
(2017) 05 OHC CK 0021

In the Orissa High Court

Case No : 7763 of 2000

Pramod Kumar Pattnaik

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court

Citation : (2017) 05 OHC CK 0021

Hon'ble Judges : Sanju Panda, Sujit Narayan Prasad

Bench : DIVISION BENCH

Advocate : Ramakanta Mohanty, D.K.Mohanty, P.K.Rath, A.P.Bose, B.K.Mohanty, D.Mohapatra, M.S.Sahoo

Final Decision : Dismissed

Judgement

1. This writ petition is under Articles 226 and 227 of the Constitution of India wherein the order passed by the Tribunal in Review Petition No.23 of 1999 dated 7.7.2000 is under challenge whereby and where under the Orissa Administrative Tribunal, Bhubaneswar has reviewed the order dated 12.10.1998 passed by it in O.A.No.1611 of 1998.

2. Brief facts of the case is that the petitioner joined Government service as a Ranger in the Forest Department on 5.4.1967 and while working as the Assistant Conservator of Forests having on deputation in the Orissa Forest Development Corporation was proceeded departmentally, simultaneously criminal case has been initiated vide G.R. Case No.253 of 1988 in the Court of the CJM, Jeypore. Petitioner has approached the Tribunal against the disciplinary proceeding vide O.A.No.21 of 1991 which was disposed of vide order dated 22.4.1991 directing the authorities to conclude the disciplinary proceeding within three months failing which the applicant/petitioner shall be reinstated in service forthwith and the order of suspension shall stand revoked, the disciplinary proceeding may

continue thereafter. The petitioner has filed one Misc.petition being M.P.No.1221 of 1991, the Tribunal while disposing of the misc.petition has directed the enquiring officer to continue the proceeding on day to day basis and if necessary for a month at time at one spell and complete the proceeding.

The petitioner approached the Tribunal in O.A.No.1611 of 1998 stating therein to direct the authorities to consider his claim for promotion to the rank of Orissa Forest Service, Class-I since juniors have been promoted to the said rank. The Tribunal while disposing of the original application vide order dated 12.10.1998 directed the authorities to open the sealed cover and conclude the proceeding within six months from the date of the order.

3. State Government has filed review application being Review Petition No.23 of 1999 for review of the order passed in O.A.No.1611 of 1998 dated 12.10.1998 wherein direction has been passed by the Tribunal to open the sealed cover, review has been sought for on the ground that the petitioner has already been convicted in the criminal case and as such there is no occasion to consider the case of the petitioner for promotion by opening the sealed cover. The Tribunal has allowed the review petition by reviewing the order dated 12.10.1998 passed in O.A.No.1611 of 1998 by modifying it to the effect that there is no justification to give any direction to open the sealed cover or consider the case of the petitioner for promotion. Accordingly, the Review petition has been disposed of with the said observation, said order is under challenge in this writ petition by the petitioner.

4. Learned Additional Government Advocate representing the State has submitted that consideration of the case of the petitioner for promotion would only arise by keeping the matter in sealed cover in case of pendency of departmental or judicial proceeding but the moment the employee is held guilty in the departmental or criminal proceeding, he cannot be considered for promotion to the higher post. According to him, since the petitioner has been convicted in the criminal case and as such he is not entitled to get promotion and on that ground the order passed by the Tribunal on earlier occasion has sought to be reviewed, which accordingly has been reviewed taking into consideration of paragraph-7 of the office memorandum dated 18.2.1994.

5. Heard learned counsel for the parties and perused the documents available on record.

6. It is settled proposition that in case of pendency of disciplinary or judicial proceeding, the matter for promotion is to be kept in sealed cover which would be opened after conclusion of the disciplinary or judicial proceeding and if in case the delinquent found fit by the Departmental Promotion Committee he would be granted promotion if he has been exonerated in the disciplinary proceeding or acquitted in the criminal case, but in case he has been held guilty in the disciplinary proceeding or convicted in the criminal case, he cannot claim promotion even by opening the sealed cover if found suitable by the

Departmental Proceeding Committee.

7. The fact of the case in hand is that the disciplinary proceeding has been initiated against the petitioner, simultaneously criminal case has been instituted, while the proceedings were pending, case of juniors have been considered and have been granted promotion to the rank of Orissa Forest Service, Class-I without considering his case, hence he approached the Tribunal for issuance of direction to keep the matter of promotion in sealed cover and to open after exoneration in the disciplinary proceeding. The Tribunal, after taking note of pendency of the disciplinary proceeding, has disposed of O.A.No.1611 of 1998 directing the authorities to open the sealed cover and recommendation of the Departmental Promotion Committee be implemented forthwith subject to review after conclusion of the enquiry and in the light of the findings of the enquiry. The petitioner has not brought to the notice of the Tribunal that he has been convicted in the criminal case in the meanwhile and as such the State authority has filed review being Review Petition(M.P.)No.23 1999 and the Tribunal, after taking into consideration the fact that the petitioner has already been convicted in the criminal case, has recalled the order passed by it in O.A.No.1611 of 1998 dated 12.10.1998 which has been challenged by him in this writ petition.

8. As has been stated herein above, principle of sealed cover has been pronounced in Union of India Vrs. K.V. Jankiram and Others, reported in (1991) 4 SCC 109 wherein it has been held that the proposition by evolving the process to keep the matter of promotion under sealed cover in case of pendency of a departmental proceeding, their lordships have also been pleased to observe therein that on which day the departmental or the judicial proceeding is said to be in motion, while answering this their lordships have been pleased to hold that the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before that. This proposition clearly stipulates that in connection with the departmental proceeding, the proceeding would be said to be initiated in the eye of law that is the day when the memo of charge is served upon the concerned official and in case of judicial proceeding the day when charge-sheet is filed before the criminal court, if that would be the situation, the case of such employee would be considered but the decision which has been taken by the committee would be kept in sealed cover awaiting for the outcome of the proceeding, in case of exoneration in the departmental proceeding, the concerned employee shall be granted promotion with effect from the due date, in case any juniors have been granted promotion, he has to make room for such employee. In case of the criminal prosecution, in a situation of pendency of a criminal case, the sealed cover would be opened after the final outcome of the criminal case, so that the decision taken by the departmental promotion committee, kept in sealed cover, be given effect to but in case of punishment in departmental proceeding or conviction in criminal case the decision kept in sealed cover will not be given effect to.

The Tribunal, after taking into consideration the said proposition has reviewed the order passed in O.A.No.1611 of 1998 whereby and where under the authorities have been directed to open the sealed cover and implement the recommendation of the Departmental Promotion Committee forthwith, modified the order not to open the sealed cover on the ground of conviction in the criminal case and accordingly disposed of the review petition.

9. We, after appreciating the facts and circumstances of the case as narrated herein above and after examining the order passed by the Tribunal, are of the considered view that the Tribunal while reviewing the order passed by it dated 7.7.2000 in Review Petition(M.P.) No.23 of 1999 has not committed any illegality. Accordingly, we find no reason to differ with the order impugned, hence the writ petition is dismissed.