

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15134 of 2022

Birendra Kumar Behera ***Petitioner***
Mr. S.K. Mishra, Advocate
-versus-
State of Odisha and others ***Opposite Parties***
Mr. P.C. Das, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
21.06.2022

Order No.

I.A. No.8074 of 2022

01. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. An oral prayer is being made by Mr. S.K. Mishra, learned counsel for the petitioner that he does not want to press the I.A. of the petitioner. Accordingly, the I.A. is dismissed as not pressed.

(A.K. Mohapatra)
Judge

W.P.(C) No.15134 of 2022

02. 3. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the record.
4. The present writ petition has been filed by the petitioner with the following prayers:

“It is therefore, most humbly prayed that this Hon’ble Court be graciously pleased to:

- i) Admit the writ application
- ii) Call for record.
- iii) Quash the final order of punishment/Award dtd.28.01.2022 under Annexure-9 issued by the Opposite Party No.3 in Bhadrak Dist. Prog. No.dtd.19.07.2021 drawn up against the petitioner basing upon enquiry report under Annexure-4.
- iv) Direct the opposite parties to consider his promotion to the post of ASI to S.I. of Police vide Notification No.D-02-2022/9409/Board dtd. 10.03.2022 under Annexure-11.
- v) Direct the Opp. Party No.2 to dispose of the Appeal dtd.30.03.2022 under Annexure-11 within a stipulated period.
- vi) And/or pass such other order/orders, direction/directions as this Hon'ble Court may deems fit and proper for the ends of justice."

4. It is submitted by learned counsel for the petitioner that as against the order of punishment for the departmental proceeding, the petitioner preferred departmental appeal, which is stated to be pending before the departmental appellate authority. He further submits that during the pendency of the appeal, the selection for promotion from ASI to S.I. of Police has been advertised. Because of the pendency of the aforesaid proceeding before the appellate authority the petitioner apprehends that the case of the petitioner might not be considered by the departmental authority for promotion.

5. Learned counsel for the State, on the other hand, submits that the apprehension of the petitioner is baseless as the principle of law is well settled, the present petitioner is facing departmental proceeding and the proceeding against attains finality. The authority had adopted a sealed covered providing for consideration of promotion of a Government servant. He further submits that such sealed cover providing adopt that because of the petitioner has filed an appeal which is pending before the appellate authority. The disciplinary proceeding has not attains finality

till date. It cannot be said that the proceeding attains finality till disposal of the appeal.

6. Considering the submissions advanced by the respective parties, this Court disposes of the writ petition with a direction to the Opposite Party No.2 expedite the hearing of the departmental proceeding is pending before him and shall make every endeavour to conclude the same within a period of two months from today. It is further directed that while considering the appeal, the appellate authority-Opposite Party No.2 shall take into consideration of the materials relied upon by the petitioner including the enquiry report. Any decision so taken, the same shall be communicated to the petitioner within a period of two weeks thereafter.

8. With the aforesaid observation and direction, the writ petition stands disposed of.

Urgent certified copy of this order be granted on proper application.

(*A.K. Mohapatra*)
Judge