstanced with him have been promoted up to the Special Grade and they are getting higher scale of pay. Had the petitioner been in service throughout the period, he would have also got promotion keeping in view his service record, merit and domeanour, etc. There is nothing in the counter affidavit by the opposite party to show that except the alleged misdeed which has been erased by the award of the Industrial Tribunal, the petitioner had any other misdeed disentitling him to promotion. In view of such fact and in view of the nature of award passed by the Industrial Tribunal as confirmed by this Court, the petitioner should have been reinstated in service with full back wages along with all the consequential service benefits including promotion.

7. Taking into consideration the aforesaid fact, the writ petition is disposed of with the direction to the opposite party to consider the case of the petitioner for promotion notionally, as he has already retired from service in the meantime, and to fix his pay in the grade equal to the co-workers similarly circumstanced with him have been serving. The entire exercise be completed within a period of four months from the date of receipt of a certified copy of this

order, and the retiral benefits to the petitioner be given in accordance with the promotional post he is entitled to be fitted in according to the consideration of the opposite party.”

2.5 In view of the aforesaid observation made by this Court, the petitioner is entitled to get promotion notionally, as he has already retired from service in the meantime on attaining the age of superannuation, and his pay is to be re-fixed in the grade equal to the similarly circumstanced co-workers. Though a time limit had been fixed, but the benefit has not been extended to the petitioner and, as such, the petitioner has retired on 28.02.2011 as a category-D employee by virtue of the notice dated 02.11.2010. For non-extension of the benefits in terms of the award passed by the tribunal, which was affirmed by this Court, and also despite specific direction issued by this Court in subsequent writ petition, the petitioner has approached this Court seeking consequential benefits.

2.6 The direction, which was given by this Court in W.P.(C) No.22316 of 2010 disposed of on 09.10.2015,

has not been complied with by passing the order dated 01.03.2016 under Annexure-1 to the following effect:-

“1) The eligibility for promotion to the next higher post is based on working experience of the present post which is attained by working daily. Here he has no such working experience.

2) ACR for last 3 years is required for any promotion to the next higher post which is given by his reporting officer based on his performance of work. In this case ACR cannot be filled as he has not performed any work.

3) Minimum attendance of 240 days/year for at least two years in last 3 years is required for promotion, in this case he has Nil Attendance.”

In view of the above, the petitioner has been denied the benefit of promotion to the next higher grade. Hence this application.

3. Mrs. U.R. Padhi, learned counsel for the petitioner contended that the opposite party, instead of adhering to the directions given by the industrial tribunal to extend the notional benefits of promotion to the petitioner, which was affirmed by this Court, rejected the claim of the petitioner vide Annexure-1 dated 01.03.2016, without any application of mind. Thereby, the same cannot be sustained in the eye of

law. It is contended that the case of the petitioner with regard to promotion should have been considered in the light of the judgment of the apex Court in the case of ***Union of India v. K.V. Jankiraman***, AIR 1991 SC 2010 and consequentially the petitioner should have been extended with the consequential benefits as due and admissible to him in accordance with law.

4. Mr. T.K. Pattnayak, learned counsel for the opposite party, referring to the counter affidavit, contended that in compliance of the order passed by the tribunal, the petitioner was reinstated in service along with back wages w.e.f. 07.11.1990 to 31.03.2009. It is further contended that against the order passed by this Court in W.P.(C) No.22316 of 2010 disposed of on 09.10.2015, the opposite party preferred writ appeal bearing W.A. No.109 of 2016 and, therefore, the claim of the petitioner cannot be sustained in the eye of law and is liable to be rejected.

5. This Court heard Mrs. U.R. Padhi, learned counsel for the petitioner and Mr. T.K. Pattnayak, learned counsel for the opposite party

through hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. On the basis of the undisputed facts, as narrated above, this Court finds that the petitioner has been reinstated in service by virtue of the order passed by the tribunal in ID Case No.26 of 1997 disposed of on 26.10.1999, which was confirmed by this Court in OJC No. 4054 of 2001 disposed of on 19.02.2009 and, as such, it is admitted by the opposite party that the petitioner was reinstated in service along with the back wages. But, after reinstatement in service in his previous job, pursuant to the award passed by the Presiding Officer, Industrial Tribunal in ID Case No.26 of 1997 disposed of on 26.10.1999, the petitioner is entitled to get notional promotion, it comes under the meaning of “consequential service benefits” as due and admissible to the petitioner. More so, it was brought to the notice of the authority that similarly situated persons, those who had joined along with the

petitioner, have extended with the benefit of promotion and some of the juniors to the petitioner have also got such benefit. Thereby, when the petitioner has been reinstated in service, he is entitled to get the benefit of promotion, which has been extended to the similarly situated persons and also his juniors. But, while considering the same, in the order impugned the benefit of promotion has been denied to the petitioner, by simply stating that eligibility for promotion to the next higher post is based on working experience of the present post which is attained by working daily and, as such, the petitioner has no such working experience. If for the laches caused by the management, the petitioner-workman is deprived of gaining such working experience, then for no fault of him he cannot be denied the benefit of promotion as due and admissible to him in accordance with law. More so, the petitioner only claims notional promotion and fixation of his scale of pay admissible to the post and consequential revised financial benefits admissible to him from the date of reinstatement in service till he was superannuated and

subsequent fixation of his retirement benefits. The reasons, which have been assigned in Annexure-1 dated 01.03.2016 to the above extent at sl.no.1, cannot sustain in the eye of law. As such, if at the fault of the employer the workman is deprived of fulfilling such eligibility criteria for promotion, he ought to have been extended with the benefit of promotion as due and admissible to him.

7. In **Union of India v. Madhusudan Prasad**, AIR 2004 SC 977, the apex Court held as follows:-

"xxxx It may be noticed that the respondent was removed from service without any enquiry and he was not even given show cause notice prior to his dismissal from service. There was fault on the part of the employer is not following the principle of natural justice. These relevant facts were considered and the learned Single Judge and also the Division Bench ordered the payment of back wages. xxxxxx"

Similar view has also been taken by this Court in **Dr. Bijayananda Naik v. Fakir Mohan University**, 2021 (I) OLR 707.

8. In view of the above mentioned judgments, if there was no fault on the part of the employee and after

due adjudication the industrial tribunal has come to a conclusion that there was non-compliance of principle of natural justice and consequentially directed to reinstate the petitioner in service with all back wages, the petitioner is entitled to get all consequential benefits, including promotion, fixation of seniority and all financial benefits admissible to the post.

9. Next comes the reason assigned in clause-(2) of the order dated 01.03.2016 in Annexure-1, that ACR for last three years is required for any promotion to the next higher post, which is given by his reporting officer based on his performance of work and, as such, ACR cannot be filled as the petitioner has not performed any work. But fact remains, due to laches on the part of the management as the petitioner was deprived of discharging his duty, the question of filling up of ACR does not arise. Furthermore, due to intervention of the Court, the opposite party having reinstated the petitioner in service with full back wages, by virtue of the Court's order, now it is precluded from raising any such objection with regard to non-filling of ACR for last

three years. As a consequence thereof, the petitioner is entitled to get the benefits as claimed in the writ petition itself.

10. As regards the objection raised in clause-(3) of the order dated 01.03.2016 in Annexure-1, that minimum attendance of 240 days/year for at least two years in last three years is required for promotion and, as such, the petitioner has nil attendance, this objection could be raised by the authority due to illegal dismissal of the petitioner from service. In other words, the petitioner was deprived of to discharge his duty only for the laches on the part of the employer. If the employee has been kept away from discharging the duty, without any fault of his own, the benefit admissible to him cannot be denied by the authority.

11. In view of the discussions made above, it is made clear that the authority has not applied its mind while assigning the above reasons, especially when the benefit claimed was to be granted to the petitioner in compliance of the order dated 09.10.2015 passed by this Court in W.P.(C) No. 22316 of 2010. Though the

opposite party contended in the counter affidavit, that against the order passed in the writ petition, W.A. No.106 of 2016 is pending, but nothing has been placed on record to show whether any interim order has been passed in the said appeal restraining compliance of the order passed by the learned Single Judge, nor has anything been indicated with regard to disposal of the said writ appeal. The counsel appearing for the opposite party has also not stated anything with regard to status position of the writ appeal itself. Thereby, in absence of any interim order passed by the Division Bench, while entertaining the W.A. No.109 of 2016, this Court proceeded with the matter, as it is an old case of the year 2014, directing the opposite party to extend the benefits as due and admissible to the petitioner, including notional benefit of promotion and revised financial benefits.

12. Law is well settled that in view of reinstatement in service with all back wages, the petitioner is also entitled to get all consequential service benefits.

In **J.K. Synthetics v. K.P. Agarwal**, AIR

2007 SC (Supp.) 637, the apex Court held as under:

“There is also a misconception that whenever reinstatement is directed, “continuity of service” and “consequential benefits” should follow, as a matter of course. The disastrous effect of granting several promotions as a “consequential benefit” to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether “continuity of service” and/or “consequential benefits” should also be directed. Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case.”

13. In **Jute Corporation of India Ltd. v.**

Judhistira Swain, 2014 (II) ILR CUT 165, taking into

consideration the judgment in J.K. Synthetics (supra),

in paragraph-11 this Court held as follows:-

“In view of the above, “consequential benefit” to a person does not mean only back wages. It includes much more things beyond back wages, such as promotion,

fixation of seniority and grant of financial benefits admissible to the post etc. Therefore, if the termination of the opposite party-workman in the guise superannuation has been declared as illegal and unjustified, then the opposite party-workman is entitled to get all the consequential service benefits admissible to the post. Back wages may be one facet of getting monetary benefits, but that is not the conclusive one. On the other hand, service benefit, which would have accrued to him had he continued in service cannot be denied by the petitioner-Management.”

Relying upon the above mentioned judgments, this Court in **Akhilananda Sahoo v. Joint General Manager, OSFC and others**, 119 (2015) CLT 281, extended the benefits to the petitioner therein.

14. In **Dr. Bijayananda Naik** (supra), this Court, taking into consideration the aforementioned judgments directed the authorities to calculate and pay the financial claim of the petitioner with continuity of service which includes promotion, fixation of seniority and grant of financial benefits admissible to the post. As the petitioner has already retired from service on attaining the age of superannuation, such benefits shall be extended to him as expeditiously as possible.

15. The reference which has been made by learned counsel for the petitioner with regard to **Janki Raman**, wherein the apex Court held that in a departmental or criminal proceeding initiated against the employees when charge memo issued and if charges are serious, employee can be suspended and if found innocent, entitles him to all benefits which he would have otherwise entitled to. Thereby, the law laid down by the apex Court, as mentioned above, is squarely applicable to the present case.

16. In view of the facts and law, as discussed above, this Court is of the considered view that the order passed by the authority, vide Annexure-1 dated 01.03.2016, denying the benefits to the petitioner for grant of notional promotion to the next higher grade and consequential fixation of salary and financial benefits admissible to him, cannot be sustained in the eye of law and is liable to be quashed and is hereby quashed. The opposite party is directed to grant the benefit of notional promotion to the petitioner and accordingly fix his salary and grant the differential pay

as due and admissible to him, as expeditiously as possible, preferably within a period of four months from the date of passing of this judgment.

17. In the result, the writ petition is allowed.
However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

Orissa High Court, Cuttack
The 14th February, 2022, Ashok

