

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 33286 of 2022

Sri Mayadhar Pattayat

....

Petitioner

Mr. Manas Pati, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr. Arnav Behera, ASC

CORAM:

JUSTICE A.K.MOHAPATRA

ORDER

07.12.2022

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard the learned counsel for the Petitioner as well as the learned Additional Standing Counsel appearing for the State- Opposite Parties. Perused the writ petition along with the documents annexed thereto.
3. This writ petition has been filed by the Petitioner seeking a direction to the Opposite Parties to consider his case for further promotion to the post of Joint Secretary in the next DPC which is likely to be held very soon by granting relaxation to him.
4. It is submitted by the learned counsel for the Petitioner that the Petitioner, who is working as a Deputy Secretary at the moment, was initially appointed as Junior Assistant in the year 1980-81. Thereafter, he was given promotion and was working as Under Secretary. In the year 2019, his case was recommended for promotion to the post of Deputy Secretary. However, due to non-supply of relevant documents like the CCR, he could not be given

promotion to the post of Deputy Secretary in the year 2019. However, subsequently he was given promotion to the post of Deputy Secretary vide order No.2994 dated 03.02.2022. It is further submitted that although the Petitioner was eligible to be promoted to the post of Deputy Secretary in the year 2019 along with his batchments, he was given promotion only vide order dated 03.02.2022, however considering the eligibility and seniority of the Petitioner, his seniority was restored and in the common gradation list the name of the Petitioner appears against Serial No.1 over and above his batchments who were promoted in the year 2019 and subsequently and prior to the Petitioner. He further contended that recently the names of the eligible candidates including the Petitioner are under active consideration for promotion to the post of Joint Secretary. However, for promotion to the post of Joint Secretary, a condition has been imposed vide Notification dated 15.02.2019 under Annexure-2 to the effect that an officer who is eligible for promotion to the post of Joint Secretary unless he or she has completed at least one year continuous service in the post of Deputy Secretary as on 1st day of January of the year in which the Committee meets, his or her case shall not be considered for such promotion.

5. On the basis of 2nd clause of paragraph-3 of Notification dated 15.02.2019 under Annexure-2, learned counsel for the Petitioner submits that the case of the Petitioner has not been considered by the DPC for promotion to the post of Joint Secretary. It is further contended that 2nd clause of paragraph-3 of the Notification dated 15.02.2019 would not stand on the way of

the Petitioner as the Petitioner has already been given seniority and his name appears against Serial No.1 in the gradation list. Therefore, although the Petitioner was given promotion subsequently, his seniority was restored with effect from the date when his juniors were given promotion, i.e., in the year 2019 and 2020. In such view of the matter, learned counsel for the Petitioner submits that the seniority and the date of joining of the Petitioner in the post of Deputy Secretary shall be reckoned from the year 2019, i.e., the date from which the Petitioner's name was recommended and could not be considered in the absence of CCR of the Petitioner. Further, once the seniority of Petitioner is restored, his date of appointment as Deputy Secretary would relate back to the date of appointment of his juniors and in such case, it cannot be said that the Petitioner does not have two years of required experience as Deputy Secretary.

6. In the aforesaid context, learned counsel for the Petitioner also refers to the clause for relaxation of the rules. Additionally, learned counsel for the Petitioner submits that Clause-22 of the OSS Cadre Rules, 2016 provides for the relaxation of rules. But, on perusal of the said Rules, 2016, it appears that the Government has power to grant relaxation in public interest by passing a reasoned order in writing in respect of any class or category of officers in consultation with the Commission. Accordingly, the Petitioner has submitted a representation before the Opposite Party No.2-Principal Secretary to Government of Odisha, Home Department on 2.12.2022. The same is stated to be pending before the said opposite party.

7. Learned counsel for the State, on the other hand, submits that since the Petitioner has already approached the Opposite Party No.2 by filing a representation on 2.12.2022 and it is stated that the same is pending before the Opposite Party No.2, therefore, it would be prudent and fair to dispose of the writ petition by directing the Opposite Party No.2 to consider the representation of the Petitioner in accordance with Rule-22 of the OSS Cadre Rules, 2016 and the Circular dated 11.03.2020 of the Government of Odisha issued by the General Administration and Public Grievance Department under Annexure-5 to the writ petition within a stipulated period of time.

8. Having heard the rival contentions raised by the learned counsel for the parties and upon careful consideration of the facts of the present case, this Court disposes of the writ petition at the stage of admission by directing the Opposite Party No.2 to consider the representation of the Petitioner dated 2.12.2022 under Annexure-3 pending before him within a period of two weeks from the date of production of certified copy of this order. Further, in the extraordinary facts and circumstances, it is directed that while considering the representation of the Petitioner, the Opposite Party No.2 shall consider the grant of relaxation to the Petitioner as provided under Rule-22 of the OSS Cadre Rules, 2016 as well as the Circular dated 11.03.2020 of the Government of Odisha in General Administration and Public Grievance Department under Annexure-5 to the writ petition and in the event the authorities come to a conclusion that the Petitioner is eligible to get relaxation, then necessary and prompt steps be taken to

place the matter before DPC to consider the case of the Petitioner for promotion to the post of Joint Secretary.

9. Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

Debasis

