

(2023) 05 OHC CK 0197
In the Orissa High Court
Case No : Writ Petition (C) No. 31501 Of 2021

Geeti Ranjan Mohapatra

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 12-05-2023

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227

Citation : (2023) 05 OHC CK 0197

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : A.K. Acharya, S. Mishra, A. Acharya, Tarun Pattnaik

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J

1. I have heard the learned counsel appearing for the Petitioner as well as learned Additional Standing Counsel appearing for the State-Opposite Parties. Perused the pleadings of the respective parties as well as the documents annexed to the respective pleadings.

2. This writ petition has been filed by the Petitioner with a prayer for a direction to the Opposite Parties to give promotion to him to the rank of Deputy Superintendent of Police pending disposal of Bolangir District Disciplinary Proceeding No.15 of 2017 w.e.f. the date of his batchmates and immediate juniors have been given promotion in terms of the G.A. & P.G. Department Office Memorandum dated 17th June, 2021 under Annexure-10 to the writ petition.

3. Mr. A.K. Acharya, learned counsel appearing for the Petitioner submitted that while the Petitioner was serving as Inspector of Police in Puintala Police Station in the district of Bolangir, vide compliant of the Additional Superintendent of Police, Bolangir vide letter No.4850/DCRB dated 27.05.2017 under Anneuxre-1, a proceeding was registered as Bolangir District Disciplinary Proceeding No.15 of 2017. It is further submitted by Mr. Aharaya that although the Petitioner is

cooperating with the Departmental Authority, however, the same has not been concluded as of now and for such delay in concluding the Disciplinary Proceeding, the Petitioner cannot be blamed.

4. Learned counsel for the Petitioner further contended that during pendency of the aforesaid Disciplinary Proceeding, a DPC meeting was convened to consider the promotion of the Inspectors to the post of Deputy Superintendent of Police. Although the Petitioner was eligible for such promotion along with his batchmates, his case was not considered on the ground that the required numbers of APRs was not available for consideration by the DPC. He further contended that the said DPC meeting which was held on 28.01.2021, the batchmates of the Petitioner and immediately juniors of the Petitioner have been given promotion ignoring the case of the present Petitioner.

5. Thereafter, the case of the Petitioner was considered in review DPC after obtaining required number of APRs of the Petitioner. In the review DPC which took place on 22.07.2021, the case of the Petitioner was considered and his fate has been kept in a sealed cover in view of the G.A. Department Notification No.29904/Gen. dated 24.07.1992, the Petitioner has approached this Court by filing the present writ petition for a direction to open the sealed cover and give promotion to the Petitioner on the ground that the Office Memorandum of the G.A.& P.G. Department under Annexure-10 provides from the date of DPC, if the Disciplinary Proceeding is not concluded within a period of two years, then the case of the Petitioner be considered for ad hoc promotion subject to certain terms and conditions mentioned therein.

6. Referring to the Office Memorandum dated 17th June, 2021 under Annexure-10, learned counsel for the Petitioner submitted that the Petitioner is entitled to get the benefit under Clause-2(ii) of the aforesaid Memorandum by taking into consideration that the first DPC for the year 2020 was convened on 28.01.2021. He further contended that though the case of the Petitioner was considered in the review DPC, the Petitioner cannot be held responsible for such deferment as a duty is cast upon the departmental authorities to maintain APRs and forward the same to the DPC for consideration of promotion of the Government employees.

7. He further submitted that by taking into consideration the first DPC which was convened on 28.01.2021, two years have been elapsed in the meantime and the Disciplinary Proceeding has not come to an end. In the meantime, the batchmates and immediate juniors have already been given promotion to the next higher rank, i.e., DSP. Accordingly, learned counsel for the Petitioner submitted that the Opposite Parties be directed to open the sealed cover and give promotion to the Petitioner within the stipulated period of time.

8. Learned Additional Standing Counsel appearing for the State-Opposite Parties, referring to the counter affidavit, submitted that while Petitioner was working as IIC in the Bolangir District, a disciplinary proceeding was initiated against him.

Since the Disciplinary Proceeding which was initiated against the Petitioner is pending, the Departmental Authorities shall consider the case of the Petitioner by following the G.A. Department Notification No.29904/Gen. dated 24.07.1992 in the review Departmental Promotion Committee meeting for the year 2020 for promotion from Inspector to the rank of DSP which was held on 22.07.2021. He further contended that due to pendency of such Disciplinary Proceeding against the Petitioner, the case of the Petitioner was although considered for promotion in the review DPC meeting held on 22.07.2021, the fate of the Petitioner has been kept in a sealed cover. Moreover, the said sealed cover can only be opened after disposal of the Disciplinary Proceeding or completion of two years from the date of review DPC recommendation, which was held on 22.07.2021.

9. Learned Additional Standing Counsel appearing for the State-Opposite Parties referring to the counter affidavit further submitted before this Court that in view of the Office Memorandum of the G.A. & P.G. Department under Annexure-10, the Appointing Authority is required to consider the case of the Petitioner for ad hoc promotion keeping in view the public interest. He further submitted that it is only after expiry of two years of DPC recommendation, the case of the Petitioner can be considered for ad hoc promotion in the event the Disciplinary Proceeding is not concluded within the aforesaid time.

10. Further, while considering such ad hoc promotion, the authorities are also required to consider the suitability of the employee concerned on the basis of his totality of his service/record of his service without taking into account Disciplinary Proceeding pending against him. He further contended that it is only after complying with aforesaid requirement, promotion can be granted to a Government employee, who is facing a Disciplinary Proceeding. Learned Additional Standing Counsel emphatically submitted that the two years period as prescribed in Office Memorandum under Annexure-10 has not come to an end, therefore, the case of the Petitioner is not yet matured for such ad hoc promotion.

11. A rejoinder affidavit has been filed on behalf of the Petitioner. On perusal of the rejoinder affidavit, it is seen that the Petitioner has taken a ground that availability of required number of APRs and sending the same to the DPC for consideration is not the responsibility of the Petitioner. The District Police Administration or the higher authorities of the Police Department are vested with such responsibility and it is their duty and responsibility to see that such PARs are send in time to the DPC for consideration of the cases of the promotion of the Government employees in time and as per the rules.

12. In such view of the matter, learned counsel for the Petitioner submitted that non-availability of APRs/CCRs/PARs is not a ground not to consider the case of the Petitioner for promotion in the regular DPC which was held on 28.01.2021. Although the case of the Petitioner was considered in the review DPC meeting held on 22.07.2021, the same should have been considered on 28.01.2021 and taking into consideration the date of the DPC meeting, i.e., on 28.01.2021, two years have already expired in the meantime as provided in Office Memorandum

under Annexure-10. Accordingly, sealed cover should have been opened and the Petitioner should have been given ad hoc promotion subject to other terms and conditions under Annexure-10.

13. Having heard the learned counsel for the respective parties and upon a careful consideration of the pleadings of the respective parties as well as their respective contentions and upon a close scrutiny of the materials placed before this Court, this Court is of the considered view that to succeed in the writ petition, the Petitioner has to satisfy that he fulfills all the eligibility criteria that has been prescribed in the Office Memorandum dated 17.06.2021 under Annexure-10. On close scrutiny of the materials placed on record, this Court finds that initially the Petitioner's name was sent to DPC along with other eligible candidates which was convened in respect of the year 2020.

14. It is also apt to mention here that although the DPC meeting held on 28.01.2021 which had recommended the batchmates and immediate juniors of the Petitioner for promotion to the post of DSP, the case of the Petitioner could not be considered due to lack of adequate number of PARs which fact is evident from the minutes of such DPC meeting. Such non-availability of the PARs cannot be a ground not to consider the case of the Petitioner for promotion which is a right vested by law upon the Petitioner. This Court in several judgments referring to the judgments of the Hon'ble Apex Court has already held that a Government employee cannot be denied promotion merely on the ground that adequate numbers of PARs are not made available to the DPC or the APRs are not transferred by the authorities.

15. In such view of the matter, this Court has no hesitation to come to a conclusion that although the case of the Petitioner was considered in the review DPC meeting, which was held subsequently, however, the same has to be counted from the date of original DPC that was convened and the recommendations of the batchmates and immediate juniors of the Petitioners were made for promotion to next higher rank. Accordingly, if the limitation prescribed in G.A. & P.G. Office Memorandum dated 17th June, 2021 under Annexure-10 of two years is to be calculated w.e.f. the date of the DPC meeting for the year 2020 held on 28.01.2021, it is crystal clear that the two years' time frame as provided under Clause-2 has already been expired in the meantime. Therefore the case of the Petitioner for ad hoc promotion to the post of DSP could very well have been considered by the authorities in the light of the Office Memorandum dated 17th June, 2021 under Annexure-10 to the writ petition.

16. Accordingly, in view of the aforesaid analysis of facts as well as the law, this Court has no hesitation in directing the Opposite Party No.2 to open the sealed cover in respect of the present Petitioner within a period of four weeks from the date of production of certified copy of this judgment. Further, it is made clear that such ad hoc promotion of the Petitioner shall be subject to other terms and conditions as has been provided in the Office Memorandum dated 17th June, 2021 under Annexure-10 to the writ petition.

17. With the aforesaid observations and directions, this writ petition stands disposed of.

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