
(2010) 01 OHC CK 0007
In the Orissa High Court

Nilachal Hota

APPELLANT

Vs

The Chief Security Commissioner of R.P.F., Eastern Railway
and Others

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2010) 109 CLT 238

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—Heard Mr. S.K. Das, Learned Counsel for the Petitioner & Mr. Bidyadhar Mishra, Learned Counsel appearing for Opposite Party No. 2.

2. The Order Dated 19.6.1997 passed by the Director General, R.P.F., Railway Board (Annexure-4) rejecting the representation filed by the Petitioner is assailed in this writ application.

3. Bereft of unnecessary details, the short facts, which are necessary for appreciating the inter se disputes are as follows:

The Petitioner after facing rigorous recruitment test was selected & appointed as Sub-Inspector, R.P.F (Executive) under the South-Eastern Railway & he joined as a trainee on 15.3.1976. Being satisfied with his performance, he was regularly appointed with effect from 15.3.1977 after completion of the training. In the year 1978 he became an accused in a criminal case, which was investigated by the Central Bureau of Investigation (CBI). It was alleged that he had committed an offence under the Indian Penal Code as well as Prevention of Corruption Act. After initiation of the criminal case, the Petitioner was put under suspension with effect from 7.5.1978. He faced trial before the Special Judge (CBI), Bhubaneswar in T.R. Case No. 13 of 1978 & was convicted. After conviction the Petitioner was dismissed from service with effect from 10.8.1981. The Petitioner thereafter

preferred an appeal before this Court which was registered as Criminal Appeal-No. 83 of 1981. The said appeal was allowed by Judgment dated 21.11.1986 & the Petitioner was acquitted from the charges. Thereafter, he applied to the Opposite Parties enclosing the copy of the order of acquittal & prayed to reinstate him. After considering the pros & cons he was reinstated in service in the year 1987. The Opposite Party-authorities also by Order Dated 16.9.1987 (Annexure-1) directed that the period of suspension & dismissal of the Petitioner should be treated as on duty for all purposes. According to the Petitioner, in the year 1985, i.e., before he was reinstated, a drive for upgradation of officers of R.P.F. was undertaken by restructuring the cadre of Sub-Inspector. During the, said period, as the Petitioner was not in service on account of the conviction in the criminal case, his case could not be considered & his juniors were promoted to the rank of Inspector, R.P.F. (Executive) Grade-II. After being reinstated, the Petitioner submitted a representation on 28.11.1987 praying to consider his case retrospectively & to accord him promotion from the date when his juniors were promoted. No action having been taken on the said representation, the Petitioner submitted several reminders, but in vain. Thereafter, the Petitioner approached this Court in OJC No. 6792 of 1994. By Order Dated 31.1.1995 the said writ application was disposed of with a direction to the Secretary, Ministry of Railways, Government of India, New Delhi to dispose of the representation of the Petitioner within six months from the date of receipt of the order. It is alleged that in spite of receipt of the said direction, no action was taken. Consequently the Petitioner filed a contempt petition, which was registered as Original Criminal Misc. Case No. 19 of 1997. Thereafter, the competent authority considered the representation & by Order Dated 19.6.1997 (Annexure-4) rejected the same. Being aggrieved, the Petitioner has approached this Court.

4. The main grievance of the Petitioner in this writ application is that the authorities acted illegally & with material irregularity in rejecting the representation without appreciating the fact that he was reinstated in service with a direction that his period of suspension & dismissal would be treated as on duty for all purposes. Thus, it should be deemed that the Petitioner was continuing in service all through & his case should have been considered for promotion retrospectively from the date when juniors to the Petitioner were promoted.

5. After receiving the Rule, a counter affidavit has been filed by the Opp. Parties. Most of the factual aspects are admitted. Answering the delay in disposal of the representation, in the counter affidavit, it is stated that the order passed by this Court in OJC No. 6792 of 1994 was not communicated to Opposite Party No. 1 in time. Only after receiving the order, the said Opposite Party forwarded the representation of the Petitioner to the Director General, RPF of the Railway Board, who is the competent authority to deal & dispose of the representation. After receipt of the same, the Director General took prompt steps to call for the records, examined the same & disposed of the representation with a reasoned order (Annexure-4) & as such no laches or malice can be attributed to the

authorities The main thrust of resistance raised in the counter affidavit is that, due to the involvement of the Petitioner in the criminal case in the year 1978, he was suspended from service with effect from 7.5.1978 to 10.8.1981. Thereafter, on being convicted, he was dismissed from service with effect from 11.8.1981 & was reinstated in service with effect from 21.3.1987 on the strength of the order passed by this Court acquitting him from the charges. Thereafter, he was promoted to the rank of Inspector Grade-II from the rank of Sub-Inspector in the year 1990 through a regular selection process held for according promotion to the eligible officers. According to the Opposite Parties, the promotion of an employee is not automatic nor does an employee has a right to be promoted. Promotion always depends upon performance as well as merit & suitability of a candidate. Of course, seniority is also taken into consideration while promoting a suitable meritorious candidate. The Petitioner being not in service from 7.5.1978 to 21.3.1987, his performance reports were not available nor were any ACR containing favourable or adverse entries. In view of the aforesaid fact, the authorities had no other option but to take into consideration the ACR from the year 1978 & thereafter give proportionate weightage for the next five years. After adopting such modality, the Committee arrived at a conclusion that the Petitioner was not suitable to be promoted in the year 1983. The Director General, RPF, Railway Board in his Order Dated 19.6.1997 has vividly dealt with all the aspects & rightly rejected the representation filed by the Petitioner. According to the Learned Counsel for the Opp. Parties, the decision taken neither suffers from any infirmity nor there is any error apparent on the face of the record & as such, the Writ Application may be dismissed in limine. 6. In course of hearing, Mr. Das, Learned Counsel for the Petitioner strenuously submitted that no latches whatsoever can be attributed to the Petitioner with regard to his absence in service with effect from 7.5.1978 to 21.3.1987. It is stated that though the Petitioner was innocent, he was falsely involved in the criminal case & the authorities without realizing the said fact, suspended him & terminated him after he was convicted. The order of conviction was set aside by the High Court & the Petitioner was exonerated from all charges & only thereafter he was reinstated in service. Laying stress on the Order Dated 16.9.1987 (Annexure-1), Mr. Das submitted that the Petitioner was reinstated with a direction that his period of absence (due to suspension & termination) shall be treated as on duty for all purposes & as such, it should be deemed that the Petitioner was all along continuous service & was entitled to all the benefits, which were extended to his juniors. The further contention of Mr. Das is with regard to the observation made by the Director General in his Order Dated 19.6.1997 (Annexure-4). It is stated that the said order suffers from the vice of non-consideration of vital facts. Relying upon the order under Annexure-4 Mr. Das submitted that the Committee came to the conclusion that the promotion of the Petitioner cannot be considered. But then, in paragraph 6, the Director erroneously observed that the case of the Petitioner for promotion was considered by the Committee & was rejected. Thus there is error apparent on the face of the order & the same cannot be sustained. To appreciate such submission, this Court once again perused the

order Paragraph 4 of the order reads as follows:

It is seen from the record that a Departmental Promotion Committee consisting of CSCs/RPF, Eastern RLy., S.E. Railway & Northern Railway was constituted to consider the case of Shri Neelachal Hota for promotion from the rank of SI to the rank of Inspector Grade -II under the re-structuring scheme. For promotion under the restructuring scheme w.e.f. 01. 04.1983, as per extent instructions, service records for the years 1979 to 1983 were to be examined. The Committee met on 17.03.1993. The Committee examined the record of service of Shri Hota carefully. The ACR of Shri Hota for the year 1978 was available & from 1979 to 1983, no ACR was available as he was not in the service during this period. The Committee took into consideration the ACR for the year 1978 & thereafter for five years they gave proportionate weightage. The Committee was of the opinion that the promotion of Shri Hota cannot be considered to the rank of Inspector Grade-II from 1983 under the restructuring scheme.

7. A cumulative reading of the entire paragraph thus, leads to a conclusion that in fact the Committee has taken pains to consider the case of the Petitioner, called for the records, considered the ACR entries of the Petitioner for the year 1978, which was available & in absence of any ACR for the period from 1979 to 1983, the Committee gave proportionate weightage of ACR of 1978 & ultimately came to the conclusion that the Petitioner was fit for promotion under the restructuring scheme. This is a case where no malice can be attributed to the Opposite Parties more so because the case of the Petitioner was considered for promotion in the year 1990 & he was promoted. It is no more *res integra* that promotion cannot be claimed as a matter of right. However, the eligible employee has a right to be considered for promotion, but then such consideration should always be strictly in accordance with law. In the case at hand, admittedly the Petitioner was involved in a criminal case initiated by the CBI & he was convicted by the Special judge. He was out of service for a period of 5 years, i.e., from 1978 to 1983. In the absence of his performance within the said period, it was not possible for the authorities to adjudge his suitability. In spite of the said fact, the authorities have taken pain to refer to his past ACR & gave proportionate weightage. While exercising the power under Articles 226 & 227 this Court does not act as an Appellate Court & can interfere with the decision taken only if it is satisfied that the said decision is shocking to the common-sense or is otherwise not tenable in law.

8. After considering the facts & circumstances & after going through the records & after hearing Learned Counsel for the parties diligently, we find that the order under Annexure-4 does not suffer from any infirmity whatsoever. Consequently, we are not inclined to interfere with the decision taken by the authorities. The writ application is accordingly, dismissed.

B.N. Mahapatra, J.

9. I agree.