
(2007) 03 OHC CK 0060
In the Orissa High Court
Case No : O.J.C. No. 3620 of 1999

Nabakishore Pradhan

APPELLANT

Vs

Orissa Administrative Tribunal and Others

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Bihar and Orissa Boards Miscellaneous Rules, 1963 — Rule 10, 14(A), 24, 9

Citation : (2007) 1 OLR 839 Supp

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : N. Behuria, for the Appellant; Add. Government Advocate, for the Respondent

Judgement

I.M. Quddusi, J.—This writ petition has been filed against the impugned judgment and order dated 14.12.1998 passed by the Orissa Administrative Tribunal dismissing O.A. No. 3001 of 1994, which was filed by the Petitioner.

2. The brief facts of the Petitioner's case are that the Petitioner was appointed as Lower Division Clerk (L.D.C.) on 3.9.1966. Thereafter, he was promoted to the post of Upper Division Clerk (U.D.C.) on 11.4.1975. The next promotional post was the post of Head Clerk promotion to which was to be made in accordance with the draft rules of the year 1975 which were being followed in which it was provided that for the post of Head Clerk in the District Employment Exchanges passing of Final Accounts Examination is essential. Prior to the draft rules, a circular was also issued by the P and S Department in Memo No. 9983/(88)/Gen.2/R.1-62/61 dated 12.8.1961 to the effect that passing of departmental examination was necessary for promotion to the post of Head Clerk. As the post of Head Clerk was the highest ministerial post in the District Offices and the Head Clerk is responsible for cash, preparation of bills and budget, maintenance of cash book, stock and store, confidential matters, general correspondence, submission of account returns and all other important affairs including general supervision of the District Employment Exchange, passing of the departmental

accounts examination conducted by the Board of Revenue was an essential qualification. Appearing at such examination was voluntary. An employee had to take initiative to appear at such examination and on the basis of willingness, the department use to recommended names of the volunteers for such examination. The criteria for promotion to the post of Head Clerk was seniority-cum-merit.

3. The Petitioner had passed the Departmental Examination in the year 1973 and only thereafter he was promoted to the post of U.D.C. In this regard, Rule 14(A) of the Bihar and Orissa Board's Miscellaneous Rules are liable to be perused which provides as under:

No Clerk who has not passed the preliminary examination will be allowed to cross the E.B. and no clerk who has not passed the Final Examination will be appointed to a post in Upper Division which requires a knowledge of accounts.

The Petitioner has relied upon the Orissa Ministerial Service (Method of Recruitment and Conditions of Service of Clerk and Assistants in the District Offices and offices of the Heads of the Department) Rules which came into force in 1963. Rule 9 of the same speaks as under:

Promotion to higher posts in the cadre of district offices:

Promotion to the higher posts in the cadre of Ministerial service of the district offices shall be subject to the passing of the Departmental Examinations and such other tests, if any, as may be ordered by the Head of the District Office in that behalf and shall be based on merit and suitability in all respects with due regard to seniority and be made in the following manner, namely,

(a) xx xx xx xx

(b) Promotion to the posts of Head Clerks shall be made from amongst the senior clerks who have passed the Final Accounts Examination as laid down in Rule 24 on the basis of selection made by the Selection Board constituted in accordance with Rule 10;

(c) xx xx xx xx

(d) xx xx xx xx

4. The grievance of the Petitioner is that opposite party No. 4 in the instant writ petition had not passed the Departmental Accounts Examination and was not eligible for promotion to the post of Head Clerk but his case was considered ignoring the candidature of the Petitioner and ignoring the fact that opposite party No. 4 was not qualified for being considered.

5. The Tribunal has dismissed the O.A. on the ground that the position of the Petitioner in the seniority list was 60th position below opposite party No. 4 who was promoted in the year 1975 but the Petitioner filed the Original Application in the year 1994 and thus was barred by limitation also.

6. In service matters if a person is given promotion which remains unchallenged

for number of years, all of a sudden after lapse of long time, in the instant case it is about 15 years, cannot be challenged as long settled seniority or promotion is not liable to be disturbed. To our opinion at least there should be some extent of time to challenge such promotion. The Petitioner slept over the matter for as long as 15 years and did not approach the Tribunal within a reasonable time and all of a sudden filed the O.A. after 15 years. No explanation for challenging such promotion at belated stage has been given. Hence, we are not inclined to interfere with the decision of the Tribunal. However, at the most it can be said that the case of the Petitioner for promotion may be considered on the next available vacancy in case it is feasible and the Petitioner is still in service.

7. The writ petition is disposed of with the aforesaid observation.

N. Prusty, J.

8. I agree.