

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OA) No.1009 of 2017

Ajoy Kumar Dash

....

Petitioner

-versus-

State of Odisha & Others

....

Opp. Parties

COROM:

JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

29.08.2022

Order No

1. 1. This matter is taken up through Hybrid Mode.
2. Heard Mr. S.N. Pattnaik, learned counsel for the Petitioner and Mr.M. Balabantaray, learned Standing Counsel.
3. It is submitted that the counter has already been filed in the case and copy of the same is served on the learned counsel for the petitioner. Mr. Balabantaray files a copy of the same in Court today. The same be kept on record.
4. Heard Mr. S.N. Pattnaik, learned counsel for the petitioner and Mr.M. Balabantaray, learned Standing Counsel .
5. The petitioner has filed the present Writ Petition challenging the order of promotion issued in his favour vide notification dated 20.9.2016 under Annexure-2. It is submitted that pending disposal of the vigilance proceeding initiated against the petitioner, petitioner approached learned Tribunal in O.A. No.1076 of 2021. Learned Tribunal in its order dated 26.2.2016 under Annexure-1 disposed of the OA with the following order:

“11. In view of the above submissions, respondents are directed to open the sealed cover in respect of the promotion of the applicant to the rank of Deputy Superintendent of Police as per the recommendations of the DPC held on 30.3.2007 and consider his subsequent promotion from the date his juniors were promoted. If he is otherwise found suitable for such promotion. It is made clear that promotion given to the applicant shall only be adhoc, subject to the final outcome of the Vigilance case pending against him. The respondents are at liberty to pass appropriate order as per rules after conclusion of the said Vigilance case. The benefit of adhoc promotion be extended to the applicant within a period of two months from the date of receipt of a copy of this order.

6. It is submitted that learned Tribunal though directed the Opp. Parties to give promotion on adhoc basis subject to the final outcome of the vigilance case, but while implementing the said order by giving ad-hoc promotion, the same was given on notional basis. It is submitted that the order passed by the learned Tribunal was never challenged and in fact it was implemented vide the impugned notification dated 20.9.2016. It is submitted that since learned Tribunal directed to give promotion on adhoc basis subject to final outcome of the vigilance proceeding, but without implementing the same in letter and spirit, promotion has been given on notional basis. Accordingly, Mr. Pattanaik prayed for interference of this Court in the said order.

7. Mr. M. Balabantaray, learned Standing Counsel on the other hand made his submission basing on the counter filed Opp. Party No.1. It is submitted that since the vigilance proceeding has not yet been disposed of, petitioner has been given adhoc promotion vide the impugned notification but on notional basis w.e.f the date his juniors were promoted to the said rank.

8. Heard learned counsel for the parties. This Court after going through the order passed by the learned Tribunal finds that learned Tribunal while disposing the O.A directed the Opposite parties to open the sealed cover and give promotion to the petitioner on ad hoc basis from the date his juniors were promoted, but the same shall be subject to the final outcome of the vigilance case. Therefore, while implementing the said order, the petitioner should not have been given promotion on notional basis. This Court while interfering with the said order directs Opp. party No.1 to modify the notification dated 20.9.2016 and allow the petitioner the benefit of promotion with all service and financial benefit from the date his juniors were so promoted. The said exercise shall be completed within a period of two months from the date of receipt of the order. Financial benefit accruing to the petitioner, on such modification shall also be released within the aforesaid period.

9. It is observed that the benefit extended to the petitioner however shall be subject to the final outcome of the vigilance proceeding.

10. With the aforesaid observation and direction, the Writ Petition is disposed of.

(Biraja Prasanna Satapathy)
Judge

sangita