

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C. (OA) No.2906 of 2014

Kanhu Charan Dalai

....

Petitioner

Mr. Niroj Kumar Mahapatra, Advocate

-versus-

Secretary, Fishery & A.R.D.

Department and Another

....

Opposite Parties

Mr. L. Samantaray, Addl. Government Advocate

CORAM:

JUSTICE M.S. RAMAN

ORDER

20.10.2022

Order No.

13.

1. The Original Application No.2906 of 2014 was filed before the Orissa Administrative Tribunal, Bhubaneswar Bench, Bhubaneswar. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OA) No.2906 of 2014.

2. The petitioner, mechanic (electrical) under the administrative control of Director of Animal Husbandry and Veterinary Services, was arraigned in a Vigilance Case on the allegation of shortage of Motor Vehicles spare parts and equipments during the period of 1984-85 which was assessed at a value of Rs.15,000/- at that relevant time. Consequent upon such Vigilance case, departmental proceeding was initiated. The petitioner is aggrieved by non-consideration of his case for promotion to the post of Chief Operator by the Department of Fishery and A.R.D.

3. The petitioner moved the Odisha Administrative Tribunal by way of Original Application bearing No.214 of 2013, which came to be disposed of *vide* order dated 24.02.2014 wherein the following order was passed:-

“Heard learned counsel for the applicant and learned Govt. Advocate at length.

2. While the applicant was working as a Mechanic in the LDB Farm, Remuna, a disciplinary proceeding by an order dated 12.03.1991 at Annexure-3, was initiated against him. On receipt of the charge along with its enclosure, the applicant submitted his written statement. But no Inquiring Officer was appointed and no enquiry was conducted. When the applicant learnt that his juniors had been promoted to the post of Chief Operator since the year 1988, he made a representation to the Government and the Government in turn in their letter dtd. 14.05.2012 at Annexure-4 directed respondent No.2 to examine the matter and submit the status report as to why the applicant was not promoted to the rank of Chief Operator, even though he possessed requisite qualification and experience for the purpose. The Government also called for an explanation from respondent No.2 for such inordinate delay in disposal of the departmental proceeding vide their letter dtd. 30.08.2012 at Annexure-5. After a long period of 21 years, respondent No.2 by his order dated 17.10.2012 at Annexure-6 appointed the Inquiring Officer as well as Marshalling Officer to enquire into the charges framed against the applicant.

3. Hence, it goes without saying that the Inquiring Officer and the Marshalling Officer were appointed 21 years after initiation of the charge, which causes undue hardship to the applicant.

4. Learned Government Advocate submits that in the mean time the enquiry has been completed and enquiry report has also been received. For inordinate delay I would have quashed the charge.

5. In view such submission of the learned Government Advocate, I direct the respondents to finally conclude the departmental proceeding within a period of two months from the date of receipt of a copy of this order, failing which the departmental proceeding shall be deemed to have been dropped.

6. In O.A. No.215/2013, the applicant has claimed retrospective promotion with effect from 1988 i.e. from the date his juniors were promoted.

7. To this the State respondents have explained that in the year 1988, the applicant had not completed five years of experience in running the LN2 Plant. I am not convinced with such plea. If the applicant was not posted in LN2 Plant, it was not his mistake. Rather, it was the laches of the respondents for which the applicant was not considered for promotion, on such a flimsy ground for which the respondents were responsible.

8. O.A. No.215/2013 is disposed of with a direction to respondent to consider the case of the applicant for retrospective promotion with effect from the date from which his juniors were promoted without waiting for the result of the departmental proceeding, as such proceeding was initiated much after the applicant's juniors were promoted and a subsequent departmental proceedings could not stand on the way of the applicant to be considered for promotion.

9. Both the O.As. are accordingly disposed of."

4. Mr. N.K. Mahapatra, learned counsel for the petitioner submitted that as per paragraph 5 of the said order, the departmental proceeding should have been treated to be dropped and promotion to the post of Chief Operation should have been accorded to the petitioner. It is contended that the disciplinary proceeding was not concluded finally within the period stipulated as directed by the learned Tribunal. For this purpose he laid stress on the following paragraph of Annexure-7, which is order No.VIII-33/2003-8173/Vet, dated 10.04.2014 of the Director of Animal Husbandry & Veterinary Services, Odisha, Cuttack:-

"Whereas careful consideration of the finding of inquiry report with reference the proceeding and written statement of defense on the delinquent, it was proposed to inflict following punishment on him.

1. *Recovery of Rs.15000/- (Fifteen Thousand) only.*
2. *One increment may be stopped with cumulative effect."*

Mr. Mohapatra, therefore, submitted that the very use of the word "proposed" in aforesaid order of the Director of Animal Husbandry and Veterinary Services is indicative of fact that the disciplinary proceeding was not concluded finally.

5. Mr. Lalatendu Samantaray, learned Additional Government Advocate vehemently opposed the said contention of the counsel for the petitioner and urged that for all practical purposes the order dated 10.04.2014 passed by the Director is treated to be finally concluding the disciplinary proceeding in view of the following fact being stated in the said order:-

"Whereas the inquiring officer submitted his inquiry report on 25.02.2013 according to which the charges framed against the delinquent is established."

Though very fact that the charges framed against the petitioner being established in the disciplinary proceeding, the punishment so inflicted/proposed to be inflicted cannot be read as non-compliance of order dated 24.02.2014 of the learned Tribunal.

6. Mr. Samantaray has taken this court to Annexure-6 which shows that the order of the Tribunal was passed on 24.02.2014, whereas the order of the Director concluding the proceeding stated to have been passed and issued *vide* Memo No.8174 dated 10.04.2014.

Thus, the contention of counsel for the petitioner is not only technical but also preposterous.

7. Amplifying his submission, he further stated that had that not been so, the petitioner would not have challenged the said order of the Director in appeal which fact is apparent from the document enclosed at Annexure-8. For the sake of argument if it is conceded, but not admitted that the order dated 10.04.2014 of the Director is treated to be “not final”, then the present petition is to be treated premature and, for non-adherence of order of the Tribunal second original application/writ petition is not maintainable. Therefore, Mr. Samantaray laid stress on final Order dated 02.02.2018 passed in Appeal No.1274/FARD, passed by the Commissioner-cum-Secretary, F&ARD Department *vide* Annexure-B/1 enclosed to counter filed on behalf of the Opposite Party No.1, Secretary, Fishery and A.R.D. Department. The Commissioner-cum-Secretary-Appellate Authority, having considered gamut of factual aspect *vis-à-vis* gravamen of charge, rejected the appeal on merit and thereby accepted the reasons recorded by the Director of Animal Husbandry and Veterinary Services. Mr. Samantaray, therefore, requested to dismiss the writ petition.

8. This court after having heard the arguments advanced by both the sides is persuaded to hold that the argument that the disciplinary proceeding was not concluded within the time stipulated as directed in paragraph 5 of the order dated 24.02.2014 passed by the Odisha Administrative Tribunal, Bhubaneswar is

fallacious. The Appellate Authority, appreciating the fact and evidence available on record, has confirmed the fact established in the disciplinary proceeding by the Director of Animal Husbandry & Veterinary Services basing on the enquiry report. Therefore, it cannot be said that the disciplinary proceeding was not concluded within the period stipulated in the order of the Tribunal. Thus, this Court finds little scope to interfere with the facts so established.

9. In view of aforesaid matter, this Court is not inclined to exercise extraordinary jurisdiction under Article 226/227 by interfering in facts as established in order dated 10.04.2014 passed by the Director of Animal Husbandry and Veterinary Services, particularly so when the said order has been merged in the Appellate Order dated 02.02.2018 passed by the Commissioner-cum-Secretary Fisheries and ARD Department, Bhubaneswar. The writ petition, being devoid of merit, is dismissed.

(M.S. Raman)
Judge

Basudev