

(2015) 09 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 12046 of 2000

Santanu Kumar Jena

APPELLANT

Vs

Registrar Cooperative Society Orissa and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 OHC CK 0029

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : K.B. Panda, for the Appellant; B. Senapati, Addl. Govt. Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J—The petitioner, who was working as Cooperative Supervisor in Koraput Central Cooperative Bank Ltd. has filed this application seeking for a direction to Registrar Cooperative Societies to recommend his name to the State Level Standing Committee for consideration of his case for selection and appointment in Orissa State Cooperative Bank and promote him to a equivalent post in the rank of Inspector, Cooperative Societies in the establishment of the Central Cooperative Bank and also to pay him the entire dues for the period of suspension i.e. 15.4.1996 to 14.9.1997 as he has been exonerated from all the charges and further seeking for a direction to grant all consequential benefits as due and admissible to him in accordance with law.

2. The short fact of the case in hand is that Koraput Central Cooperative Bank is one of the 17 Central Cooperative Banks of Orissa functioning within the territory of undivided Koraput District. The Orissa State Cooperative Bank being the apex Bank of the 17 Central Cooperative Banks, the Service Condition of the Central Cooperative Banks are regulated by the Central Cooperative Banks Staff Rules, 1984, which has been duly approved under Section 33-A of O.C.S. Act by the Registrar Cooperative Societies. The petitioner being a graduate in Arts was appointed as Assistant Supervisor on 26.07.1983. The Government in addition to

the channel of appointing the Central Cooperative Bank employees in the apex Bank, created another channel for eligible employees to take the post of Inspector of Cooperative societies under the Registrar Cooperative Societies, Orissa, who issued letter on 18.06.1993 calling upon the Deputy Registrar to sponsor eligible names for appearing in the written test and viva voce test for appointment in the post Inspector Cooperative Societies. It was indicated in the letter that the sponsored candidates must have outstanding performance and exceptional merit and ability. The name of the petitioner was sponsored by the Koraput Central Cooperative Bank for the said purpose and accordingly the petitioner appeared in the written test held on 25.02.1996 and having qualified in the said test he was called upon vide letter dated 12.08.1996 to appear in the viva voce test scheduled to be held on 23.08.1996. But on 23.08.1996, the viva voce test could not be held and subsequently the said viva voce test was held on 6.8.1997 and the petitioner was prevented by the Koraput Central Cooperative Bank to appear the said test. Thereafter, he was placed under suspension on 17.5.1997 but subsequently he was reinstated in service on 13.09.1997 and in between the viva voce test date i.e. 06.08.1997 was over. Therefore, it is stated that the petitioner is deprived of getting promotion to the post of Inspector of Cooperative Societies by preventing him to appear in the viva voce test scheduled to be held on 6.8.1997 and as such his case was also not considered for promotion by the bank in similar post. Therefore, he made representation before the authorities and without considering his representation in proper perspective, he was served with charge. In response to the same, the petitioner represented himself and inquiry was also conducted by the A.R.C.S. In the inquiry proceeding itself, the petitioner was fully exonerated from all the charges vide inquiry report on 14.12.2001. It was held in the inquiry report that the order of suspension is unjustified and the petitioner should be promoted to the post filled up in official basis and he should be allotted permanent vacancy reserved for him. The benefit having not been extended to the petitioner, he has approached this Court by filing the present writ application for appropriate relief.

3. Mr. K.B. Panda, learned counsel for the petitioner strenuously urged that the petitioner should be given promotion to the post of Inspector of Cooperative Societies or similar such post in the bank itself and he should be granted consequential service benefits as due and admissible to him in accordance with law.

4. Mr. B. Senapati, learned Addl. Govt. Advocate for the State appearing for opposite party No. 1 raised preliminary objection with regard to maintainability of the writ petition to the extent that if the petitioner claims for promotion to the post of Inspector of Cooperative Societies, which is a civil post, he may approach the learned State Administrative Tribunal instead of approaching this Court by filing the present writ application. So far as merits of the case is concerned, it is stated that Registrar being the highest authority in Cooperative Sector and the Service Rule framed by the bank having been approved under Section 33-A of the O.C.S. Act, the action taken pursuant to such Staff Rules cannot be found

fault with. More so, the petitioner having been exonerated in the inquiry proceeding, it is left open to the bank authority to consider his case for promotion in accordance with law and the State-opposite party has nothing to do in the matter.

5. Mr. D.K. Mohanty, learned counsel appearing for opposite party No. 2 similarly raised objection with regard to maintainability of the writ petition and stated that since the petitioner claims for promotion to the post of Inspector of Cooperative Societies which is a civil post, instead of approaching the learned State Administrative Tribunal, he has approached this Court by filing the present writ application. Therefore, the writ application is not maintainable before this Court. In addition to that, it is stated that it is alleged by the petitioner that his juniors were promoted to the similarly situated posts whereas he has been discriminated but in the present writ application the juniors of the petitioner having not been made party, the writ application suffers from non-joinder of proper parties and accordingly the writ application should be dismissed on that score. So far as merit is concerned, it is urged that by the time consideration was made for promotion to the post of Inspector of Cooperative Societies on 06.08.1997, the petitioner was placed under suspension and therefore he has not appeared in the said test conducted by the authority concerned. In addition to that, it is urged that the petitioner having not participated in the selection process, he cannot claim that he should be promoted to the post of Inspector of Cooperative Societies as claimed by him. So far as similar promotion in the bank is concerned, the benefit is only admissible as per the Staff Service Rules applicable to its employees. Therefore, as the disciplinary proceeding was pending before the authority, his case for promotion was not considered by the authority.

6. Considering the above mentioned facts pleaded and after going through the records, it is seen that admittedly the petitioner was initially appointed as an Assistant Supervisor in the Bank and while he was discharging his duty, his name was recommended for promotion to the post of Inspector of Cooperative Societies and in written test though he was qualified, for some reasons or the other, the viva voce test was deferred and the date was fixed to 06.08.1997 to conduct the viva voce test. By the time the date was fixed for viva voce test, the petitioner was placed under suspension by the bank authority. Therefore, he could not appear in the viva voce test. For reasons mentioned above, if the petitioner could not appear in the viva voce test, he cannot claim for benefit of promotion to the post of Inspector of Cooperative Societies inasmuch as if the petitioner claims for promotion to the post of Inspector of Cooperative Societies then in that case, the said post being a civil post, the writ application is not maintainable before this Court and the petitioner may approach the appropriate forum ventilating his grievance in accordance with law. The petitioner has been reinstated in service but thereafter charge was framed basing upon which inquiry was conducted and if he has been exonerated from all the charges levelled against him then in that case, the case of the petitioner should be considered for promotion in the bank itself. It is stated that his juniors were promoted but

without impleading them as parties to the present proceeding, the claim of the petitioner that he should be promoted to the post held by his juniors cannot be considered as the writ application suffers from non-joinder of proper parties. Apart from the same, the grievance of the petitioner with regard to his promotion can only be considered by his employer subject to suitability as per the Staff Rules applicable to the petitioner. It is well settled principle of law laid down by the apex Court that the case of the petitioner for promotion can be considered along with others, as per the Staff Rules. No right has accrued in his favour to claim that he should be promoted to the next post. Therefore, the petitioner might have a right to be considered but he cannot have right to be promoted to the next post as claimed by him in the writ application. In any case, since the petitioner has been exonerated from the charges in the departmental proceeding itself, he is at liberty to file a fresh representation before the authorities claiming consideration of his promotion to the next higher post. If such a representation is filed within four weeks, the authority shall consider the same in accordance with the Staff Rules governing the field within a period of three months thereafter.

7. With the above observation and direction, the writ application stands disposed of. However, there is no order as to costs.