

Mohammed Amln Vs. Orissa Forest Development Corporation and ors.

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Court : Orissa

Decided On : Sep-10-1998

Reported in : 1998(II)OLR592

Judge : S. Chatterji and ;D.M. Patnaik, JJ.

Appeal No. : O.J.C. No. 5679 of 1993

Appellant : Mohammed Amin

Respondent : Orissa Forest Development Corporation and ors.

Advocate for Def. : J.K. Tripathy, Debasis Satpathy, (O.P. No. 1) and P.K. Chand (O.P. Nos. 3 to 5)

Advocate for Pet/Ap. : B.B. Ratho, Manoj Mishra, U.C. Patnaik, P.K. Das, B. Rath and D.K. Patnaik

Disposition : Petition allowed

Judgement :

D.M. Patnaik, J.

1. Petitioner challenges his supersession to the promotional post of Junior Administrative Officer and prays for a direction from this Court for his promotion to the post of Head-Asst./Section Officer with retrospective effect from 12.8.1980 and

for retaining his seniority all through.

2. Petitioner's case is, he entered the service under the Orissa Forest Development Corporation (in short the 'Corporation') in the year 1967. In due course he was promoted to the post of Senior Grade Assistant and placed at serial 2 in the cadre whereas opposite party Nos. 2 to 6 were placed below him. On the recommendation of the Departmental Promotion Committee, opposite party Nos. 2 to 6 were promoted to the post of Section Officer/Head Assistant with effect from 12.8.1980, but the Committee did not recommend the promotion of the petitioner on the ground that his C.C.Rs. for the years 1977 to 1979 bore adverse entries. He was however promoted on 27.6.1981 i.e. 11 months after his supersession, but he was not given retrospective promotion from 12.8.1980, when his juniors were promoted and in the gradation list of the Section Officer, he was placed at serial 10 and opposite parties 2 to 6 were placed above him. Aggrieved he filed suit for the above reliefs. The lower Court dismissed the suit. The appellate Court decreed the suit, directing the O.P. to reconsider the case of the petitioner, ignoring the entries for 1977-79.

Petitioner claims that the departmental rules prescribed promotion to higher post on the basis of seniority-cum-merit and not merit alone. He further claims, that denial of his promotion to the post of Junior Administrative Officer in 1985 was an act of arbitrariness and non-application of mind.

3. The Corporation Opposite party No. 1 has filed a counter in which it is stated that it was not because of the adverse remarks for the years 1974-76 the petitioner was refused promotion but the adverse entries for the years 1977-78, 1978-79 were not expunged at the time of consideration and therefore these entries affected his prospect for promotion. So far as the objection of the petitioner to the gradation list is concerned the opposite party Corporation stated that the same was disposed of on 24.1.1983. With regard to the subsequent non-promotion of the petitioner to the post of Junior Administrative Officer on 29.8.1985, the opposite party stated that since there was only one vacancy in that cadre, incumbents double the number of vacancy were considered, and since petitioner was at serial 10 he was not considered for promotion. With regard to the

compliance with the judgment of the Civil Court dated 13.3.1992 in the Title Appeal it is averred that the Departmental Promotion Committee met on-19.1.1992 and reconsidered the case of the petitioner, treated the adverse entries for the period from 1977-79 as average, but confirmed the recommendation of the earlier D.P.C. promoting the opposite parties on the basis of better performance record than the petitioner.

With these averments the opposite party Corporation claimed dismissal of the writ petition.

4. Mr. Manoj Mishra, learned counsel for the petitioner strenuously urged that no doubt as on 11.8.1980 when the D.P.C. met there were adverse remarks for the year 1974-76 and though the petitioner had moved to expunge the adverse entry, his application was not disposed of as on that date but the adverse remarks subsequently expunged in the year 1981 and then the said Departmental Promotion Committee took up his matter of promotion only eleven months thereafter and promoted him to the cadre of Section Officer. According to Mr. Misra thus there was no justification for the opposite parties to take into account the same entries in the year 1992 to judge his comparative suitability with opposite party Nos. 2 to 6. Secondly, it was urged that by virtue of the judgment of the Civil Court which the Corporation did not challenge in higher forum the adverse entries if any for the year 1977-79 should have been considered as honest and therefore his further promotion to the post of Junior Administrative Officer should not have been denied on the pretext that the petitioner was not found comparatively more suitable than the other opposite parties. Lastly, it was urged that the criteria for promotion to such post under the prescribed rule of the Corporation was seniority-cum-merit and not merit alone. Therefore, according to settled position of law the petitioner should have been promoted to the post of Junior Administrative Officer as claimed by him, since at no point of time he was found to be unsuitable to hold the promotional post.

5. Mr. J. K. Tripathy, learned counsel for the Corporation on the other hand urged that there has been no mala fide alleged against the authorities nor challenge is made to the constitution of the Selection Committee. The action of the opposite

party Corporation having been based on accepted principles and the prescribed rules the action is not maintainable in a writ petition.

6. Mr. P. K. Chand, learned counsel for the opposite parties 2 to 6 supported the action of the Corporation and endorsed the argument of Mr. Tripathy and prayed for dismissal of the writ petition on the ground of delay and laches.

The respective contentions of the counsel for the parties are disposed of in the following manner.

7. Annexure-6 is the proceeding of the D.P.C. dated 11.6.1980 which recorded the impugned action promoting the juniors to the petitioner. The minutes show, for promotion to the higher post of Section Officer/Head Assistant, the main criteria were, that a person must have completed two years of continuous service in the post of Grade-I Asst./Head Clerk, and the second one is promotion should be on the basis of seniority-cum-merit subject to 'elimination of unfit'. Out of the case of 11 persons considered of whom petitioner figured at serial 2 of the gradation list, seven persons were recommended for promotion. Four including the petitioner were not recommended for promotion, because of adverse remarks in the C.C.Rs. It may be pointed out that in the proceeding there is no mention that the petitioner was unfit or otherwise unsuitable to hold the promotional post.

In the counter the Corporation pleaded that though there were adverse entries for the years 1974 to 1977 of the petitioner and his representations for expunging the remarks were pending, yet the adverse entries for these three years were not the basis for denial of promotion, but it was the adverse entries for the years 1977-79 which were not expunged as on that date even though the representation for expunction was pending and those adverse entries affected the prospect of his promotion. Therefore, it becomes necessary to examine whether the decision of the Corporation not to promote the petitioner because of the adverse entries for those two years was legal.

8. Admittedly, petitioner's case was considered first time on 11.6.1980 when he was refused promotion to the post of Section Officer. Hardly 11 months thereafter i.e. on 27.6.1981 his matter for promotion was again taken up and this time he was

recommended for promotion and in fact was given promotion from that date. This shows even in spite of the adverse entries for the years 1977-79 for expunction of which representation was pending, the petitioner was given promotion. Thus, by their own conduct the D.P.C. as well as the authority of Corporation treated the adverse entries for those years as non-existent. The Civil Court had also decreed the plaintiff's suit with a declaration that the entries for these two years should be ignored. As rightly submitted by Mr. Mishra, this decision of the Civil Court was not challenged at any higher forum and therefore there was no basis for the Corporation to allow O.Ps.2 to 6 to supersede the petitioner on account of the adverse entries for those two years.

However, the opposite party Corporation comes forward with a case that after the judgment of the Civil Court, petitioner's retrospective promotion and that too his promotion to the next cadre of Junior Administrative Officer were considered in the year 1992. It is their case that on comparison of the relative degree of performance between the petitioner and his juniors, the Committee treated the entries for the year 1977-79 as average and on the basis of comparative suitability of his juniors the petitioner was not promoted, though his case was considered.

Therefore, it becomes necessary to find out whether it was correct on the part of the Departmental Promotion Committee to treat the entries for the year 1977-79 as 'average' and denial of promotion on the basis of such comparative performance with his juniors was legally tenable.

9. We have gone through those entries, Annexure-5 series. These are C.C. Rs. for the years 1977-78, 1978-79, and 1.6.1979 to 31.10.1979, i.e. the period in respect of which the petitioner's comparative performance was judged along with others.

In fact the above entries cannot be termed as average since there is nothing adverse reported. The Reporting Officer (Marketing Manager (T) in the column meant for general remarks for the year 1 977-78, remarked that he was an assistant who had moulded himself and had been improving. The Managing Director endorsed that his disposal of paper needed improvement. For the year 1978-79 the same reporting officer commented that he was an worthy, improved Assistant and done good work during the year and suitable for promotion. The

Managing Director agreed with the Reporting Officer but added that it would be better if he showed more initiative. For the period from 1.3.1979 to 31.10.1970, the Reporting Officer remarked that he was an Assistant who had shaped out to be an Assistant, and deserved accelerated promotion on out of the turn basis. The Managing Director had no comments for that period. So far as other relevant column i.e. column-4 is concerned against the heading Intelligence, it is recorded as 'average' and 'fairly good' and the last entry against Intelligence it is recorded as 'very good' and against Honesty very good'. Nowhere the standard of performance is found to have been mentioned as average. On the face of such remarks in the C.C.Rs. it was not competent on the part of the D.P.C. to sit over the comments of the Reporting Officer as well as the Accepting Officer and treat the entries for those two years to be average and comparatively not better than the C.C.Rs. of his juniors. They should have accepted those entries as reflected as such on the fact of it. Therefore we are of the view that the petitioner's C.C.Rs. for those two years did not reflect as an average officer. Even assuming the same could be treated as average still then since he was admittedly senior to opposite parties 2 to 6 and there is no record of his having been considered at any time as unsuitable his promotion with retrospective effect from 12.8.1980 should not have been denied. Consequently, also his seniority should have been displaced.

10. We may appropriately refer to the decision in the case of State of Gujarat v. S. Tripathy and Ors., AIR 1987 SC 479. In that case, the incumbent's case was wrongly passed over and he was not given promotion to the selection grade and subsequently the supertime scale. However, the High Court directed the Government of Gujarat to reconsider the matter of his promotion to the above two cadres, and the Supreme Court also agreed with the finding of the High Court that the supersession was wrong and since the respondent had resigned from his service directed the Government to promote him to the said posts retrospectively with all monetary benefits.

11. The obvious conclusion from the above discussion is that the petitioner was wrongly superseded on 12.8.1980 and therefore, he should be deemed to have been promoted to the post of Section Officer with retrospective effect i.e. from 12.8.1980 and consequently he shall continue to retain his seniority in the

gradation list of the Section Officers and his juniors who superseded him should be shown below him.

So far as his promotion to the post of Administrative Officer with effect from 29.8.1985 is concerned, the opposite party Corporation in paragraph 10 of the counter stated that as on the date of consideration for such promotion opposite party No. 2 Sri Dibakar Nayak was senior to him and since at that point of time only one post of Junior Administrative Officer was lying vacant and opposite party No. 2 was senior to him, and petitioner was junior being at serial 10 his case was not considered. But we have held that petitioner should be allowed to retain his seniority in the gradation list of Section Officers and if that be so he would be placed senior to opposite party No. 2 and below one Niranjana Routray. Since by our above decision the gradation list in the cadre of Section Officers has to be re-fixed and presently we have no material with us to judge the comparative performance of the petitioner vis-a-vis opposite party No. 2 in that cadre instead of directly allowing the prayer of the petitioner for his promotion to the post of Junior Administrative Officer with effect from 29.9.1985, we feel it appropriate to leave the matter for consideration of the opposite party Corporation for his promotion to the post of Junior Administrative Officer as per prescribed rules.

12. In the result, the writ petition is allowed with the above observation. No cost.

Requisites shall be filed within a week to communicate the order to the opposite parties. No certified copy shall be granted unless requisites are filed to communicate the order.

S. Chatterji, J.

13. I agree.