

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C(OA) No.1778 OF 2016

Ramakrushna Mohanty

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

06.09.2022

Order No

4. 1. This matter is taken up by video conferencing mode.
2. At the outset, an affidavit filed by the petitioner in Court today be kept on record.
3. Heard Mr. Biswabihari Mohanty, learned counsel for the Petitioner and Mr. Choudhury S. Mishra, learned A.G.A.
4. This writ petition has been filed with the following prayer.

“ to direct the respondents to open the sealed cover and effect promotion in favour of the applicant in the rank of Asst. Commandant with effect from the date of promotion his immediate junior Respondent No.3 with all consequential service and financial benefits.”

5. It is submitted that as on the date of the holding D.P.C on 24.11.2012 under Annexure-3, though no proceeding was pending as against the petitioner, but the DPC illegally did not recommend the case of the petitioner by holding that the same be kept in a sealed cover as a proceeding is pending

against him. Mr. Mohanty, learned counsel for the petitioner further submitted that persons junior to the petitioner recommended by the DPC in its meeting dated 24.11.2012 were given promotion to the post of Asst. Commandant vide notification dated 25.2.2013 under Annexure-5. Mr. Mohanty further submitted that the proceeding against the petitioner was in fact initiated on 22.8.2013 vide PTC proceeding No.3 of 2013. It is also submitted that the said proceeding initiated against the petitioner, in the meantime has been disposed of vide order dated 18.4.2017. Mr. Mohanty, further submitted that two other proceedings initiated against the petitioner vide PTC Proceeding No.2 of 2014 and PTC, Angul proceeding No.26 of 2015 have also been disposed of with award of punishment vide order dated 17.2.2019 and 27.12.2018 respectively. Accordingly, Mr. Mohanty, learned counsel for the petitioner submitted that since as on the date of holding of the DPC on 24.11.2012, no proceeding was pending as against the petitioner, the finding of the DPC and keeping the claim for the petitioner in a sealed cover on the ground that a proceeding is pending is illegal and not based on record. Accordingly, Mr. Mohanty prayed for consideration of his case and for passing of an appropriate order.

6. Mr. Choudhury S. Mishra, learned A.G.A on the other hand made his submission basing on the counter filed by the opp. Parties. It is submitted that since the petitioner was placed under suspension vide

order dated 21.8.2012, his case was not rightly recommended and kept in a sealed cover by the DPC in its proceeding dated 24.11.2012. He also brought to the notice of this Court the office memorandum issued by the G.A Deptt. under Annexure-7 wherein in clause 3 of the said office memorandum, it has been provided as follows.

“3. Promotion of officers to the various posts/services.

At the time of consideration of cases of officers for promotion, details of such officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committee:-

- (i) Government servants under suspension.*
- (ii) Government servants in respect of whom a charge-sheet has been issued and disciplinary proceedings are pending; and*
- (iii) Government servants in respect of whom prosecution for criminal charge is pending.”*

7. Mr. Mohanty learned counsel for the petitioner submitted that similar issue was raised before the learned Tribunal in O.A. No.934 of 2014 and learned Tribunal vide order dated 11.8.2017 while deciding the same held that since on the date of holding of the DPC, no departmental proceeding or vigilance or criminal proceeding was there against the petitioner therein, a direction was issued to convene the review DPC and to consider the claim of the petitioner for promotion from the date his juniors were so promoted.

8. This Court after going through the materials available on record finds that as on the date of holding of the DPC on 24.11.2012, no proceeding was

pending against the petitioner and such proceeding was only initiated on 22.8.2013. Therefore, as per the considered view of this Court, the DPC in its proceeding on 24.11.2012 should not have directed to keep his case in a sealed cover on the ground of pending of a proceeding.

9. In such view of the matter, this Court while disposing the writ petition directs Opp. Party No.1 to convene a review DPC to consider the case of the petitioner within a period of one month from the date of receipt of this order and if it is found that the petitioner is suitable for his promotion, then necessary order of promotion be issued in his favour.

10. This Court further observes that such benefit of promotion will be extended in favour of the petitioner from the date his juniors were so promoted vide notification dated 25.2.2013, but on notional basis. This Court directs Opp. Party No.1 to complete the exercise within a period of three months from the date of convening of the review DPC as directed herein above.

11. The Writ petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge