

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No. 4264 of 2016

An application under Articles 226 & 227 of Constitution of India.

AFR

Sultan Khan

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Petitioner

-Versus-

State of Odisha & others

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Opp. Parties

Advocate(s) appeared in this case:-

For Petitioner : M/s. Dr. J.K. Lenka &
P.K. Behera, Advocates

For Opp. Parties : Mr. H.K. Panigrahi,
Addl. Standing Counsel

JUSTICE SASHIKANTA MISHRA

JUDGMENT

14th September, 2022

SASHIKANTA MISHRA, J.

The petitioner, being recruited as a Junior Clerk under the Collector, Cuttack joined as such on 04.05.1991. In the year 2004 he was promoted to the post of Sr. Clerk. He was further promoted to the post of Head Clerk in the year 2014 and joined as such in the office of B.A.O., LFA, Cuttack on 21.05.2016. By letter dated

13.09.2012, the Collector recommended the name of the petitioner for promotion to Odisha Revenue Service (Group-B) for the recruitment year 2011 as per Rule-4(b) of Odisha Revenue Service (Recruitment) Rules, 2011 (in short “2011 Rules”). The petitioner had outstanding CCRs for the preceding five years. However, the petitioner was deprived of being promoted to ORS by the DPC held on 04.02.2013. A similarly placed employee, namely Akhaya Kumar Mohanty approached the erstwhile Odisha Administrative Tribunal by filing O.A. No. 1764 (C) of 2013. By order dated 01.05.2014, learned Tribunal held that the promotion of less meritorious candidates ignoring the case of persons like the applicant (Akhaya Kumar Mohanty) was not proper and as such, quashed the recommendation of the DPC dated 04.02.2013 and directed the authorities to convene a review DPC in order to consider suitability of the applicant (Akhaya Kumar Mohanty) along with others for promotion and if found suitable for promotion, to recommend his name for the same. Accordingly, a selection committee was held on 22.09.2014, wherein it was, inter alia, decided to wait till the final decision of the High Court in W.P.(C)

No.13210 of 2014, which was filed by the State challenging the order of the Tribunal in O.A. No. 1764 of 2013 (Akhaya Kumar Mohanty). The petitioner in the meantime, also approached the Tribunal by filing O.A. No. 1346 (C) of 2015. By order dated 23.04.2015, the Tribunal disposed of the O.A. by directing the authorities to extend the same benefits to the petitioner as per the ratio decided in O.A. No. 1764 of 2013 (Akhaya Kumar Mohanty). Accordingly, by order dated 08.10.2015, the petitioner was promoted and appointed to ORS (Group-B) against the recruitment year 2011 and was posted as Additional Tahasildar, Bhuban. The writ petition filed by the State being W.P.(C) No. 13210 of 2014 was withdrawn on 19.10.2016. Thereafter, acting purportedly as per the recommendation of the Review Selection Committee held pursuant to the order of the Tribunal passed in O.A. No.1764 of 2013, the petitioner was reverted to his parent post i.e., Senior Clerk and was posted in Pattamundai Tahasil, Kendrapara and his name was placed in the waiting list for the recruitment year 2012 to be considered after availability of vacancy for the said year after vacation of the stay order passed by the

Tribunal in O.A. No. 2983 of 2014, filed by one Gauranga Kumar Gouda for promotion to the rank of ORS for the recruitment year 2012. The order of reversion dated 11.11.2016, which is impugned in the present application, is enclosed as Annexure-12. O.A. No. 2983 of 2014 was disposed of by the Tribunal by order dated 12.05.2016 with a direction to constitute review DPC. In the review DPC held on 19.03.2016, the names of 106 officers were recommended for promotion to ORS for the recruitment year 2011 including employees, who are less meritorious than the petitioner as also some employees who had forgone their promotion. It is the petitioner's case that as per the gradation list, his name finds place at serial no. 262, whereas the names of Smruti Ranjan Sahoo, Susanta Kumar Pattnaik and Akhaya Kumar Mohanty find place at serial nos. 263, 264 and 265 respectively. All the said persons were promoted whereas the petitioner was reverted and that too to a post below the post which he was holding prior to promotion. Being thus aggrieved, the petitioner originally approached the Odisha Administrative Tribunal seeking the following relief:

“In view of the facts mentioned in para-6 above, the applicant prays for the following relief(s):-

- (a) Quash the impugned revision order No. 35083/RDM dated 11.11.2016 at Annexure-12 and the decision of Review selection committee dated 06.01.2016 communicated under memo dated 28.07.2016 vide Annexure-13 so far as it relates to the Applicant.*
- (b) Declare that appointment of the applicant to ORS (Group-B) by way of promotion for the recruitment year-2011 as per letter No.-28763/R dated 08.10.2015 at Annexure-11 is valid and the Applicant is entitled all consequential and financial benefits w.e.f. 20.04.2013.*
- (c) Declare that consideration the cases of 32 candidates/persons those who were forego their promotion for the recruitment year 2011 in the review selection committee dated 06.01.2016 is illegal, arbitrary and contrary to the law/executive instruction.*
- (d) Issue any other order/direction which would afford complete relief to the applicant, in the facts & circumstances of the case;”*

The said O.A. has since been transferred to this Court and registered as the instant writ petition.

2. A counter affidavit has been filed by opposite parties No. 2 and 3. In the said counter affidavit, 2011 Rules has been referred to. It is admitted that for the recruitment year 2011, the name of the petitioner was recommended as he had five outstanding CCRs to his credit, for which he was promoted. It is further admitted that even though the promotion was to be made against 73 vacancies meant for UR category and he had five outstanding CCRs, yet due to selection of the UR

candidates having three outstanding CCRs are their credit, the vacancies meant for UR category was exhausted at serial no.100 of the common gradation list. Subsequently, in pursuance of the order passed by the Tribunal in O.A. No. 1346(C) of 2015, the applicant was recommended for promotion against the recruitment year 2011. Thereafter several O.As. have been filed for which it was decided to consider the cases of all candidates afresh as per direction given by the Tribunal in O.A. No.1764 of 2013 and to withdraw the writ application pending before this Court. Accordingly, the review DPC was convened on 06.01.2016 and several decisions were taken. In so far as the petitioner is concerned, it was found that he was promoted in pursuance of order of the Tribunal in O.A. No.1346(C) of 2015 having fulfilled the benchmark decided in the review DPC held on 06.01.2016 but presently, appears below the last man recommended in the waiting list for promotion against the recruitment year 2012. It is further stated that his name will appear at serial no.236 of the common gradation list for the year 2012 and will remain below

Umakanta Biswal at serial no. 17 of the waiting list for the year 2012 and can now to be adjusted for the year 2012.

3. The petitioner filed a rejoinder to the counter affidavit taking the stand that the petitioner had already joined in the promotional cadre but was reverted without giving him an opportunity of hearing. Further, the petitioner has been ignored while persons such as, Smruti Ranjan Sahoo and Akhaya Kumar Mohanty, who are placed much below him in the common gradation list for the year 2011, were promoted. There was no legal impediment for considering the case of the petitioner since he had fulfilled the benchmark as decided in the Review Selection Committee held on 06.01.2016. The gradation list published on 13.05.2021 does not contain the name of the petitioner and is placed in the separate list at serial no.4. One of the officers, namely, D. Maleswar Patra, whose name finds place at serial no.11 in the said separate list, filed an O.A. before the Tribunal being O.A. No. 913(C)/2017 which was subsequently transferred to this Court and registered as WPC(OAC) No.913 (C) of 2017. By order dated 06.08.2021, a coordinate Bench of this Court

held that the order of reversion of the petitioner (D. Maleswar Patra) without granting opportunity of hearing was illegal and therefore, the same was quashed. Pursuant to such order, the authorities restored his original promotion. Since the petitioner stands exactly on same footing, the impugned order of reversion also needs to be quashed and his promotion should be restored.

4. Heard Dr. J.K. Lenka, learned counsel for the petitioner and Mr. H.K. Panigrahi, learned Addl. Standing Counsel for the State.

5. It is argued by Dr. J.K. Lenka that as per the 2011 Rules, promotion is to be granted on the principle of merit-cum-suitability with due regard to seniority. In so far as merit is concerned, the CCRs of the past five years is to be taken into consideration. Admittedly, the petitioner had five outstanding CCRs to his credit and therefore, he should have been promoted at the first instance. The petitioner was promoted only after he had approached the Tribunal in O.A. No.1346(C)/2015. Prior to being thus promoted, the petitioner was admittedly occupying the post of Head Clerk since 21.05.2014. It is further contended by

Dr. Lenka that reversion of the petitioner is illegal mainly for the reason that he was not given any opportunity of hearing. Secondly, less meritorious officers having been promoted ahead of him, he could not have been reverted. That apart, he could not have been reverted to the grade lower than the grade which he was occupying prior to promotion. It is further contended by Dr. Lenka that the petitioner's case is exactly the same as that of D. Maleswar Patra and batch, in which the order of reversion was quashed and the Government has implemented such order by allowing them to continue in ORS cadre against their original promotion.

6. Mr. H.K. Panigrahi, on the other hand submits that though the criteria for promotion is merit-cum-seniority, yet seniority cannot altogether be ignored. As per the common gradation list published for the year 2011, the petitioner was placed at serial no. 173. Since the vacancies, namely, 73 meant for UR category had already been exhausted at serial no. 100 of the common gradation list, he could not have been granted promotion. It is further contended by Mr. Panigrahi that though the

petitioner was promoted subsequently as per the order passed by the Tribunal, yet keeping in view the large number of litigations, the Government decided to review the entire process and to consider the case of all candidates afresh. In the process, the petitioner had to be reverted but was kept in the waiting list for promotion for the recruitment year 2012.

7. In order to appreciate the rival contentions better, it would be apposite to refer to the provisions of Orissa Revenue Service (Recruitment) Rules, 2011. Rule-4 provides that 50% of the posts shall be filled up by way of direct recruitment and 30% shall be filled up by way of promotion of officers of outstanding merit from among the officers of the Department as envisaged under Rule-6. Rule-6 is quoted hereinbelow for immediate reference.

"6. Eligibility Criteria for Promotion:-

(1) No person shall be considered for appointment by promotion under clause (b) of rule 4 to the service unless:

1. (a) He/She is a graduate; and has worked for at least ten years in any one or more than one post taken together as Consolidator Grade-I Kanungo, Revenue Supervisor, Revenue Inspector or Ministerial Officer under Board of Revenue/RDCs/Collectors/and other Revenue Offices on the 1st day of January of the year in which the Committee meets; and

*(b) He/She has passed departmental examination, if any; and
(2) He/She is not more than 53 years of age as on 1st day of January in which the Committee meets."*

Rule-9 provides that Secretary, Board of Revenue, Orissa shall call for the recommendations for promotion and selection, the names of eligible officers for consideration by the Committee. The constitution of committee is laid down under Rule-10. Rule-8 deals with preparation of gradation list for Promotion, which reads as under;

"8. Preparation of Gradation List for Promotion :- (1) *For the purpose of consideration of promotion to the service under clause (b) of rule 4 a common gradation list of eligible officers shall be prepared by the Secretary, Board of Revenue, Orissa on the basis of their date of appointment to their respective cadres:*

Explanation – *While preparing the common Gradation list the officers in higher pay scale or with higher grade pay in a pay band will be placed above those in the lower pay scale or lower grade pay in same pay band.*

Provided that the inter-se-seniority fixed in their respective cadre shall not be violated.

Provided further that in case, the date of appointment of two or more officers happens to be the same, the person elder in age shall be placed above the younger."

8. Admittedly, the petitioner was placed at Serial No. 173 of the common gradation list. It is also not disputed that the petitioner had five outstanding CCRs to

be considered, then first of all merit-cum-suitability is to be taken into account for consideration of promotion. In the instant case, the persons concerned, who have got two outstanding or one Outstanding CCRs have been ignored. In that view of the matter, the process of selection is completely against the settled principle of law and hence liable to be quashed.

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The Tribunal further held as follows:

“As such, the person concerned having five outstanding CCRs ought to have been selected at the first instance. If required number of candidates were not available from out of the persons of five outstanding CCRs, then the DPC would have gone to consider and select the persons concerned having four outstanding CCRs, three outstanding CCRs, two outstanding CCRs and one outstanding CCR.”

9. Holding thus, the Tribunal directed to convene a review DPC to consider the case of the applicant (Akhaya Kumar Mohanty). It has already been stated hereinbefore that the State had challenged the said order before this Court in W.P.(C) No.13210 of 2014 but the same was withdrawn. In so far as the petitioner is concerned, the Tribunal in O.A. No. 1346(C) of 2015 filed by him, held as follows:

“Considering the submission of the learned counsel for the applicant and learned Standing Counsel as well as taking into account the ratio decided by this Tribunal in O.A No. 1764/2013 dated 01.05.2014, the applicant in this case may be extended the same benefits. The entire exercise be completed

within a period of one month from the date of receipt of copy of this order.”

10. From the above narration it is evident that as directed by the Tribunal in its order dated 23.04.2015, which incidentally has never been challenged and has become final, the same benefit as granted in the case of Akhaya Kumar Mohanty was required to be granted to the petitioner also. Such benefit was also granted to him though by order dated 08.10.2015. In the impugned order dated 11.11.2016 in reverting the petitioner to the post of Sr. Clerk reference has been made to the recommendation of the Review Selection Committee held in pursuance of orders of the Tribunal passed in O.A. No.1764 of 2013. The order of the Tribunal in the said O.A. has been quoted in extenso before. There is nothing in the said order which can even remotely justify the action taken by the authority to revert the petitioner to the post of Senior Clerk. In the counter affidavit, it has been admitted that the petitioner had five outstanding CCRs to his credit and was therefore, eligible for consideration for promotion. It is also forthcoming from the counter and on a reading of the order

of the Tribunal in O.A. No.1764 of 2014 that persons though senior to the petitioner but less meritorious were granted promotion for the recruitment year 2011. It is reiterated that where the Rules provide for promotion on the basis of “outstanding merit” as per Rule-4(b) of the 2011 Rules, the same cannot be nullified in any manner whatsoever by harping upon the so called seniority of less meritorious candidates. Therefore, there was no justified or valid reason to revert the petitioner to the post of Senior Clerk.

11. Another important aspect that strikes at the very basis of the impugned order of reversion is, no opportunity of hearing was granted to the petitioner before reverting him to a lower post. Such an act is entirely contrary to the principles of natural justice and therefore, cannot meet with the approval of law. Be it noted here that the petitioner having been promoted to the ORS by order dated 08.10.2015 was reverted by order dated 11.11.2016, i.e., after working in the promotional post for a little more than a year. It is stated at the bar that the persons who

were promoted earlier 2011 have in the meantime acquired right to be considered for further promotion to the OAS. As has already been stated hereinbefore a coordinate Bench of this Court in the case of D. Maleswar Patra (WPC(OAC) No. 913 of 2017) disapproved the order of reversion issued against the petitioner in the said case and quashed the same with a direction to the authority to reconsider the same and to pass appropriate order by affording opportunity of hearing to the petitioner. It is not disputed that pursuant to such order, the authority by order dated 23.11.2021 has allowed the petitioner (D. Maleswar Patra) to continue in ORS Cadre against his original recruitment by promotion. Having regard to the fact that the petitioner stands exactly on the same footing there is no reason why similar benefit shall not be granted to him.

12. For the forgoing reasons therefore, this Court is of the considered view that the impugned order, looked at from the angle of justifiability or legality, cannot be sustained in the eye of law. The petitioner deserves to be restored in his promotional post as originally granted vide

order dated 08.10.2015 with all consequential service and financial benefits.

13. In so far as the prayer for a declaration that consideration of the case of 32 candidates, who had foregone their promotion for the recruitment year 2011 is concerned, this Court is of the view that the said candidates not having been impleaded in the present case, no order operating to their detriment can be passed in the present case.

14. In the result, the writ petition is allowed. The impugned order under Annexure-12 dated 11.11.2016 is hereby quashed. The petitioner shall be deemed to be continuing in the promotional post as per order dated 08.10.2015 and consequently, shall be granted all service and financial benefits within a period of four weeks.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 14th September, 2022/ A.K. Rana