

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**WPC(OAC) No.3407 of 2014**

*Narayan Sutar*

....

*Petitioner*

None

-versus-

*State of Odisha & Others*

....

*Opposite Parties*

Mr. M.K. Khuntia, AGA

**CORAM:**  
**JUSTICE M.S. RAMAN**

**ORDER**  
**28.10.2022**

**Order No.**

- 01.** 1. The Original Application No. 3407 of 2014 was filed before the State Administrative Tribunal, Cuttack Bench, Cuttack. After its abolition, the same has been transferred to this Court which is renumbered as WPC (OAC) No. 3407 of 2014.
2. The Petitioner has challenged show cause notice dated 17<sup>th</sup> October, 2014 issued by the Opposite Party No.3-Regional Chief Conservator of Forest, Angul.
3. It is revealed from the said notice dated 17<sup>th</sup> October, 2014 that the said authority had issued notice calling for furnishing reply in connection with proposal to revert the Petitioner to the rank of Forester during pendency of the Vigilance, P.S. Case No. SBP(V) 36/2008 under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

4. None appeared for the Petitioner at the time of call. However, Mr. M.K. Khuntia, Additional Government Advocate referring to counter filed by the Opposite Party No.4-Divisional Forest Officer, Bargarh submitted that the promotion being given to the Petitioner on temporary basis, the same does not confer any right.

5. Paragraphs 3 & 4 of the counter are extracted hereunder for better understanding of the matter:-

*“3. That in reply to para 6.10 and 6.11 of the Original Application, it is humbly submitted that the averment made in this para that the show cause notice is illegal and liable to be quashed is not justified. This is because the promotion given to the applicant is temporary one. His promotion is illegal since one vigilance case and one departmental proceeding are pending against him which is a bar for promotion. Accordingly, the RCCF, Angul on the basis of information received from the D.G. Vigilance, Cuttack has rightly issued show cause reply. It may be submitted here that a benefit extended amiss does not confer a right upon the applicant, who is not entitled for the promotion as a vigilance case and disciplinary proceeding are pending, which could not be noticed at the time of DPC. This is also the ratio laid down in a case reported in 2014 (ii) LIR-CUT-1 (Chairman-cum-Managing Director and others –Vs-Bharat Chandra Behera & Another) and in the case of State of Bihar- Vs.- Upendra Narayan Singh and Others, reported in (2009) 5 SCC page 65, In another case, reported in (2010) 2 SCC 59, Union of India –Vs.- M.K. Sarkar, the Hon’ble Supreme Court while laying down the law, has made following observation.*

*“If someone has been wrongly extended a benefit, that cannot be cited as precedent for claiming similar benefits by others and guarantee of equality*

*before law under Article 14 is a positive concept and cannot be enforced in a negative manner.”*

*a) Similarly as per Rule 62(2) of the Orissa Forest Code, the applicant's reversion is justified. Said Rule 62 of Orissa Forest Code is reproduced here below:*

*“62. Probation- (1) Unless otherwise provided in the recruitment rules, every Government servant appointed to officiate against a substantive vacancy shall be treated as on probation, except in case of a transferred officer or a promote who has already been conformed in his previous service prior to his transfer on promotion.*

*(2) The period of probation shall be two years in case of directly recruited government servants and one year in case of promotes. Transferred officers who have not been confirmed in their previous service prior to their transfer, may be treated as on probation for such period as may be determined by the appointing authority in each case.*

*(3) The period of probation in each case shall count from the date a Government servant is appointed to officiate against a substantive vacancy.*

*Provided that the whole or any part of the continuous officiating service rendered by a Government servant prior to such appointment in a temporary post may be allowed by the appointing authority to count towards the period of probation prescribed in the preceding sub-rule.*

*(4) The appointing authority may, in any special case, extend the period of probation by such period as he may deem it.*

*(5) The appointing authority may terminate the service of an officer directly recruited or revert him to his former appointment in case he is a promote or transferred officer, during or at the end of the period of probation, if the Government servant has failed to give satisfaction or is found to be otherwise unfit for permanent appointment to the post. No appeal shall lie in such cases.” (Emphasis supplied).*

4. That in reply to para 6.12 of the Original Application, it is submitted that the averment made in this para is not corrected. The promotion of the applicant to the rank of Deputy Ranger from Forester is temporary as per rule 62(2) of the Orissa Forest Code. The vigilance case and pending departmental proceeding are bar for promotion. It may be submitted here that the Hon'ble Supreme Court of India while adjudicating a service dispute, has also dealt with an issue pertaining to granting promotion which was later found that the person concerned who was given promotion, was not entitled for the same. Such observation of the Hon'ble Supreme Court reported in AIR 1998 SC 2311, in the case of Union Bank of India Vs. Vishwa Mohan is reproduced hereunder (the relevant portion has been under lined for better appreciation):

*“The High Court also committed error when it assumed that when respondent was promoted as Bank Officer, he must be having a good report otherwise he would not have been promoted. This finding is totally unsustainable because the various acts of misconduct came to the knowledge of the bank in the year 1989 and thereafter the first charge sheet was issued on 17<sup>th</sup> February, 1989. The respondent was promoted as Bank officer some times in the year 1988. At that time no such adverse material relating to the misconduct of the respondent was noticed by the bank on which his promotion could have been withheld.”*

*(Emphasis supplied).*

*Be that as it may, on receipt of information, Respondent No.3 i.e. Regional Chief Conservator of Forests, Angul has rightly show caused the applicant. As it appears from the Annexure-6 i.e. order dated 20.11.2014 passed by the RCCF, the applicant pursuant to show cause notice dated 17.10.2014 i.e. the impugned show cause, has already submitted his reply dated 27.10.2014 upon receipt of the said show cause on 22.10.2014 and the applicant who has submitted to the jurisdiction, has suppressed all those facts.”*

6. Mr. M.K. Khuntia, Additional Government Advocate submitted that the writ petition against show cause notice is not maintainable and by efflux of time, the matter would have proceeded substantially or concluded by now.

7. In view of the aforesaid submission, the writ petition is dismissed.

**(M.S. Raman)**  
**Judge**

Laxmikant

