

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C)(OA) No.3070 of 2015

Anup Kumar Mishra

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

CORAM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

05.07.2022

Order No

- 01.** 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 Deputy Executive Engineer w.e.f. 29.08.2015, i.e., the date from which his immediate juniors got such promotions, and to grant him 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 a disciplinary proceeding pending against the petitioner besides the vigilance proceeding pending in the Court of Special Judge, Vigilance, Cuttack in Vigilance P.S. Case No.57 of 2009. Involving the allegation against the petitioner, it appears the Vigilance Proceeding initiated in the year 2009, the charge-sheet involving the Vigilance case was also submitted. However the said vigilance case is yet to be disposed of. Pleading also further made clear that a Disciplinary Proceeding initiated against the petitioner since 2009, (Annexure-9) on the same set of charges as of vigilance case. In this background of case an allegation is made that promotion of the petitioner taking effect in the year 2015 (Annexure-7) has been kept in sealed cover only on the premises that a vigilance proceeding involving the petitioner is pending since 2009. The petitioner will retire from service w.e.f. 31.07.2022 on attaining the age of superannuation. 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 2009 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, Housing and Urban Development Department, Bhubaneswar-O.P. No.1 to give promotion to the petitioner to the rank of Deputy Executive Engineer (Super Time Scale) from the date of his juniors and batchmates got such promotions. However the promotions 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 promotions given to the petitioner to Deputy Executive Engineer 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 directions the writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

Sneha

