

Sunil Kumar Dash Vs. the District Judge-cum-appointing Authority and anr.

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SooperKanoon Citation : sooperkanoon.com/529778

Court : Orissa

Decided On : Feb-25-2009

Reported in : 107(2009)CLT756

Judge : B.S. Chauhan, C.J. and; I. Mahanty, J.

Appellant : Sunil Kumar Dash

Respondent : The District Judge-cum-appointing Authority and anr.

Disposition : Petition dismissed

Judgement :

I. Mahanty, J.

1. Petitioner Sunil Kumar Dash, a Junior Clerk in the judgeship of Keonjhar, Has sought to challenge the Order Dated 25.11.2002 passed by the Learned District Judge, Keonjhar giving promotion to Opposite Party No. 2, who was junior to the Petitioner, on the ground that the Petitioner has certain adverse entries in his Confidential Character Roll.

2. Case of the Petitioner is that the Petitioner joined as Junior Clerk in the judgeship of Keonjhar after having successfully passed in the competitive examination and was appointed on probation with effect from 4.3.1982. Petitioner also passed the Departmental Examination on 20.5.1988 and was confirmed as a

Junior Clerk as on 1.2.1992. Since then he was working as Junior Clerk in the office of SDJM, Keonjhar. Petitioner claims that he is the senior-most Junior Clerk in the judgship of Keonjhar and is placed at serial No. 1 in the gradation list in the year 2002. As he possesses unblemished service record, under Rule 10 of the Orissa District and Subordinate Courts Ministerial Services (Method of Recruitment and Conditions of Service) Rules, 1969 (hereinafter called the 'Rules') he was eligible for promotion to the post of Senior Clerk and therefore, he claims that he is entitled for promotion to the next higher post, i.e., Senior Clerk. It is further submitted that the Petitioner completed accounts training on 23.4.1992, which is a mandatory requirement for being considered for promotion. According to the Petitioner, since the Senior Clerk working as Bench Clerk to the SDJM, Anandapur was promoted to the post of Senior Upper Division clerk, the said post of Senior Clerk fell vacant and instead of promoting the present Petitioner, Opposite Party No. 2, who was at serial No. 3 in the gradation list was promoted to the said post vide Order Dated 25.11.2002.

3. The Petitioner being aggrieved by the promotion of Opposite Party No. 2, a junior to him, to the post of Senior Clerk submitted a representation before the Learned District Judge which was rejected vide Order Dated 23.12.2002 on the ground that the Petitioner was not found suitable for promotion.

4. Mr. S.P. Misra, Learned Senior Counsel appearing on behalf of the Petitioner, inter alia, submitted that the Petitioner had been communicated with the adverse remarks for the years 2000-01 and 1997-98 vide memos dated 22.12 2001 and 16.11.2002 under Annexures 4 and 5 respectively. The said adverse entries were communicated just prior to the consideration of promotion to the post of Senior clerk and the delayed communication itself was mala fide since the Petitioner did not have time to make representation against the same. In terms of the :G.A. Department Memo No. 741/PRO. 11/81(SE) dated 5.2.1982 instructions were issued by the State Government indicating the manner and procedure for recording, maintaining and communication of adverse remarks in the Confidential Character Rolls of non-gazetted employees and disposal of representations. Mr. Misra has placed reliance upon Clause (xiv) of the aforesaid memo. Same is extracted below for convenience and ready reference:

(xiv) Communication of adverse remarks -The C.Rs. on receipt, will be scrutinized in the office of the appointing authority and all adverse remarks will be communicated to the employee by the officer entrusted with their maintenance of C.Rs. The purpose of communication is to ensure that the employee rectifies the defect at the earliest. Hence, the utmost priority should be given to communication of adverse remarks. All such communications should normally issue before 31st December immediately following the report period.

Learned Senior Counsel for the Petitioner submitted that since the adverse entries in the CCR of the Petitioner had not been communicated within the period prescribed same ought to have been ignored, and could not have been the basis for assessing the Petitioner for promotion as a Senior Clerk.

5. Mr. Misra, Learned Senior Counsel for the Petitioner also relied upon a Judgment of the Supreme Court in *Gurdial Singh Fijji v. State of Punjab and Ors.* : [1979]3SCR518 , particularly the observations of the Supreme Court in paragraph 17 thereof. In the said Judgment the Supreme Court held that the rules of natural justice require that an adverse entry in a Confidential Character Roll can not be acted upon to deny the promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or explain the circumstances leading to such report.

6. Mr. Misra also placed reliance upon another Judgment of the Supreme Court in *Amar Kant Choudhary v. State of Bihar and Ors.* : [1984]2SCR299 and submitted that the Petitioner's name was not included in the select list due to some adverse remarks in the Confidential Rolls which were either not communicated to him or against which representation was made by him remained un-disposed of on the date of selection.

7. Mr. P. Panda Learned Additional Standing Counsel appearing on behalf of the Registrar, Civil Courts, Keonjhar placed heavy reliance on the counter affidavit filed on behalf of the District Judge, Keonjhar and stated that the Petitioner was not given promotion to the post of Senior Clerk considering his adverse entries in the CCR during 1997-98 and 2000-01 in terms of Rule 3(c) of the Orissa Civil Services Criteria for Promotion Rules, 1992. Apart from this, Mr. Panda submitted

that averments made by Mr. Misra, Learned Senior Counsel for the Petitioner that the adverse entries have no foundation was wholly incorrect. He rather submitted that the Petitioner had made representations before this Court to expunge the adverse remarks in his CCR and this Court had called for the substantiation report on comments from the Reporting Officer for the relevant period vide letter dated 8.10.2003. In response to the said letter, the concerned District Judge had also submitted the substantiation report substantiating the comments the comments in the CCR of the Petitioner and same was submitted to this Court on 20.12.2003 on the administrative side. He further submitted that the adverse remarks in the CCR can be acted upon even before final disposal of the representation.

In the light of the above, both facts and law, we have to first find that the contention of the Petitioner that the adverse entries for 1997-98 and 2000-01 were communicated to the Petitioner only a few days before the selection was made for giving promotion to the post of Senior Clerk is not borne out on record and is not a fact, We find that the adverse entries for the year 2000-01 runs as follows:

Mischievous element in office. Needs to be kept under constant watch.

The aforesaid adverse entry was communicated to the Petitioner on 22.12.2001
The adverse entry for the year 1997-98 was to the following effect:

Not mindful to his job.

The said adverse entry was communicated to the Petitioner vide letter dated 16.11.2002. Therefore, the assertion of the Petitioner that the adverse entries for both the periods were communicated to him few days prior to the selection for promotion to the post of Senior Clerk done on 25.11.2002 is not a fact borne out on record. The adverse entry for 2000-01 was communicated to the Petitioner one year before, i.e., vide letter dated 22.11.001.

8. Next contention of the Petitioner that Clause (xiv) of the G.A. Department memo referred to above regarding recording and communication of adverse remarks in the Confidential Character Rolls of non-gazetted employees is concerned, on a mere reading of the said provision it is to be noted that the communication of

adverse entries should normally be issued before 31st December immediately following the report period. This Rule has been clearly complied with in so far as the adverse entry of the Petitioner for 1997-98 is concerned. In using the word 'normally' one is referring to something which is in contradiction to abnormal or exceptional. Thus, we are of the considered view that the said provision manifestly is merely directory in nature and not mandatory since it prescribes what should be done normally. In other words, non-compliance of the same and non-communication within the period stipulated it does not render the adverse entry in the CCR meaningless.

9. In so far as the Judgments relied upon by the Petitioner is concerned, as indicated hereinabove, we fully agree with the principles of law laid down by the Hon'ble Supreme Court. Same do not apply to the facts of the present case inasmuch as in the present case the adverse entries had been communicated and there is no allegations to the contrary and the only plea is that the communication had been made late which, for the reasons indicated hereinabove, is also not a fact. Apart from that, the Supreme Court in Amar Kant Choudhary (supra) was dealing with a case where an employee had not been considered by the Selection Committee for promotion due to adverse remarks and such adverse remarks had not been communicated to the employee and had been subsequently expunged by the State. From the facts of the present case, it appears that the Selection Committee had considered the Petitioner for promotion, it reviewed the case of Petitioner and did not recommend him for promotion. The adverse remarks contained in the CCR of the Petitioner was taken into consideration on the date of consideration of promotion and such adverse remarks had in fact been communicated to the employee. Further, in the present case the adverse marks have remained as on date and same have not been expunged. Therefore, the case laws relied upon by the Petitioner are also of little consequence.

10. Apart from taking into consideration the facts and circumstances indicated above, we have also perused the personal records of the Petitioner and by Order Dated 17.2.2009 we have referred to various entries available in the service record of the Petitioner, which is extracted below:

As per the earlier order of this Court dated 02.02.2009, the original service record of the Petitioner has been produced before us. In 1997-1998 the adverse entry had been given by the Learned District Judge that he was not mindful to his job and that adverse entry had been communicated to the Petitioner on 16.11.2002. Again in 2000-2001, the Petitioner had been given an adverse entry as a mischievous element in office and needs to be kept on constant watch. This adverse entry was also communicated to the Petitioner on 22.12.2001. The said adverse entries have been accepted by the Petitioner in paragraph 8 of the Writ Petition itself.

Further we have perused the record and it is found that one Office Note was submitted by the Sheristadar, District Court, Keonjhar, which is as under: Shri Sunil Kumar Dash, Jr. Clerk, now working as Comparing Clerk in the Office of the SDJM, Anandapur is the senior most Jr. Clerk under the unreserved category as per the gradation list. He has passed the departmental examination on 20.5.1988. It appears from the last five years CCR of Shri Dash, that there is adverse remarks by the then District Judges on 25.9.1998 and 20.10.2001, but the same has been rejected and communicated to him in this office L. No. 349, dated 16.11.2002. The adverse remark dated 25.8.1998 has been communicated to Shri Dash recently on 16.11.2002. No representation against that adverse remark is received from Shri Dash. The time limit stipulated in paragraph (xiv) of G.A. Department memo No. 741 dated 5.2.1982 is six months from the date of receipt of communication. So the period for the purpose has not yet been lapsed. Till expunction of adverse remarks and final disposal of representation, if any, to be preferred thereof, Shri Dash may not be considered suitable for promotion to higher post....

11. In the facts and circumstances of the case, we are of the considered view that the petition lacks merit and is accordingly dismissed, but without any order as to costs.

B.S. Chauhan, C.J.

I agree.

