
(2011) 05 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (C) No. 10143 of 2010

Jai Bhagwan Sangwan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Citation : (2011) 2 ILR (Ori) 167

Hon'ble Judges : S.K. Mishra, J;L. Mohapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application assails the order in Annexure-7 passed by the Deputy Commandant on 22.5.2010 reverting him to the post of Sub-Inspector from the post of Inspector.

2. The petitioner was appointed as a Sub-Inspector on 6.1.1995 after being selected through SSC. He served in such capacity at different places for 18 years. His case was considered for promotion by the D.P.C. on 30.3.2009 and he was found fit to be promoted for the post of Inspector on the basis of the recommendation of DPC. Before the petitioner was given promotion, a charge memo was issued by opposite party no.4 on the allegation of negligence in duty. The charge is that the petitioner had been intimated to attend the pre course marine training, which was scheduled to be held from 10.5.2009 to 30.5.2009 and even though he had been informed about the training, he got himself admitted in Ayurvedic Hospital, Safdarganj Hospital, New Delhi and obtained a certificate from the doctor of the said hospital on 15.5.2009 advising him for seven days bed rest in order to avoid the training programme. Accordingly, on the basis of the said allegation, charge was framed for indiscipline and disobedience of order of higher authority. He was found guilty of the charge and was imposed one day pay fine. On depositing the fine, the petitioner was promoted to the post of Inspector under Annexure-5 on 21.8.2009. The certificate appended to the said order of promotion clearly shows that no

departmental inquiry was either pending or contemplated against him and that he was not under currency of punishment. Though it is the case of the petitioner that he joined the promotional post and had drawn salary for two to three months before the reversion order was passed, the stand taken in the counter affidavit is that before the petitioner joined in the promotional post the order of reversion was passed in view of the departmental proceeding.

3. Shir Pattnaik learned counsel appearing for the petitioner assailed the order in Annexure-7 basically on two grounds. The first ground taken by the learned counsel is that once the D.P.C. found the petitioner suitable for promotion, initiation of a departmental proceeding subsequent thereto cannot be a ground to deny promotion. The second ground is that the petitioner having been promoted to a substantive post and having joined the said promotional post, he could not have been reverted without following the due procedure of law.

Shri S.D.Das, learned Assistant Solicitor General appearing for the opposite parties-Department submitted that though the departmental proceeding had been initiated against the petitioner after the D.P.C. recommended for his promotion, before he was actually promoted the proceeding had already been started and concluded. Therefore the petitioner could not have been given promotion on the recommendation of D.P.C. and, accordingly, the order of reversion had to be passed.

4. So far as first ground taken by the learned counsel for the petitioner is concerned, admittedly the D.P.C. met on 30.3.2009 and recommended the case of the petitioner for promotion and on the said date no disciplinary proceeding was pending against him. The disciplinary proceeding was started on 31st July, 2009 when a charge memo was served on the petitioner. The proceeding was concluded and as a minor punishment, fine of one day pay was imposed and the petitioner also deposited the said fine on 21.8.2009. On the very same day the order of promotion was issued in Annexure-5 and it is specifically stated in the said promotion order that on the date the said order was issued, no departmental proceeding was pending against the petitioner. In this connection, reference may be made to a judgment of the Hon''ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., . The Hon''ble Supreme Court in the said judgment held that sealed cover procedure is to be followed only after charge memo is issued to the employee. Merely pendency of a preliminary investigation is not sufficient to enable the authorities to adopt the said procedure. In the case of Mahendra Pratap Vs. State of Orissa and Others, this Court observed that initiation of a departmental proceeding after recommendation is made by the D.P.C. cannot be a ground to deny the promotion. We are therefore of the view that the departmental proceeding having been initiated after the D.P.C. recommended the case of the petitioner for promotion, pendency or disposal of the departmental proceeding shall not stand on the way of the petitioner to deprive him of such promotion. Moreover, it has been certified in Annexure-5 that on the date of promotion, no departmental

proceeding was pending against the petitioner.

5. So far as second ground is concerned, the petitioner admittedly had been promoted to the post of Inspector in Annexure-5 and the said order of promotion was passed on 21st August 2009. The order of reversion was passed on 22nd May, 2010 and there is nothing in the counter to show that the petitioner was working as Sub-Inspector from 21st August, 2009 till 22nd May, 2010. The petitioner having been promoted to the post of Inspector in August, 2009 and the order of reversion passed on 22nd May, 2009, we accept the contention of the learned counsel for the petitioner that the petitioner had in fact worked in the promotional post for few months.

6. In view of the above, the petitioner having joined the promotional post and having worked for some months, the order of reversion could not have been passed without following the due procedure of law.

7. Having found the order of reversion illegal for the reasons stated above, we allow the writ application and set aside the order of reversion in Annexure-7