
(2001) 12 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 14014 of 1998

Krutibash Mohanty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 9
Constitution of India, 1950 — Article 226, 227

Citation : (2002) 93 CLT 273

Hon'ble Judges : P.K. Patra, J; P.C. Naik, J

Bench : Division Bench

Advocate : Ganeswar Rath, for the Appellant; D.C. Mohanty, Senior Standing Counsel (Central), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Patra, J.—In this writ application under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the order dated 17.9.1998 in O.A.No. 773 of 1997 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, rejecting his prayer for giving him retrospective promotion and financial benefits.

2. The petitioner was recruited as a Senior Observer on 22.4.1974 and was posted in the office of the Deputy Director General of Meteorology in the Regional Meteorological Centre, Calcutta (opposite party No. 3) which is under the Director General of Meteorology India Meteorology Department, New Delhi (opposite party No. 2). On 8.3.1983 the petitioner was promoted to the post of Scientific Assistant in the scale of pay of Rs. 1400-2300.00. As per the gradation list of Scientific Assistants in the Department published on 11.7.1988, vide Annexure-1, the petitioner was placed at serial number 1386 and one Amarjit Singh was placed next below him at serial number 1387. On 22.8.1990 the petitioner received a communication from the Regional Meteorological Centre, Calcutta, vide Annexure-2, intimating him that the entries made in his

Confidential Report for the year ending 31.3.1990 were adverse. It revealed that in respect of seven columns, the remark "Satisfactory" has been noted, and . the petitioner had been advised to exert himself to get over the defects and to earn better remarks in the future years. He was advised to make representation, if any, against the "adverse" remarks. On 10.9.1990 the petitioner filed a representation, vide Annexure-11/1, pursuant to Annexure-2 before the competent authority stating that the remark "Satisfactory" was not adverse. On 30.4.1991 the Regional Meteorological Centre, Calcutta intimated the petitioner that the entries made in Annexure-2 were not "adverse" against the petitioner. On 26.8.1992, the petitioner was served with a memorandum of charges, vide Annexure-3, with imputation of misconduct under rule 16 of the C. C. S. (C.C.A.) Rules, 1965. For his misconduct and misbehaviour a departmental proceeding was started against the petitioner on the report of one R. K. Nayak, Senior Observer, fo the effect that on 29.1.1992 the petitioner hurled abusive words at him and attempted to assault him by means of Chappal. When the said departmental proceeding was pending enquiry, the petitioner was intimated on 2.7.1993, vide Annexure-4, that in his Confidential Report for the period from 1.4.1992 to 31.3.1993 an entry had been made that "disciplinary action had been initiated against him for his misbehaviour with one of his junior colleagues". On 7.8.1993 the petitioner filed a representation for expunction of the "adverse" entry in his C.C.R. for the period from 1.4.1992 to 31.3.1993. The petitioner was intimated on 27.9.1993, vide Annexure-5, that the entry communicated to him, vide Annexure-4, was not "adverse" and was only a statement of fact. After conclusion of the enquiry in the departmental proceeding against the petitioner the competent authority inflicted punishment of stoppage of two annual increments of pay without cumulative effect on 30.4.1994, vide Annexure-6. On 7.11.1994 the petitioner preferred an appeal against the said punishment before the Director General of Meteorology, opposite party No. 2, and on 30.9.1995 the said appellate authority reduced the punishment of stoppage of two annual increments without cumulative effect to stoppage of one annual increment without cumulative effect. The petitioner was promoted on officiating basis to the post of Professional Assistant, vide orders dated 5.6.1995 and 28.8.1995 on eightynine-days basis, as per Annexures-15 and 15/1, and he joined the said . post on 5.6.1995. On 28.11.1996, the Departmental Promotion Committee (hereinafter referred to as "DPC") considered the case of the petitioner for promotion to the post of Professional Assistant, but his name was not recommended and the name of his junior, Amarjit Singh, who was at serial number 1387 in the gradation list, and the names of fourteen others were recommended and on the basis of that recommendation, Amarjit Singh was promoted to the post of Professional Assistant on 24.1.1996, vide Annexure-8. Against the said supersession, the petitioner filed a representation on 15.10.1997 to the concerned authority, vide Annexure-9. Before receiving any communication from the authority on his representation the petitioner filed the O.A. before the Central Administrative Tribunal on 17.12.1997. According to the petitioner, the authorities overlooked the circulars of the Central Government

issued from time to time providing guidelines for promotion of employees and that the DPC had illegally not recommended his case for promotion.

3. Mr. Rath, learned counsel for the petitioner, contended that when the remarks "Satisfactory" and "disciplinary action has been initiated against Shri K. B. Mohanty for his misbehaviour with one of his junior colleagues" were not adverse as per the communication received from the authorities, the DPC could not have taken an unfavourable view against him and the Committee should not have taken into consideration the initiation of the departmental proceeding against the petitioner as an adverse circumstance to deprive him of his right to promotion, ignoring the circulars of the Central Government guiding the field. It was further contended that though the disciplinary authority had inflicted a "minor" punishment of stoppage of two annual increments of pay without cumulative effect for the delinquency of the petitioner, the appellate authority had reduced the same to "stoppage of one annual increment without cumulative effect", vide order dated 1.3.1995, and as such the period of punishment expired on 30.3.1996. Accordingly, the same should not have been considered as a bar for promotion of the petitioner on 28.11.1996 when the DPC met. He referred to the circulars of the Central Government, vide Annexures-10 and 11, in support of his contention. Mr. Rath further contended that the Tribunal erred in rejecting the contention's of the petitioner on this score.

4. Mr. Mohanty, learned Senior Standing Counsel (Central) supported the impugned order and contended that there is no infirmity or illegality in the same so as to warrant interference.

5. It has been stated in para-11 of the writ petition that the respondents contested the case with the averments that after termination of the first departmental proceeding and infliction of punishment of stoppage of two annual increments of pay without cumulative effect, reduced to stoppage of one annual increment of pay without cumulative effect by the appellate authority, another departmental proceeding was initiated against the petitioner, vide chargesheet dated 16.3.1997, which terminated on 24.9.1997 inflicting punishment of "warning" when the petitioner admitted his delinquency and apologised. The DPC considered the case of the petitioner for promotion twice on 28.11.1996 and 3.9.1997, but the petitioner was not found fit for promotion on both the occasions.

6. In para-5 of the impugned order, the tribunal has dealt that though the learned counsel for the petitioner submitted that the DPC twice considered the case of the petitioner for promotion on 28.11.1996 and 3.9.1997, he confined his argument to the DPC meeting held on 28.11.1996. Apparently, the learned counsel for the petitioner confined his argument to the first DPC, which debarred the petitioner from promotion and in the O.A. there was no challenge to the second DPC recommendation.

7. After a thorough discussion, the Tribunal held that the circular of the Central

Government dated 15.2.1979 (Annexure-10) containing clarification in regard to the sealed cover procedure regarding promotion to higher grade was not applicable to the present case, in as much as the departmental proceeding started against the petitioner had terminated on 30.3.1994 and the appeal terminated on 30.3.1995 and the DPC held its meeting much after the same, i.e. on 28.11.1996 and, therefore, the question of keeping the recommendation of the DPC in sealed cover did not arise. So also the Tribunal has held that the circular, Annexure-11, was not applicable to the petitioner's case for the self-same reason. Annexure-11 provides that the punishment of censure, recovery of pecuniary loss and stoppage of increment do not constitute a bar to the promotion of an official, provided on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post. Annexure-11/1 contains the procedure to be observed by the Departmental Promotion Committees and also several guidelines to be followed by the DPCs.

8. In the present case, the entries in the Confidential Report of the petitioner for the year ending 31.3.1990 and for the year ending 31.3.1993 have not been taken to be "adverse" by the authorities themselves and, therefore, those entries in the Confidential Reports of the petitioner do not stand as a bar to his promotion to higher post. But the punishment, though minor, inflicted on the petitioner for his delinquency could not have been overlooked by the DPC while considering his case for promotion. As stated earlier, Annexure-11 contains that punishment of censure, recovery of pecuniary loss, stoppage of increments does not constitute a bar to promotion of an official, provided that on the basis of the overall assessment of his record of service the DPC recommends his case for promotion to the next higher post. Evidently, therefore, the DPC had to take into consideration the overall performance of an official besides considering the confidential reports for five preceding years as per the guidelines contained in Annexure-11/1. The guidelines also provide that the DPC should not be guided by the overall grading, if any, that may be recorded in the Confidential Reports, but should make its own assessment on the basis of the entries in the Confidential Reports, because it has been noticed that sometimes the overall grading in the Confidential Reports may be inconsistent with the grading under various parameters and attributes.

9. In the present case, the DPC did not find the petitioner fit for promotion because of his misconduct inside office in hurling abusive words and attempting to assault a junior colleague with Chappal and the punishment of stoppage of annual increment of pay inflicted on him, besides considering his Confidential Reports.

10. The petitioner has not averred anything regarding the Confidential Reports for the relevant years of his junior - Amarjit Singh (Serial number 1387 in the gradation list) and regarding his suitability or unsuitability for promotion and he has not challenged his promotion and has not impleaded him as a party either in

the O.A. or in this writ petition. Therefore, the promotion of Amarjit Singh to the next higher post appears to be in accordance with the guidelines issued, was justified.

11. In view of the discussions made above, the impugned order of the Central Administrative Tribunal cannot be interfered with. The writ application is found to be devoid of any merit and is liable to be dismissed and the petitioner will not be entitled to the reliefs claimed. We will part with this matter with the observation that the petitioner's case for promotion to the next higher post will be considered by the DPC, if not already done, in the next meeting in view of his deprivation of the promotion in two DPC meetings which is considered adequate for the delinquency.

12. In the result, the writ application is dismissed. No costs.

P.C. Naik, J.

13. I agree.

14. Writ application dismissed.