

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.3895 of 2013

Sailendra Narayan Praharaj Petitioner

-versus-

State of Odisha & Ors. Opposite Parties

**COROM:
JUSTICE BIRAJA PRASANNA SATAPATHY**

**ORDER
21.07.2022**

Order No

- 01.** 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. D. R. Panda, learned counsel for the Petitioner and Mr. R. N. Mishra, learned Addl. Government Advocate for the State-Opposite Parties.
3. The Petitioner is aggrieved by the communication dated 22.07.2013 issued by the Government in the Department of Finance under Annexures-6 & 7 in refusing to expunge the adverse C.C.R communicated for the year 1990-1991 and 1993-94.
4. It is submitted that because of his implication in a vigilance case, the Petitioner was communicated with the adverse CCR for the aforesaid two years.
5. It is also submitted that in the Vigilance Proceeding, the Petitioner was acquitted vide judgment dated 28.07.2012 passed by the learned Vigilance, Judge, Cuttack in T.R. Case No.139 of 2007.
6. It is also submitted that earlier the Petitioner had approached the learned Tribunal in O.A. No.3324 of 1997

and learned Tribunal vide order dated 28.02.2013 under Annexure-5 dispose of the said Original Application with the following order:-

8. *In the result, the O.A. is allowed. The respondent No.1 is directed to see that the representations made by the applicant challenging the adverse remarks recorded in his CCRs. For the years 1990-1991 and 1993-1994 are considered and disposed of, within a period of one month from the date of receipt of a copy of this order. The respondents shall, thereafter, convene a review DPC within a further period of one month to consider the applicant's case for promotion to the rank of OFS, Class-II on the basis of available materials for the period till 1.9.1995 including the orders passed on both of his representations challenging the adverse remarks passed against him. In case the applicant is found suitable for promotion, he shall be promoted immediately after the DPC takes its decision and such promotion shall take effect from 1.9.1995 i.e. the date from which his juniors were promoted and his pay shall be notionally refixed from such date and his pension shall also be refixed accordingly and the differential amount be paid to him, within a period of six months from the date of communication of this order. It is however, made clear that the applicant shall not be entitled to arrears of salary for the period for which he has not worked in the promotional post.*

7. It is submitted that without following the direction of the learned Tribunal in letter and spirit and without assigning any reason whatsoever, the Department issued the communication under Annexure- 6 & 7 in refusing to expunge the adverse CCRs communicated for the year 1990-1991 and 1993-1994.

8. It is also submitted that because of such issuance of the adverse CCRs, the Petitioner was deprived from getting the benefit of promotion and in the meantime he also retired from his service on 30.09.1998.

9. It is accordingly submitted that because of the illegal action of the Opposite Party No1 in not following the direction of the learned Tribunal in letter and spirit, the Petitioner was deprived from getting the benefit of promotion and he retired as such in the year 1998.

10. Mr. Panda, accordingly prayed that the communication issued under Annexure-6 and 7 be set aside by this Court with passing of appropriate order on the claim of the Petitioner. Even though notice of the writ petition was issued on 13.01.2014, but no counter affidavit was filed by the State-Opposite Parties in spite of several opportunity given by this Court. This Court vide order dated 16.03.2022 also passed an order that if no counter is filed within ten days time, the matter will be decided on its own merit.

11. Heard learned counsel for the Parties.

12. This Court after going through the same find that the Opposite Party No.1 without applying mind and without following the direction of the learned Tribunal passed on 28.02.2013 in O.A No.3324(C) of 1997 refused to expunge the adverse CCRs for the period 1990-91 and 1993-94. Because of such action of the Opposite Party No.1 as per the considered view of this Court, the Petitioner was deprived from getting the benefit of any promotion and retired as such in the year 1998.

13. After considering the materials available on record, this Court has got no hesitation in quashing the communication issued by the Opposite Party No.1 on

22.07.2013 under Annexures-6 & 7 and so also the adverse CCR for the period in question. While quashing the same, this Court directs the said opposite party to accord notional promotion to the petitioner from the date his juniors were give such promotion. This Court further directs the Opposite Parties to extend all service and financial benefits as due and admissible in favour of the Petitioner. The entire exercise shall be completed within a period of four months from the date of receipt of this order.

14. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Subrat

