

(1995) 04 OHC CK 0029

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5734 of 1992

Meenaketan Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-04-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (1995) 1 OLR 615

Hon'ble Judges : P. Ray, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : J. Patnaik, H.M. Dhal, A.A. Das and S.K. Patnaik, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Ray, J.—The grievance of the writ petitioner in the present writ application is that though he was selected and empanelled for promotion to the post of Chief Judicial Magistrate, the High Court in its administrative jurisdiction declined to give him promotion in his due turn, but promoted his juniors in an illegal and arbitrary manner

2. The facts which are material for consideration are briefly stated below:

In September, 1987 the petitioner was a member of the Orissa Judicial Service (Class I) and was posted as Registrar, Civil Courts, Sundargarh. On September 3, 1987, the petitioner along with other members of the Orissa Judicial Service (Class I) were selected and empanelled by the High Court Standing Committee for promotion to the post of Chief Judicial Magistrate in the Superior Judicial Service (Junior Branch); The petitioner's name figured at serial No. 3 in the said panel. Admittedly one Judge of this High Court who visited Sundargarh in connection with the work of Lok Adalat between October 16 and 19, 1987 submitted a report containing some adverse remarks about the writ petitioner. Relying upon the said report, the Standing Committee in its meeting held on

December 8, 1987 did not give the writ petitioner promotion recording that he was not found fit for promotion to the cadre of Orissa Superior Judicial Service (Junior Branch). On the same date, the Standing Committee promoted Shri S. C. Chhatoi, and Sri S. K. Dhal, both of whom were juniors and were placed below the petitioner in the panel for promotion prepared by the Standing Committee of the High Court. The writ petitioner was subsequently promoted to the rank of Chief Judicial Magistrate on January, 5, 1990, but in the meantime several other juniors were promoted to the rank of Chief Judicial Magistrate superseding the petitioner. The petitioner, thereafter, submitted several representations to the High Court, inter alia, complaining that he was illegally superseded and praying for treating him to have been promoted on and from the date when immediate junior to him was promoted. It appears that consideration of his representations was deferred from time to time and ultimately by Memo No. 548 dated February 5, 1994 the petitioner was communicated that the High Court was pleased to reject the representations of the writ petitioner.

3. It has been submitted on behalf of the petitioner that if it is found that the petitioner was denied promotion and superseded illegally, the petitioner is entitled to be treated as promoted on and from the date when his junior was promoted, to get consequential seniority as Chief Judicial Magistrate and to be considered for promotion to the next higher ranks on the basis of such seniority.

4. As already stated, the petitioner was selected and empanelled for promotion to the Orissa Superior Judicial Service (Junior Branch) by the Standing Committee of the High Court on September 3, 1987. It is obvious that upon consideration of the service records of the petitioner up to that date the Standing Committee of the High Court found him fit for promotion and placed him at serial No. 3 of the panel. It has been stated in paragraph 6 of the counter affidavit affirmed by Special Officer (Special Cell), Orissa High Court that subsequent to September 3, 1987 a sitting Judge of the High Court visited Sundargarh to attend the Lok Adalat, that the said Hon'ble Judge carried a very poor impression about the administrative ability of the petitioner and submitted a report and that in view of the said report the Standing Committee in its meeting dated December 8, 1987 declared the petitioner as unfit for promotion.

5. We have perused the relevant records maintained in the office of the High Court. It appears from the report submitted by the learned sitting Judge that in course of his casual conversation with some judicial officers, local officers, members of the Bar, public and staff of the District Court an impression was given to him that the administrative ability of the petitioner is poor. the report of the learned Judge is extracted herein below in extenso.

"Registrar of the Civil Courts has no good relationship with the District Judge and the members of the staff. From his functioning on 17.10. 1987 since the zero hour about which time I reached till my departure on 18.10.1987 I carried the impression that his administrative ability is poor, he has no minimum standard of application of mind and has no control over the staff. He is satisfied only in

performing that much of function as is specifically entrusted to him. I had no occasion to have impression on his judicial capacity."

6. A glance through the report clearly shows that the observations made in the report were vague, wholly subjective and without any objective material or basis. Not a single fact or instance was mentioned in the report in support of the said observation. Admittedly no copy of the said report was supplied to the petitioner and no opportunity was given to him to deal with the said remarks. We are unable to appreciate how the Standing Committee of the High Court could rely upon such a vague, subjective comments and hold the petitioner unfit for promotion in spite of the fact that the Standing Committee found him fit for promotion only 7 months before. There was no other material excepting the said observations of the learned sitting Judge.

7. We are of the view that after selecting the petitioner for promotion the Standing Committee erred in taking into consideration a purely vague, subjective, personal report of a Judge of the High Court.

8. Moreover, assuming that the said observations could be considered, even then the Standing Committee also went wrong in relying upon the same without affording the petitioner any opportunity of dealing with the observations contained in the said report. The manner in which the Standing Committee declared the petitioner unfit for promotion in its meeting dated December 8, 1987 is contrary to the basic principles of natural justice and fair play. Accordingly, we hold that the decision of the Standing Committee dated December 8, 1987 denying promotion to the petitioner was illegal, violative of principles of natural justice, unreasonable and unsustainable.

9. As already stated, the petitioner was subsequently promoted to the post of Chief Judicial Magistrate on January 5, 1990. Thereafter the petitioner submitted representations to the High Court for giving him seniority in the rank of Chief Judicial Magistrate on and from the date when his junior was promoted. The representations of the petitioner were ultimately rejected without assigning any reason whatsoever. It does not appear from the record that the High Court in its administrative side applied its mind, to the contentions raised and grievance made by the petitioner in his representations. The petitioner's representations were rejected mechanically without proper consideration.

10. In view of the admitted position and the materials on record, we are unable to find any sustainable reason for not giving the petitioner promotion according to his position in the panel prepared on September 8, 1987. In view of the fact that the petitioner was found fit by the Standing Committee and empanelled for promotion and that there was nothing more to be considered for giving him promotion on the date when the petitioner's junior was promoted to the post of Chief Judicial Magistrate, we direct that the petitioner be promoted from the date when his next junior was promoted.

11. All the juniors who superseded him have been impleaded as respondents in

the writ application. An interim order was passed on July 12, 1993 that promotion to be made would abide by the result of the writ application. It was also directed that in all the promotion orders the said condition would have to be mentioned. It appears that during the pendency of the writ application some of the juniors have been given further promotion to the Superior Judicial Service (Senior Branch). The petitioner claims that he should also be given promotion to the said higher rank at least from the date when his immediate junior was promoted. For the purpose of promotion to the next higher rank the merit and fitness of the petitioner are required to be considered by the appropriate authority. Accordingly, it is not possible to give any direction to give promotion to the petitioner to the next higher rank. But the petitioner is entitled to be considered for promotion in the next higher ranks as and when his juniors have been promoted.

12. In the facts and circumstances, we direct that the petitioner be promoted to the post of Chief Judicial Magistrate with effect from the date when his immediate junior Shri S. C. Chhatoi was promoted to the post of Chief Judicial Magistrate and his seniority amongst the Chief Judicial Magistrates be re-determined on the basis that he is promoted to the post of Chief Judicial Magistrate on the date when Shri S. C. Chhatoi was promoted to the said rank. We further direct that the petitioner's case be considered for promotion to the Orissa Superior Judicial Service (Senior Branch) as and when his juniors have been promoted. The petitioner should be given the consequential pecuniary benefits to which he is entitled on the aforesaid basis within six months from the date of receipt of this order.

13. The writ application is accordingly allowed. There shall, however, be no order as to costs.

G.B. Patnaik, J.

14. I agree.