
(2006) 12 OHC CK 0046
In the Orissa High Court

Mahendra Pratap

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Citation : (2007) 103 CLT 675 : (2007) 114 FLR 689 : (2007) 1 OLR 496

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Judgement

I.M. Quddusi, J.—Heard Shri A.K. Mishra, Learned Senior Advocate for the Petitioner, Learned Addl. Government Advocate for the State and Learned Asst. Solicitor General for the Union of India.

The Departmental Promotion Committee (for short "D.P.C") considered promotion of the eligible I.P.S. officers to the grade of DIG of Police and made its recommendation on the basis of which, the Government of Orissa in General Administration Department issued promotion order of four I.P.S. Officers including the Petitioner vide Govt. Notification dated 21.1.2005. The said notification speaks as under:

Government of Orissa General Administration Department NOTIFICATION

Bhubaneswar dated the 20th January, 2005.

No. AIS/II-3/2005-2555/AIS.I. The following I.P.S. Officers are promoted to the grade of D.I.G. of Police with effect from the date of their joining against the promotional post.

1. Sri Sudhanshu Sarangi, IPS (RR-90)

On study leave.

2. Sri Arun Kumar Sarangi, IPS. (RR-90)

S.P.-I, C.I.D., C.B., Cuttack

3. Sri Jaswinder Singh, IPS (RR-90)

S.P., Railways, Cuttack.

4. Sri Mahendra Pratap, IPS (RR-90)

S.P., Railways, Rourkela.

The places of positing of the above I.P.S. Officers shall be decided by the Home Department.

By order of Governor D.P. Das. Additional Secretary to Government.

Memo No. 2556/AIS.I Dated 20.01.2005

Copy forwarded to the Under Secretary to Government of India, Ministry of Home Affairs, North Block, New Delhi for information.

Sd/-Additional Secretary to Government.

Memo No. 2557/AIS.I. Dated 20.01.2005

Copy forwarded to the Director, Printing, Stationary & Publication, Orissa, Cuttack for information and publication of this notification in the next issue of the Orissa Gazette.

Sd/- Additional Secretary to Government.

Memo No. 2558/AIS. I. Dated 20.01.2005

Copy forwarded to A.G., (A & E), Orissa, Bhubaneswar/Officers concerned/ Principal Secretary to Govt., Home Department/D.G. & I.G. of Police, Orissa Cuttack/G.A.(S.E) Deptt./ G.A. (Vig) Deptt., Orissa, Cuttack/S.P.CID, CB, Cuttack/ S.P. Railways, Cuttack/S.P., Railways Rourkela/Commr-cum-Secy to Governor, Orissa/ Commr-cum-Secy to Chief Minister, Orissa/ P.S. to Chief Secretary P.S. to Spl. Secy to Govt., G.A. Deptt./Shri R.N. Behera, Sr. Scientist, NIC Computing Centre, Secretariat Campus, BBSR/ Guard file with 2 copies for information and necessary action.

Sd/- Additional Secretary to Government

2. The above quoted notification shows that the posting of the promoted officers was to be decided by the Home Dept. Unfortunate, the Petitioner was not given any posting Subsequently, another DPC was held which recommended the promotion of the persons junior to the Petitioner to the grade of D.I.G. The Govt. of Orissa in the General Administration Department accepted the recommendation of the DPC and issued another Notification on 13.05.2005 promoting Shri B.P. Mohapatra, and Shri Debasis Panigrahi to the grade of DIG of Police with similar observation that the places of posting would be decided by the Home Department. The Home Department accordingly issued posting orders to the above persons, to the grade of DIG, but still did not issue any posting order in favour of the Petitioner.

3. Being aggrieved, the Petitioner approached the Central Administrative Tribunal by filing O.A. No. 750 of 2005 along with interim prayer. But, the Tribunal did not consider the prayer for grant of interim order while issuing notice and fixed the date of filing counter affidavit. Challenging the said order, the Petitioner has approached this Court by filing the instant Writ Petition. By Order dated 27.9.2005 on the request of the Learned Addl.Govt. Advocate this Court granted four days time to obtain instruction to show cause as to why the Petitioner has been deprived of salary attached to the post of DIG when his promotion order has been passed by the competent authority and his juniors, whose promotion orders were passed later on, have been given posting and paid the salary of DIG. Thereafter on 5.10.2005 vide interim order it was observed that the place of posting of the Petitioner having not been assigned by the Opposite Parties, he would not be entitled to get the salary of DIG while his juniors who were given promotion much later have been issued posting order by the Home Department pursuant to their promotion order and they are getting their salary in the cadre of DIG of police. Therefore, it was directed that the Petitioner shall be paid his salary in the grade of DIG of police irrespective of his posting order.

4. A counter affidavit has been filed on behalf of the State of Orissa and a short reply on behalf of the Union of India has also been filed. In the counter affidavit, it has been mentioned that since the Government of Orissa in G.A. Department had notified that promotion to the rank of DIG would be effective on and from the date of his joining and he having not joined as D.I.G. it can be inferred that he has not been promoted. In so far as not giving any posting order to him, the reason assigned is that there was Rail Roko agitation on 7.2.2005, but the Petitioner had gone to the Border Co-operation meeting at Vishakapatnam and remained absent from the headquarters without permission. As such ,the Home Department has initiated a departmental proceeding against him. However, it has been mentioned that the I.G. of Police, Railway.Orissa has sent a reply to the Petitioner and to State Police Headquarters vide his letter No. 121/Con. Railways, dated 27.4.2005, in which he has irresponsibly justified the journey of Petitioner to Vishakapatnam.

5. Shri Misra, Learned Counsel for the Petitioner has submitted that it was the official duty of the Petitioner to attend Border Co-operation meeting at Vishakapatnam ,for which prior permission has been granted by the I.G. of Police, Railways and the Petitioner had not left the place for his personal work. Anyhow this is not for consideration of this Court as the D.P. has been initiated against the Petitioner. This Court is concerned with only question whether the departmental proceedings were already initiated against the Petitioner before the D.P.C. made its recommendation for promotion of the Petitioner to the grade of DIG as if the D.P.C. had already been held and the incident had taken place subsequent to the same, it could not have any effect on the promotion order of the Petitioner.

6. The notification for promotion of the Petitioner to the rank of D.I.G. was issued

on 21.1.2005 on the basis of the recommendation already made by the D.P.C. Therefore, it is clear that the D.P.C. was held prior to January, 2005. The incident relating to alleged absence of the Petitioner for attending the meeting at Vishakapatnam was subsequent to the same i.e., dated 7.2.2005. The Departmental Proceeding initiated against the Petitioner by issuing a charge memo and Articles of charges vide memorandum of Government of Orissa, Home Department dated 29.4.2005 were also subsequent to the same. Therefore, in our opinion, the order of promotion of the Petitioner to the grade of D.I.G. could not have any effect due to the events as mentioned above.

7. Learned Addl. Government Advocate has placed reliance upon the case laws laid down by the Supreme Court in the case of Union of India Vs. K.V. Jankiraman, etc. etc., , and Union of India and Others Vs. Dr. (Smt) Sudha Salhan, .

In those case laws, it has inter alia, been held by the Supreme Court that to qualify for promotion ,the least that is expected of an employee is to have an unblemished record.

If on the date on which the name of a person is considered by the Departmental Promotion Committee for promotion to. the higher post, such person is neither under suspension nor has any departmental proceedings been initiated against him, his name, if he is found meritorious and suitable, has to be brought on the select list and the "sealed cover" procedure cannot be adopted. The recommendation of the Departmental Promotion Committee can be placed in a sealed cover only if on the date of consideration of the name for promotion, departmental proceedings had been initiated or were pending or on its conclusion, final orders had not been passed by the appropriate authority.

8. But the above case laws are not applicable to the instant matter as the promotion of the Petitioner was considered much prior to the initiation of the departmental proceeding and he was also ordered to be promoted by the Govt. of Orissa in the G.A. Department as mentioned above,

9. In the case of Bank of India and Another Vs. Degala Suryanarayana, , it has been held that the sealed cover procedure is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him and hence the findings as to his entitlement to the service benefit of promotion etc. are kept in a sealed cover to be opened after the proceedings in question are over. But the sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 withheld for the D.E. Proceedings initiated at the fag end of the year 1991 The High Court was, therefore, right in directing the promotion to be given effect to which the Respondent was found entitled to as on 1.1.1986 and the order of punishment made in the year 1995 cannot deprive the Respondent of the benefit of the promotion earned on 1.1.1986.

10. The Learned Addl. Govt. Advocate has submitted that the stand taken in the

counter affidavit is that the promotion of the Petitioner shall be deemed to have been put under sealed cover and will be decided after the conclusion of the D.P.. But that is not correct position of law as the promotion order was issued much earlier to the date of incident for which D.P. has been initiated, as such the rule of sealed cover procedure could not have been applicable in the case of the Petitioner.

We are informed that in pursuance of the interim order passed by this Court the Petitioner is getting his salary in the grade of D.I.G. through he is still working in the post of Superintendent of Police.

11. In view of the above mentioned facts and circumstances, the Writ Petition is disposed of confirming the interim Order dated 5.10.2005 with a further direction to the Opposite Parties that since the Petitioner is getting salary of the post of D.I.G. of police, he should be posted in the post of D.I.G. or equivalent to the same during the pendency of the O.A. before the Tribunal, subject to the decision of the Tribunal. It may, however, be observed that the Tribunal may decide the O.A. independently without being influenced by this order.

No order as to costs.

Pradip Mohanty, J.

12. I agree.