

(2015) 01 OHC CK 0037

In the Orissa High Court

Case No : Writ Petition (Civil) No. 3433 of 2014

Laxmidhar Dehuri

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 20(2)(b), 21, 21(1)(b)
Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 — Section 12-A, 3

Citation : (2015) 120 CLT 308 : (2016) 1 ESC 131 : (2015) 1 ILR Ori 683

Hon'ble Judges : Biswajit Mohanty, J.; P. Mohanty, J.

Bench : Division Bench

Advocate : Prem Kumar Mohanty, for the Appellant; Anup Kumar Bose, Asst. Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Biswajit Mohanty, J.—The petitioner has filed the present writ application with the following prayer;

"(i) Writ of certiorari quashing the order dated 13 September, 2013 passed by the Central Administrative Tribunal, Cuttack.

(ii) Writ of mandamus to the Directorate of Census Operation the Opposite Party No. 1 to give promotion to the petitioner to the post of Assistant Compiler with effect from 12.5.98 and further to the post of Compiler till upto date of the disposal of this writ application with all consequential pay and emoluments.

(iii) And to issue such other writ/writs or order which may provide complete relief to the petitioner as may deem fit and proper in the interest of justice."

2. The petitioner being a member of Scheduled Tribe was appointed as a Peon during 1982. In the year 1995, he passed H.S.C. Examination. As per the Gradation List for the post of Peons under Annexure-1, while his name appeared against Sl. No. 13, name of one K.B. Mohanata appeared against Sl. No. 21.2.

Thus, the petitioner claimed that he was/is senior to said K.B. Mohanta. In the year 1997, the petitioner was promoted to the post of Daftary. On 18.5.1998, the above named K.B. Mohanta was promoted to the post of Assistant Compiler in Group "C". Much after, on 17.10.2003 under Annexure-2 Series, the petitioner submitted a representation for promotion to the post of Group "C". On 9.1.2004 (under Annexure-2 Series), again he made a representation with a prayer to give him promotion to the Group "C" post (Assistant Compiler) with effect from 1998. Vide Annexure-4 dated 29.1.2004, he was intimated that promotion quota from Group "D" to Group "C" posts of Assistant Compiler had already been exhausted and his case for promotion against reservation quota from Group "D" to Group "C" would be considered as and when vacancies would arise, as per Rules. Despite assurances when nothing was done, on 16.1.2005 under Annexure-2 Series, he submitted another representation praying therein that as vacancies were now available in the grades of Assistant Compiler and L.D. Clerk, the authority should consider his case sympathetically and pass necessary orders along with his promotion against one of the said vacancies. During 2006, vide Annexure-3, the petitioner was informed that his case for promotion to the Group "C" post against the percentage reserved for Group "D" employees would be considered by the DPC in its next meeting along with other eligible Group "D" employees. Vide Annexure-7, dated 16.11.2007, the matter was enquired into by the Research Officer and Regional Head of National Commission for Scheduled Tribes which recommended that the petitioner should be given promotion to Group "C" post with effect from 1998. Despite this when nothing was done, on 14.6.2007, the petitioner requested opposite party No. 2 to consider his grievance petition dated 9.1.2004 under Annexure-2 Series as he had become eligible for promotion to the Group "C" (Assistant Compiler) post since 1998. Further, he submitted a representation on 14.1.2013 under Annexure-8 to the Director of Census Operations, Orissa and prayed that his case for promotion to the post of Assistant Compiler in Group "C" post with effect from 18.5.1998 be considered when his junior was promoted. Ultimately nothing was done and the petitioner filed O.A. No. 636 of 2013 before the learned Central Administrative Tribunal, Cuttack Bench, Cuttack with the following prayer;

"RELIEF SOUGHT FOR:

In view of the facts stated above, the applicant prays for the following relief(s):-

- (i) Original Application be allowed;
- (ii) The respondent No. 1 and 2 directed to consider the case of the applicant and give promotion to the post of Assistant Compiler in the Group-C Post w.e.f. 18.05.98 when his junior was promoted with all service benefits.
- (iii) Such other order/orders be passed granting complete relief to the applicant."

3. This Court called for the LCR vide order dated 19.8.2014. From the order sheet of the learned Tribunal, it appears that the case was registered on 11.9.2013 and the matter was taken up on 13.9.2013 and was dismissed on the

same date vide Annexure-9 at the initial stage.

4. Heard Mr. D.P. Mohanty, learned Senior Advocate appearing on behalf of Mr. Prem Kumar Mohanty, learned counsel for the petitioner and Mr. Anup Bose, learned Assistant Solicitor General for the opposite party.

5. Perused the documents on record and LCR. At the outset, it may be noted that several documents have been filed before this Court which were never filed before the learned Tribunal. Such documents are Annexures-1,3 and 4. It further appears that there has been some addition to the prayer of the writ application vis-?-vis the prayer made in the Original Application. Such course of action are not legally permissible. Further, since this is mainly a certiorari proceeding, we have not referred to the counter and rejoinder filed by the parties here before this Court, which were not part of LCR, i.e., records before the learned Central Administrative Tribunal.

6. In such background, let us examine the legality of the impugned order passed by the learned Tribunal. A perusal of the impugned order shows that the learned Tribunal has dismissed O.A. No. 633 of 2013 filed by the petitioner on the ground of delay and laches and also on the ground of non-joinder of parties. So far as dismissal of the said Original Application on the ground of non-joinder of parties is concerned, in our considered view the same could not be a ground for dismissing the Original Application for the simple reason that in the Original Application, no specific prayer has been made by the petitioner to give him seniority above his so-called junior, K.B. Mohanta in the promotional post. However, we agree with the reasoning given by the learned Tribunal for dismissal of the Original Application on the ground of delay and laches. Here is a case where the petitioner prayed for a direction to opposite party No. 2 to consider his case and give him promotion to the post of Assistant Compiler in the Group "C" with effect from 18.5.1998 when his junior was promoted with all his benefits.

7. The undisputed facts are that the junior was promoted some time during 1998 as Assistant Compiler. The petitioner submitted his first representation more than five years after on 17.10.2003 under Annexure-2 Series with a prayer to promote him to Group "C" post. In the said representation, there is no whisper about any junior being promoted in 1998. There is also no prayer to give him promotion with effect from 18.5.1998. For the first time on 9.1.2004 under Annexure-2 Series, the petitioner made a request to promote him to Group "C" post of Assistant Compiler w.e.f. 1998. Again on 16.1.2005 under Annexure-2 Series, the petitioner prayed to allow him promotion as there existed vacancies in the grades of Assistant Compiler and L.D. Clerk. Vide Annexure-7, the Research Officer and Regional Head on 16.11.2006 made a recommendation in favour of the petitioner that he should be given promotion to the Group "C" post with retrospective effect with effect from 1998. On 14.6.2007 under Annexure-2 Series the petitioner again requested the authorities to consider his grievance petition dated 9.1.2004 under Annexure-2 Series. Thereafter, it appears that the petitioner went into deep slumber to be woken up more than five years after. On

14.1.2013, he submitted a representation under Annexure-8 to promote him with effect from 18.5.1998 to the post of Assistant Compiler in Group "C" when K.B. Mohanta was given promotion.

8. A narration of all these facts would clearly show that all throughout out the petitioner has been negligent in pursuing his legal remedies. Though the cause of action arose on 18.5.1998, he filed his first representation in casual manner more than five years after, in the year 2003. Even if a liberal view of the matter is taken, the petitioner should have filed the Original Application within 1 1/2 years from 17.10.2003 in the background of Section 20(2)(b) and Section 21(1) (b) of the Administrative Tribunals Act, 1985. This he never did. Further, though vide Annexure-7 a recommendation was made in his favour by the Research Officer and Regional Head of National Commission of Scheduled Tribes in 2006 and though again he filed a representation on 14.6.2007, however, he slept over the matter for more than five years to file a representation again on 14.1.2013 under Annexure-8. Instead he could have moved the learned Tribunal in 2006-07 itself. Apart from the settled principles of law that repeated representations do not save the delay; this is a case where there does not exist any sufficient cause to explain delay in filing first representation in 2003, i.e., more than 5 years after cause of action arose. Similarly, there exists no sufficient cause for waiting from 2006 to 2013.

9. It is well settled that a court is not expected to give indulgence to such indolent person, who compete with "Kumbhakarna" or for that matter with Rip Van Winkle. (See Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu,).

10. In such background, we refuse to accept the submissions made by Mr. Mohanty, learned Senior Advocate for the petitioner that the impugned order passed by the learned Tribunal is unconstitutional and is in violation of the provisions of Sections 20 and 21 of the Administrative Tribunals Act, 1985 and also his submission that the learned Tribunal went wrong in dismissing the Original Application on the ground of delay and laches when according to him there has been no delay and laches on the part of the petitioner as he was pursuing his remedies all throughout. Mr. Mohanty relied to Section 12-A of the Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 to advance the case of the petitioner. In our opinion, as per Section 3 the said Act applies to appointments to the posts and services under the Odisha State only. The petitioner being a Central Government employee cannot derive any benefit from the same.

11. During course of hearing, Mr. Mohanty relied on the decisions of the Hon''ble Supreme Court in the cases of Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another, , Ram Sewak Prasad Vs. State of U.P., and others, , Vineet Narain and Others Vs. Union of India (UOI) and Another, , Vishwas Anna Sawant and others Vs. Municipal Corporation of Greater Bombay and others, , Commissioner of Commercial Taxes, A.P. Hyderabad and another Vs. G.

Sethumadhava Rao and others, , State of Mysore Vs. M.H. Krishna Murthy and Others, , R.M. Ramaul Vs. State of Himachal Pradesh and Others, and Sheshrao Jangluji Bagde Vs. Bhaiyya and others, . Perused the decisions. In our considered view, the above decisions cited by Mr. Mohanty have no application to the present case as they do not discuss the consequence of an inordinate delay in approaching the Central Administrative Tribunal, which functions under Administrative Tribunals Act, 1985. For all these reasons, the writ application is without any merit and the same is dismissed. No costs.

P. Mohanty, J.

I agree.