

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21269 of 2022

Bimal Kumar Nayak **Petitioner**

-versus-

State of Odisha & Ors. **Opposite Parties**

**CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
13.10.2022**

Order No

02. I.A. No.13116 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. This is an application for modification/recalling of order dtd.08.09.2022.
3. Considering the grounds taken in I.A., the order dtd. 08.09.2022 is recalled.
4. I.A. is disposed of.

**(Biraja Prasanna Satapathy)
Judge**

03. W.P.(C) No.21269 of 2022

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard learned counsel for the parties.
3. The petitioner has filed this application seeking direction to the opposite parties to give him promotion to the post of Asst.

Executive Engineer from 12.08.2021 and to grant all consequential service and financial benefits including further promotion within a stipulated time.

4. Moot question involves if a promotion of employee can be withheld for indefinite period on the premises of pendency of vigilance proceeding over a period of decades.

5. This Court considering such situation has already settled the position of law keeping the sealed cover promotion aspect in view of pendency of the Disciplinary Proceeding and/or Vigilance Proceeding for decades becomes bad.

6. Fact involving the case reveals that there is no disciplinary proceeding against the petitioner except the vigilance proceeding pending in the court of Spl. Judge Vigilance, Berhampur in T.R. Case No.77 of 2002 and in Spl. Judge Vigilance, Bhubaneswar in F.I.R. No.44/2000. Involving the allegation against the petitioner, it appears the Vigilance Proceeding initiated in the year 2000, but charge-sheet involving the Vigilance case was submitted in the year 2002. However the said vigilance case is yet to be disposed of. Pleading also further made clear that no Disciplinary Proceeding pending against the petitioner. In this background of case an allegation is made that promotion of the petitioner taking effect in the year 2021 has been kept in sealed cover only on the premises that a vigilance proceeding involving the petitioner is pending since 2000. For the settled position of law, this Court in disposal of the writ petition observes, petitioner cannot suffer for the long pendency of the vigilance proceeding. It is also not known when the Vigilance Proceeding initiated in the year 2004 will come to end. It is keeping in this view, this Court in disposal of the writ petition directs the Principal Secretary to Govt. of Odisha, Water Resources

Department, Bhubaneswar-O.P. No.1 to give promotion to the petitioner to the rank of Asst. Executive Engineer (Civil) from the date of his juniors and batchmates got such promotion. However the promotion of the petitioner as per direction of this Court shall be subject to the ultimate outcome in the Vigilance Proceeding. Further it is also clarified that the promotion given to the petitioner to the rank of Asst. Executive Engineer (Civil) shall not confer equity in the event, he will ultimately lose the Vigilance Proceeding. Entire exercise shall be completed within four weeks from the date of communication of this direction. It is also clarified that upon promotion, petitioner shall also be entitled to all consequential benefits.

7. With the aforesaid observation and direction, the writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha

