

IN THE HIGH COURT OF ORISSA AT CUTTACK**WPC(OAC) No.3125 of 2016**

(In the matter of application under Articles 226 and 227 of the Constitution of India, 1950).

Ranjan Kumar Jit *Petitioner*

-versus-

State of Odisha and Ors. *Opp. Parties*

Advocates appeared in the case through Hybrid Mode:

For Petitioner : *Mr. Jayant Kumar Rath, Sr. Adv.*
along with
Mr. Amit Ku. Saa, Adv.

-versus-

For Opp. Parties : *Mr. Saswast Das, AGA*
Mr. Kaushik Anand Guru,
Adv.(for O.P.5)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-30.08.2022

DATE OF JUDGMENT:-20.09.2022

Dr. S. K. Panigrahi, J.

1. The petitioner in the aforementioned Writ Petition has challenged the impugned office order dated 25.08.2016 issued by the Opp.party No. 2 wherein the Opposite Party no.2 without issuing any show cause or notice as contemplated under Article 311 (2) of the Constitution of India, passed an

order for deletion of the name of petitioner which tantamount to disengagement of the petitioner from the post of Forester which is in gross violation of Principles of Natural Justice.

I. FACTUAL MATRIX OF THE CASE:

2. An advertisement was issued by Opposite Party No.4 for appointment of Forester as well as Forest Guard under the Bamra Wild Life Division and in respect of the post of Forester is concerned, the eligibility qualification has been prescribed that a person should qualify +2 with Science. The petitioner who was having the qualification of B.Sc and MBA and is otherwise eligible offered his candidature and thereafter the petitioner was duly selected as against the said post. Accordingly, the Opposite Party No.4 in his office order No.63 dated 04.04.2012 issued appointment order in favour of the petitioner for the post of Forester.
3. Pursuant to issuance of such appointment order dated 04.04.2012 in favour of the Petitioner, he submitted his joining report on 05.04.2012 and continuing in service till date as against the said post of Forester under Opposite Party No.4 smoothly with utmost satisfaction of the authority. In the meantime, the service book has already been opened where the date of joining of the petitioner has been clearly indicated as "05.04.2012" against the post of Forester.
4. In the month of July, 2016, the petitioner came to know that an ex parte enquiry was conducted by the Opposite Party No.3 on the basis of an allegation levelled against his selection process

which was held way back in the year 2011-12. The based of the enquiry was that during the selection process the father of the petitioner who was at that time continuing as Deputy Range Officer evaluated the examination paper of the petitioner and basing on which the petitioner got selected. Subsequently, the father of the petitioner sought for certain information under the RTI Act regarding the name of the post whose written examination was held on 25.09.2011 and whose answer sheets have been evaluated by him. Further, he also sought for information as to whether he had evaluated the answer sheets of the written examination for recruitment of Forester in Bamra Wild Life Division. He also sought for information regarding the name of the Forest Division and Code of the examination paper evaluated by him.

5. The Office of Opposite Party No.3 issued information on 18.07.2016 where only a list of officers selected for evaluation of answer papers for recruitment examination held on 25.09.2011 has been furnished wherein it was indicated that a list of officers where the name of the father of the petitioner finds place under Bamra Wild Life Division. However, as can be seen on a bare perusal of the list of officers for evaluation of answer sheet, the father of the petitioner was a Deputy Range Officer, Bamra Wild Life Division, but nowhere it indicates that he has evaluated or allotted to evaluate the answer papers in respect of Bamra Wild Life Division. Rather, admittedly, the father of the petitioner has evaluated the examination paper only in respect of Forest Guard

but not in respect of Forester and that too he was allotted to evaluate the answer papers in respect of the recruitment held in respect of Sambalpur South Division and not in respect of Bamra Wild Life Division.

6. The First Appellate authority i.e. Opposite Party No.3 disposed of such First Appeal preferred by the father of the petitioner on 25.08.2016. Though the Opposite Party No.3 referred to the detailed particulars of the document sought for by him and clarified that the information sought for by the appellant is not available in this office, therefore, it is not possible to supply the same and accordingly said appeal has been disposed of. However, admittedly the document as sought for by the father of the petitioner was not furnished neither by the PIO nor by the First appellate authority.
7. While the matter stood thus, the petitioner was shocked to know that on 25.08.2016 an office order has been issued by Opposite Party No.2 which has been passed in the guise of implementation of the order passed by this Tribunal in an original application filed by one Rajanikanta Patel. In the said office order it was held that the name of the petitioner, who has been selected in the Forester Recruitment examination held during 2011-12 be deleted from the select list as his father Dhaneswar Jit, Deputy Ranger was the evaluator of the aforesaid examination. It was further held that the mark awarded to the said Rajanikanta Patel during Forester Recruitment Examination, 2011-12 may be revised to 68 instead

of 66 and revised select list be prepared accordingly. After revision of mark if the name of Rajanikanta Patel finds place in the merit list then he may be issued appointment order. Further the explanation be sought for from the Officer concerned for appointing the father of the petitioner as Evaluator while his son was one of the applicants for the Forester Recruitment examination. Prudent man should have rescued from the said selection process which the father of the petitioner did not do. Admittedly, though as against the finding given by Opposite Party No.2, the petitioner was aggrieved by such observation but before passing such order, no notice whatsoever has been given to him and no procedure has been followed. Based on a false and frivolous allegation levelled against the father of the petitioner, such office order has been passed which is not at all sustainable in law. On being aggrieved by the same, the petitioner has filed this writ petition.

II. PETITIONERS' SUBMISSIONS:

8. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of their contentions:
 - (i) On bare perusal of the impugned office order dated 25.08.2016 which has been passed by Opposite Party No.2 in the guise of implementation of the order passed by the Tribunal which was filed by one Rajanikanta Patel in O.A.No.880(C) of 2012. The said original application which was disposed of on 18.04.2016 with a direction of the Opposite Party No.2 to conduct an enquiry to ascertain whether the evaluation has been done by

the father of the petitioner or not and if so, take appropriate action deleting the name from the select list. Accordingly, direction was issued to prepare a fresh merit list and in the event the name of Rajanikanta Patel finds place in the merit list, he may be issued with appointment order. However, admittedly neither in the said original application nor before the Opposite Party No.2, the petitioner has been arrayed as party. Even he was not given any notice nor has he been given any opportunity of hearing. In this respect, law is well settled that any order passed against the person who is not a party to the said proceeding is not binding on the said person concerned. In the instant case, though said Rajanikanta Patel has specifically alleged against the appointment of the present petitioner, but he has not arrayed the petitioner as party in the said original application. The Tribunal while disposing of the original application on the basis of the prayer made by Sri Patel and directed the authority (Opposite Party No.2) to conduct an inquiry. Even though the so-called enquiry was conducted by the Opposite Party No.3, but the petitioner was not afforded opportunity to participate in the said enquiry and without hearing the petitioner, the impugned order dated 25.08.2016 has been passed.

- (ii) Moreover, since the petitioner has not been arrayed as party in the said original application and the subsequent order passed by the Opposite Party No.2 dated 25.08.2016 where the petitioner has also not been issued any notice even though

specific order has been passed against the petitioner which is not only adversely affecting his service career, but also for that office order he will be disengaged by the appointing authority. Hence in no circumstances the impugned office order dated 25.08.2016 is allowed to sustain and is liable to be quashed.

(iii) Admittedly, the father of the petitioner who was serving as Deputy Range Officer at the time of selection of the petitioner, but he was only allotted for evaluating the answer papers in respect of the recruitment of Forest Guard and not for the recruitment of the Forester. Further, he has been allotted to evaluate the answer papers in respect of Sambalpur South Division, but the petitioner was selected as Forester in Bamra Wild Life Forest Division. Therefore, there is no occasion for the father of the petitioner to evaluate the answer papers of the petitioner as alleged in the said original application based on which the present impugned order has been passed.

(iv) It is the duty of the Opposite Party No.2 to conduct a proper enquiry and to issue notice to the person concerned, who are involved in the said matter. However, in the instant case, as it appears though the name of the petitioner in the select has been deleted by Opposite Party No.2 vide impugned order dated 25.08.2016, but before passing such order no notice whatsoever has been given to the present petitioner nor to his father, therefore, the very order passed by the Opposite Party No.2 dated 25.08.2016 is not only illegal, arbitrary but also contrary to law. Law is well settled that before passing any adverse order

against a person, the said person is required to be given fair chance to defend his case and principles of natural justice are required to be followed before passing any order which has been a clear go-by in the instant case. Therefore, the impugned order is not sustainable and the same is liable to be quashed.

III. SUBMISSION OF OPPOSITE PARTIES 2, 3 & 4:

9. Per *contra*, learned counsel for the Opp. party intently made the following submissions:

(i) A recruitment test was conducted in Bamra Wildlife Division during the year 2011-12 for recruitment of 6 number of Foresters. One petitioner namely; Shri Rajani Kanta Patel, Son of Shri Manbhanjan Patel was not selected in the said Foresters' recruitment test. Being aggrieved by the decision of the Divisional Forest Officer, Bamra Wildlife Division, he filed an Original Application before the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack vide O.A. No.880 (C)/2012 with a prayer to direct the Opposite Parties to appoint him as Forester.

(ii) While disposing of O.A. No.880 (C)/2012 the Orissa Administrative Tribunal, Sambalpur Circuit Bench vide order dated 18.04.2016 directed the Opposite Party No.1 i.e. Principal Chief Conservator of Forests, Odisha as under:

"In view of the above discussion, instead of directing appointment of the petitioner or cancelling the examination, the Opposite Party No.1 is directed to conduct an inquiry to ascertain whether evaluation has been done by the father of Ranjan Kumar Jit and,

if so, take appropriate action deleting his name from the select list. Further, mark as per the scheme of examination, be awarded to the petitioner in mathematics as in no case, petitioner can secure 66 marks, which is not multiple of 4. Accordingly, a fresh merit list be prepared and, in the event, the name of the petitioner finds place in the merit list, he may be issued with appointment order. The entire exercise be completed, with a period of four months from the date of receipt of a copy of this order."

- (ii) The father of the petitioner, Sri Dhaneswar Jit, Deputy Range Officer, while working in Bamra Wildlife Division was selected for the evaluation of answer paper of Forester/ Forest Guard candidates held on 25.09.2011 vide memo No.2305 dated 26.09.2011 of the Regional Chief Conservator of Forests, Sambalpur. He had attended the evaluation at Regional Chief Conservator of Forests, office as per aforesaid memo. The Regional Chief Conservator of Forests, Sambalpur (Opposite Party No.3) conducted the enquiry in this respect as per direction of the Principal Chief Conservator of Forests, Odisha (Opposite Party No.2) and submitted his enquiry report. After due verification of the enquiry report, the Principal Chief Conservator of Forests, Odisha (Opposite Party No. 2) passed the order vide his Office Order No.969 dated 25.08.2016. Hence, the impugned order passed by the Opposite Party No.2 is sustainable in the eye of law.
- (iv) As per order dated 18.04.2016 of the O.A.T. in O.A. No.880(C) of 2012 the Opposite Party No.2 duly authorized Opposite Party No.3 who has conducted the enquiry on recruitment of

Foresters in Bamra Wildlife Division. The evaluation of Answer papers of the candidates of different divisions were conducted in the office the Regional Chief Conservator of Forests, Sambalpur by the evaluators selected by the Regional Chief Conservator of Forests, Sambalpur (The Opposite Party No.3 i.e. the Regional Chief Conservator of Forests, Sambalpur Circle communicated enquiry report to Opposite Party No.2 vide memo No.2850 dated 03.08.2016). Therefore, the enquiries conducted by the Principal Chief Conservator of Forests, Odisha (Opposite Party No.2) through his authorized representative namely; the Regional Chief Conservator of Forests, Sambalpur quashed and then after due verification passed the order dated 25.08.2016 which is sustainable and not liable to be quashed.

- (v) The PIO and First Appellate Authority have supplied information to the father of the petitioner which are to be supplied as per provision of the Right to Information Act, 2005 subject to availability of information in his office. Hence, the plea of not supplying any information by the PIO and First Appellate Authority of selected and appointed as the Sambalpur Circle is not tenable. Further, the Opposite Party No.3 has conducted the enquiry duly authorized by Opposite Party No.2 as per direction of the O.A.T. Hence, conducting the enquiry by Opposite Party No.3 and order dated 25.08.2016 passed by Opposite Party No.2 is not illegal and arbitrary and the same is based on records which has the required sanctity and cannot be quashed.

IV. SUBMISSION OF OPPOSITE PARTY No.5:

10. Learned counsel for the Opposite Party No.5 made the following submissions:

- (i) The father of the petitioner, namely Dhaneswar Jit was posted as Deputy Range Officer, Bamra and Copy Ad (Wild Division) at the relevant point of time i.e. when the petitioner was selected as the Forester under Bamra Wild Life Division. Moreover, the father of the petitioner was appointed as an invigilators for the examination for appointment of Forester and as well as Forest Guard, in which examination, the petitioner was selected and appointed as the Forester.
- (ii) The Regional Chief Conservator of Odisha, Sambalpur vide its Memo No.2283 dated 20th September 2011 issue guideline for selection of candidate to fill up the vacancies under the direct recruitment quota in Grade of Forest Guard during 2011 in the Office of the Regional Chief Conservator of Forests, Sambalpur circle. In the said circular, it is categorically stated that, the DFOS should not engage the staffs whose son/daughter/relations are to appear the said recruitment test. Such direction was issued to avoid legal complicity in future but the petitioner's father knowing fully well about such circular participated in the selection process.
- (iii) In spite of such specific directive, the father of the present petitioner was nominated and worked as Examiner. *Prima facie*, the fact that the petitioner was applied for the examination had been either suppressed or deliberately over looked the

guidelines for obvious reasons. The evaluation of answer papers in Mathematics and MIL (Oriya) appears to have been manipulated to award less marks to the answering Respondent's even though he has done excellent in the answer papers. It is further submitted that the selection list of candidates prepared under Rule- 11 of the Odisha Sub-ordinate Forest Service (Method of Recruitment and Conditions of Service of Forests) Rules, 1998 and approved by the appointing authority for appointment, prima facie is based on the manipulation of answer papers in evaluation of awarding higher marks to the selected candidates.

V. COURT'S REASONING AND ANALYSIS:

11. It is one of the fundamental principles of service jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. The participation

of the father of the petitioner in the selection process smacks bias. The guidelines were clear regarding this issue but he has violated by ignoring such guidelines.

12. The Supreme Court explained 'likelihood of bias' in the case of *Ashok Kumar Yadav vs State Of Haryana And Ors.*¹ where it was held that:

*"It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forests Service in **A.K. Kraipak v. Union of India**² happened in this case was that one Naquisbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naquisbund who was a member of the*

¹1987 AIR 454

²(1969) 2 SCC 262

Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naquishbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection."

13. The Supreme Court has emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection. In the present case, the relationship is father-son and the father was actively involved in the selection process.
14. Learned Counsel for the Opposite Parties have put forth the argument that there was no direct link considering that the father of the petitioner was evaluating the answer sheets of

different paper. However, considering that the petitioner's answer sheet was also being evaluated in the same place and the order in place invalidating presence of relatives during the evaluations, validates the contention of Opposite Parties. In *Badrinath v. Government of Tamil Nadu and Ors. J.T.*³ the Apex Court has held that unless there is a statute or statutory rule compelling the person to take a decision and there is no legally permissible alternative to substitute the adjudicator by another adjudicator, the doctrine of necessity cannot be pressed into service. For ready reference important paragraph of the decision is reproduced as under:

"83. It may be noticed that where a statute or a statutory rule constitutes a designated authority to take administrative or quasi-judicial decisions and where the person concerned is disqualified to take a decision on the principle of likelihood of bias, then the law (in certain circumstances explained below) makes an exception in the situation and the said person is entitled to take a decision notwithstanding his disqualification for otherwise no decision can be taken by anybody on the issue and public interest will suffer. But the position in the present case is that there is no statute or statutory rule compelling the Chief Secretary to be a member of the Screening Committee. If the Committee is constituted under an administrative order and a member is disqualified in a given situation vis-a-vis a particular candidate whose promotion is in question, there can be no difficulty in his 'recusing' himself and requesting another senior officer to be substituted in his place in the Committee, Alternatively, when there are three members in the Committee, the disqualified member could leave it to

³2000 (Suppl. 1) SC 346

the other two - to take a decision. In case, however, they differ, then the authority, which constituted the Committee, could be requested to nominate a third member. These principles are well settled and we shall refer to them."

15. The question that confronts the Court in the above facts is whether the participation of Dhaneswar Jit in the evaluation process vitiates the selection of the petitioner on the ground of bias. The doctrine of bias is a unique judicial innovation consistent with the principle that the justice delivery system must be rooted in the confidence of the people and justice must not only be done but also appear to have been done. Proof of actual bias is difficult to come by. Hence, the Courts have consistently held that even the possibility of bias would suffice to nullify an order passed or an action taken. In the present case, the possibility of bias on the part of Dhaneswar Jit, the father of the petitioner, as against the other candidates in the fray and leaning in favour of his son, looms large.

16. The Supreme Court in the case of *PK Ghosh v. JG Rajput*⁴ observed hereasunder-

"A basic postulate of the rule of law is that "justice should not only be done but it must also be seen to be done". If there be a basis which cannot be treated as unreasonable for a litigant to expect that his matter should not be heard by a particular Judge and there is no compelling necessity, such as the absence of an alternative, it is appropriate that the learned Judge should recuse himself from the Bench hearing that matter.

⁴1995 SCC (6) 744.

This step is required to be taken by the learned Judge not because he is likely to be influenced in any manner in doing justice in the cause, but because his hearing the matter is likely to give rise to a reasonable apprehension in the mind of the litigant that the mind of the learned Judge — maybe subconsciously — has been influenced by some extraneous factor in making the decision, particularly if it happens to be in favour of the opposite party.

Credibility in the functioning of the justice delivery system and the reasonable perception of the affected parties are relevant considerations to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. This is necessary not only for doing justice but also for ensuring that justice is seen to be done."

17. In light of the aforesaid discussion and having regard to the present position of law, this Court has no hesitation in coming to the conclusion that the Petitioner cannot be granted any relief by way of a Writ and the present Writ Petition is liable to be dismissed.
18. Accordingly, this Writ Petition is dismissed.

(Dr. S. K. Panigrahi)
Judge