

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.4140 of 2014

In the matter of an application under Section 19 of the Administrative Tribunal's Act, 1985.

Hadibandhu Behera

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. Sidheswar Mallik and
P.C. Das

For Opp. Parties : Standing Counsel
Mr. M.K. Balabantaray

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 20.04.2022 and Date of Judgment: 25.04.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. S. Mallik, learned counsel for the Petitioner and Mr. M.K. Balabantaray, learned Standing Counsel appearing for the Opp. Parties.

3. The Petitioner has filed the present writ Petition with the following prayer:

“(I) Direct/Order that the respondents shall explore promotional channel to the post of Settlement Assistant Record Keeper and consider the case of the applicant for promotion proportionately to any higher post in terms of the principle settled by the Hon’ble Supreme Court of India and High Court of Orissa.

(II) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

4. It is submitted by the learned counsel for the Petitioner that on the death of the Petitioners’ father and in consideration of the application submitted by the Petitioner for his appointment under the provision of Rehabilitation Assistance Scheme, though Opp. Party No.1 vide letter dtd.03.05.1994 requested Opp. Party No.2 to consider the appointment of the Petitioner as against the available vacant post of the Senior Clerk, but vide order under Annexure-2 issued by the Opp. Party No.3, the Petitioner was appointed as against the post of Settlement Assistant Record Keeper on 02.08.1996.

5. It is submitted that the post of Settlement Assistant Record Keeper is a single cadre post with having no promotional avenue. Because of such position, the Petitioner even though was appointed to the said post of Settlement Assistant Record Keeper vide Order dtd.02.08.1996 under Annexure-2, but he is continuing in the same capacity till date.

6. Mr. Mallik, learned counsel for the Petitioner submitted that since the post of Settlement Assistant Record Keeper is a single cadre post with having no promotional avenue, the Petitioner is suffering and

he is denied of the benefit of promotion to the next higher post. In support of his submission Mr. Mallik relied on the decision of the Hon'ble Apex Court reported in the case of ***Food Corporation of India & Ors. V. Parashotam Das Bansal & Ors.*** reported in ***(2008) 5 SCC 100***. In Para 11 to 14 of the said decision Hon'ble Apex Court held as follows:-

"11. The question also came up for consideration in M/s. Ujagar Prints (III) v. Union of India and Council of Scientific and Industrial Research v. K.G.S. Bhatt. In the latter decision, this Court held: (SCC pp. 638-39, para 9)

"9. ... It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-

managerial employees and their supervisors". (See : Personnel Management by Dr. Udai Pareek p.277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions."

12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that he fell within a category of employees excluded from promotional prospect, the Superior Court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior Court of the country.

14. This Court in [State of Tripura & Ors. v. K.K. Roy](#), upon taking into consideration some of the earlier decisions of this Court, held : (SCC pp. 67-68, para 6)

"6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of [Article 12](#) of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle."

7. Mr. Mallik also relied on the decision of this Court reported in the case of **Pramod Kumr Singh v. IPICOL & Ors.** reported in **1995 (II) OLR-529**. In Para 3 of the said decision this Court relying on the decision of the Hon'ble Apex Court held as follows:-

" Refuting the case of the petitioner the opposite parties in their counter affidavit have stated that the promotional policy formulated by the IPICOL in 1991,

which has been amended in 1993 vide Annexure-A/1, contains promotional avenue for the in-service engineering diploma holders like the petitioner to the post of Assistant, Manager, (Project/Monitoring/Data Baal). Learned counsel for the opposite parties, however, submitted that at the present there is no post of Assistant Manager (Projects) for which the case of the petitioner can be considered; but as and when vacancy will arise or new post will be created, the case of the petitioner will be considered along with other suitable candidates. The relevance of promotional prospect in service cannot be over-emphasised. The apex Court in the case of Dr. Ms. O. Z. Hussain v. Union of India, 1990 (1) SLR 297, observed:

“This Court has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the services ineffective. Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical ‘A’ Group Scientists in the establishment of Director General of Health Service would be deprived of such advantage.”

In this regard the contention of the petitioner is that similarly placed Engineering Assistants with similar qualification serving in other State Govt. Undertakings like Orissa Mining Corporation, Industrial Development Corporation of Orissa Ltd. (IDCO), etc. have been provided with adequate promotional prospects.”

8. Mr. Mallik placing reliance on the aforesaid decision as cited (supra) prayed that necessary direction be issued to the Opp. Parties to create promotional avenues for the Petitioner by framing relevant scheme/rules within a stipulated time.

9. Mr. Balabantaray, learned Standing Counsel appearing for the Opp. Parties based his submission in terms of the stand taken in the counter affidavit. It is submitted that basing on the concession given by the Petitioner in his application dtd.26.07.1996 under Annexure-

A, the Petitioner was appointed to the post of Assistant Record Keeper vide order under annexure-2 and because of such concession given by the Petitioner, the claim of the Petitioner for creating promotional avenues to the said post lacks any merit for consideration by this Court. Accordingly, Mr. Balabantaray submitted that the prayer made by the Petitioner may not be entertained by this Court.

10. Perused the letter submitted by the Petitioner and annexed to the counter vide Annexure-A. As reflected in the said letter, the Petitioner because of the in action of the Opp. Parties in providing him appointment under the provisions of RA scheme for a pretty long period, he made the application under Annexure-A with a prayer to provide him appointment as against any Class III post.

11. The Petitioner had also no knowledge that the post in which he was appointed vide order under Annexure-2 has got no promotional avenue and no fault can be found with the Petitioner for his appointment in a post which has got no promotional avenue. Only after his joining, the Petitioner came to know that the post in question is a single cadre post with having no promotional avenue. Therefore, the stand taken by the Opp. Parties in the counter that because of Annexure-A, the Petitioner was appointed as against the post of Settlement Assistant Record Keeper, cannot be accepted.

12. Be that as it may, in view of the ratio decided by the Hon'ble Apex Court as well as by this Court in the decision cited (supra), this Court deems it fit and proper to direct the Opp. Parties more particularly Opp. Party No.1 to look into the grievance of the Petitioner as made in the writ Petition and to take appropriate steps

by creating avenues for promotion of the Petitioner to the next higher grade.

13. Since the Petitioner is continuing in a single cadre post from the date of his joining in the year 1996, this Court directs the Opp. Party No.1 to take a decision with regard to exploring the possibility for creating proper promotional avenues within a period of 4(four) months from the date of receipt of the order.

14. With the aforesaid observation and direction, the writ Petition is accordingly disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 25th of April, 2022/Sneha

