
(2009) 06 OHC CK 0015
In the Orissa High Court
Case No : Writ Petition (C) No. 8440 of 2009

Susanta Nanda

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Citation : (2011) 1 OLR 649

Hon'ble Judges : S. Panda, J;B.P. Ray, J

Bench : Division Bench

Judgement

1. Even though the matter was listed for fresh admission; with the consent of both the parties, it was taken up for final disposal.
2. Heard learned Counsel for the parties.
3. The Petitioner, who is a direct recruit to the cadre of Indian Forest Service (in short I.F.S.) is borne in the Orissa Cadre and joined initially in the service on 19.7.1989 as D.F.O.
4. In this writ application, the Petitioner challenges the order dated 21.5.2009 passed in O.A. No. 182 of 2008 by the Central Administrative Tribunal, Cuttack Bench, Cuttack rejecting an application to open the sealed cover and to give effect to the result of the selection in respect of promotion to selection grade of I.F.S.
5. The main contention of the Petitioner is that though a disciplinary proceeding was initiated as earlier as in January, 2001, his promotion to the selection grade of I.F.S. was considered and kept in sealed cover since 2005 which would be evident from Annexure-2. As it would appear from the records that even though his juniors have been promoted to the selection grade and subsequently to the rank of Conservator of Forests, but due to the pendency of disciplinary proceeding under Annexure-1, the promotion of the Petitioner has been held up and the recommendation of the selection committee remains in the "sealed

cover".

6. Learned Counsel for the Petitioner relying on a circular annexed as Annexure-3 i.e. "Indian Forest Service Promotion to various grades-Guidelines regarding" submitted that no review has been made in terms of Clause 19 of the circular, which is quoted herein below:

19. QUARTERLY REVIEW OF SEALED COVER CASES.

It is necessary to ensure that the disciplinary case/criminal prosecution instituted against an officer is not unduly prolonged and all efforts to expeditiously finalise the proceedings are taken so that the need for keeping the cases of officers in sealed cover/covers is limited to the barest minimum. The concerned State Governments shall comprehensively review such cases on the expiry of three months from the date of convening of the first Screening Committee which had adjudged his suitability and kept its findings in the sealed cover. Such a review should be done subsequently also after every three months. The review shall, inter-alia cover the progress made in the disciplinary proceedings/criminal prosecution and further measures required to be taken to expedite their completion. The material/evidence collected in the investigations would also be scrutinized to determine in cases involving suspension whether there is a prima facie case for initiating disciplinary action or sanctioning prosecution against the officer. If as a result of such a review, the State Govt. comes to a conclusion that there is prima facie no case, the sealed cover would be opened and the officer concerned would be given his due promotion with reference to the position assigned to him by the DPC.

7. It would be evident from Annexure-8 that no review in respect of the sealed cover procedure and departmental proceeding has been undertaken. Even though, more than four years have passed, the promotion of the Petitioner to the selection grade has been kept in sealed cover. No final order has been passed in the disciplinary proceeding, even though the Enquiry Officer has submitted his report.

8. Learned Counsel for the Petitioner relying upon a decision reported in *State of Punjab and Others Vs. Chaman Lal Goyal*, has submitted that since there is undue delay in finalizing the disciplinary proceeding and therefore, the Petitioner cannot be victimized by keeping the promotion in sealed cover for an indefinite period. Even though the learned Counsel for the Petitioner has brought the aforesaid decision to the notice of the learned Tribunal, the Tribunal by a non-speaking order has rejected the same. The relevant portion of the aforesaid decision (*supra*) is quoted below:

Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time it is

directed that the Respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the Respondent shall be concluded within eight months from today. The Respondent shall cooperate in concluding the enquiry. It is obvious that if the Respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.

9. Considering the nature of prayer made and keeping in view the provision contained in the circular quoted above as well as the ratio of the decision of the apex Court, we dispose of the writ application with the following directions.

- a) We direct the opp. party Nos. 2 and 3 to open the sealed cover in respect of the promotion of the Petitioner to the selection grade of I.F.S. Cadre which has been kept in sealed cover under Annexure-2 within a period of two weeks from the date of receipt of this order and to give effect to the results of such promotion within the same period.
- b) The opp. parties 2 and 3 shall also further consider the promotion of the Petitioner to the rank of Conservator of Forest within one month thereafter without being influenced because of pendency of the departmental proceeding.
- c) The departmental proceeding be concluded within a period of six months from the date of receipt of this order.

10. In view of the above, nothing remains to be decided in the Original Application pending in the file of the Central Administrative Tribunal, Cuttack Bench, Cuttack and therefore, we direct that the O.A. No. 182 of 2008 pending before the said Tribunal stands disposed of.

11. The writ application is accordingly disposed of.