

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7702 of 2022

Simadri Panigrahi

....

Petitioner

Mr.Sidharth Prasad Das, Advocate

-versus-

State of Odisha & others

....

Opposite Party

Mr.P.C.Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

07.04.2022

Order No.

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. The present writ application is the second journey of the Petitioner to this Court. After the first round of litigation vide W.P.(C) No.27825 of 2021 which was disposed of by this Court by directing the Opposite Party No.2 to consider the representation filed by the Petitioner and to dispose of the same by passing an appropriate order in accordance with law within a period of three months, whereafter the Petitioner approached the Opposite Party no.2 by filing a detailed representation which has been rejected by the Opposite Party No.2 vide order dated 08.12.2021.
3. In the present writ application, the Petitioner seeks to assail the Office Order No.16932 dated 08.12.2021 and further prays for quashing of the said order. The Petitioner has also prayed for a direction to the Opposite Parties to consider the case of promotion of the Petitioner to the rank of Veterinary Technician and to give him promotion to the said post pending Disciplinary Proceeding as has been

done in many other cases.

4. Learned counsel for the Petitioner submits that the Petitioner is due to retire from service on attaining the age of superannuation on 31.08.2022. He further submits that the Opposite Party No.2 has rejected his representation pursuant to the order passed by this Court in the writ application illegally, arbitrarily and without taking into consideration the law laid down by the Hon'ble Supreme Court of India as well as this Court. Therefore, he submits that the impugned order under challenge in this case is violation of the provisions of Articles 14,19 and 21 of the Constitution of India.

5. The factual backdrops of the case is that the Petitioner was initially appointed as Live Stock Inspector on 31.05.1984 and posted at Khariar Road under Nuapada Sub-division in the district of Nuapada. Thereafter he was transferred and posted at different places in the State of Odisha and performed his duty to the utmost satisfaction of the authorities.

6. At present the Petitioner has been posted and working as L.I. LAC, Chhamunda under SDVO, Bhanjanagar. A disciplinary proceeding has been initiated against the Petitioner vide Memo dated 20.04.2020. The said disciplinary proceeding has been instituted against the Petitioner on the allegation and imputation of misconduct and highhanded action of the Petitioner. Learned counsel for the Petitioner submits that a perusal of the memorandum of charges would reveal that the charges brought against the Petitioner are not all serious in nature like misappropriation of public money or sexual or immoral activities.

7. On 16.03.2020 a DPC meeting was convened and held before initiation of Disciplinary Proceeding against the Petitioner for consideration of eligible LIs for promotion to the next higher post of Veterinary Technician and other similar posts. The case of the

Petitioner was recommended for promotion and forwarded to the DPC along with other eligible persons. However, as per the recommendation of the DPC 311 persons have been promoted to the post of VTS/Statistical Enumerates and other various posts vide order dated 27.04.2020. However, the name of the Petitioner did not find place in the list of promoted officers and as it appears the promotion of the Petitioner was withheld for the reasons best known to the authorities. The learned counsel for the Petitioner in this context emphatically submits that the DPC which did not recommend the name of the Petitioner even much prior to the disciplinary proceeding initiated against the Petitioner. Therefore, learned counsel for the Petitioner submits that the case of the Petitioner was not considered deliberately and with mala fide intention and to stall the promotion of the Petitioner a disciplinary proceeding has been initiated against him on some false, vague and baseless allegations.

8. It is further contended by the learned counsel for the Petitioner that the disciplinary proceeding is pending since the year 2020 and not much progress has been made in the said disciplinary proceeding. He further contended that the Petitioner is due to retire on 31.08.2022. Therefore, the authorities to deprive the Petitioner of his legitimate right to get promotion have initiated this disciplinary proceeding with mala fide intention. In the event the Petitioner's case is not considered for promotion and he is not promoted along with his batch mates, he is likely to suffer irreparable injury and will be highly prejudiced and humiliated. He further apprehends that the Petitioner might have to work under the supervision of his juniors, who have already been given promotion. It is further contended by him that most of the persons, who have been given promotion are junior to the Petitioner.

9. Learned Additional Standing Counsel for the State on the other hand, supports the impugned order dated 08.12.2021 under Annexure-

12. He further submits that pursuant to the direction of this Court in the earlier writ application, the representation submitted by the Petitioner was considered by the Opposite Party No.2. The case of the Petitioner was not taken into consideration in the DPC meeting which was held on 16.03.2020 due to adverse CCR. It is further submitted that the disciplinary proceeding which was initiated against the Petitioner vide Memo dated 20.04.2020 of CDVO, Ganjam the case of promotion of the Petitioner to the next higher post was not considered by the DPC. He further submits that an Enquiry Officer has been appointed in the disciplinary proceeding as well as Marshalling Officer has also been appointed vide order dated 02.03.2021. It is further submitted that the disciplinary proceeding initiated against the Petitioner is still pending.

10. Further referring to G.A. & P.G. Department Memorandum dated 17.06.2021 it is submitted that in case disciplinary proceeding are pending under Rule 15 of OCS (CCA) Rules 1962 the sealed cover procedure has to be adopted by the concerned department, as has been provided in the GA & PG department Memo No.3928/Gen dated 18.04.1994. Learned State counsel further submits that the case of the Petitioner for promotion has not been rejected, rather the same is pending and the Opposite Party No.2 in the impugned order has decided to consider the case of the Petitioner for promotion in the next DPC in the light of the guidelines prescribed in GA & PG Department Memorandum No.15643 dated 17.06.2021. Therefore, he submits that the writ application is premature. Hence the same should be dismissed.

11. Considered the submissions made by Sri S.P.Das, learned counsel for the petitioner as well as Mr.P.C.Das, learned Additional Standing Counsel and perused the documents relied upon by the Petitioner.

12. Law with regard to promotion during pendency of a disciplinary proceeding/criminal proceeding is no more resintegra. In **State of**

Punjab-v.Chamanlal Goyal reported in 1995 (2) S.C.C.570, the Hon'ble Supreme Court of India has observed that when there is undue delay in finalising the disciplinary proceeding, the petitioner cannot be victimized by keeping the promotion in sealed cover for indefinite period.

13. A Division bench of this Court in **Sushanta Nanda v. Union of India (UOI) and others** reported in 2011 (I) OLR 649 considering the delay in finalization of the disciplinary proceeding directed the authority to open the sealed cover and considered the promotion of the Petitioner. A similar view was also taken by this Court in **P.Kishore Subudhi v. State and another** (W.P.(C) No.23259 of 2020 decided on 05.08.2021). In P.Kishore Subudhi case (supra) this Court has categorically held that the Petitioner cannot be made to suffer for long pendency of vigilance case and as such a direction was given to give promotion to the Petitioner to the rank of Commandant from the date his junior and batch mates got such promotion and further such promotion shall be subject to ultimate outcome in the vigilance proceeding.

14. The aforesaid proposition of law is not new to the State Government. The Government of Odisha has also adopted the aforesaid principle of law and many similar cases, which has been relied upon by the Petitioner and give promotion to the Officers while a disciplinary/vigilance proceeding was pending against them.

15. Coming back to the fact of the present case, it is clear from the impugned order dated 08.12.2021 that the DPC was convened and held on 16.03.2020. The petitioner's name along with other eligible candidates were sent to the D.P.C, for consideration for promotion to the next higher rank. However, the departmental authority while recommending the names of the persons who are either batch mates or junior to the Petitioner, the name of the Petitioner was not

recommended. The Disciplinary Proceeding, which has been relied upon in the impugned order by Opposite Party No.2 was initiated pursuant to a memorandum bearing No.2424 dated 20.04.2020 of CDVO, Ganjam. Such a proceeding is admittedly after the DPC meeting took place on 16.03.2020 where the case of the Petitioner was under consideration and he was not given promotion. This Court has enough reasons to believe that the disciplinary proceeding which was initiated against the Petitioner has been designed to stall the promotion of the Petitioner to the next higher rank. Moreover, the authorities are duty bound to consider the case of the Petitioner by adopting the sealed cover procedure as has been provided in Memorandum dated 18.04.1994 as well as 17.06.2021.

16. It is true that in the impugned order dated 08.12.2021 the Opposite party No.2 has not actually rejected the representation of the Petitioner. However, it has been observed that the case of the Petitioner may be considered in the next D.P.C. in view of the memorandum dated 17.06.2021 subject to fulfillment of criteria as per the Recruitment Rule. In this context, it is apt to mention here that the Petitioner is likely to retire from service on attaining the age of superannuation on 31.08.2022. Therefore, the Petitioner is at the feg end of his career. Unless the D.P.C. takes up the case of the Petitioner and gives promotion to him subject to his fulfilling the eligibility criteria as per the Recruitment Rule from the date the batch mates and juniors to the Petitioner were given promotion, the Petitioner will be seriously prejudiced and will suffer irreparable loss.

17. In view of the aforesaid analysis of law and taking into consideration the facts and circumstances of the present case, this Court is of the considered view that the impugned order dated 08.12.2021 passed by the Opposite Party No.2 under Annexure-12 is unsustainable in law and the same is only designed to defer the consideration of the

Petitioner's case for promotion. Therefore, this Court has no hesitation in setting aside the order dated 08.12.2021 and the same is hereby quashed.

18. The Opposite Party No.2 is further directed to immediately convene a review D.P.C. and consider the case of the Petitioner in the light of the law analysis herein above and give promotion to the Petitioner subject to fulfilling the eligibility criteria as per the recruitment Rule from the date his juniors and batch mates were given promotion pursuant to the recommendation of the D.P.C. which was convened and held on 16.03.2020. The aforesaid exercise is directed to be completed within a period of six weeks from the date of communication of this order.

19. With the aforesaid observation, the writ application stands disposed of.

20. Issue urgent certified copy as per Rules.

RKS

