

**ORISSA HIGH COURT
CUTTACK**

O.J.C. NO. 4900 OF 1998

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Keshab Chandra Nayak Petitioner

Versus

Chairman, Orissa Administrative
Tribunal, Bhubaneswar & others
..... Opposite Parties

For Petitioner - M/s J.K. Rath, S.N.Rath,
P.K.Rout, C.K. Rajguru,
D.N. Rath, S.R.Nayak &
S.Mishra

For Opp.Parties - Addl. Government Advocate

PRESENT: -

**THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing & judgment : 15.02.2006

I.M.QUDDUSI,J. This writ petition has been filed against the judgment and order dated 12th March, 1998 passed by the Orissa Administrative Tribunal, Bhubaneswar in O.A. Nos. 669 of 1990 and 670 of 1990, filed by the instant petitioner and one Gobardhan Jena respectively. By the impugned order, the Tribunal dismissed both the O.As. In the present writ petition, we are concerned with O.A. No.669 of 1990.

2. The brief facts of the case are that the petitioner after acquiring the qualification of Matriculation was initially appointed as Chain Man on 16.06.1972 and was subsequently promoted to the post of Amin on 02.08.1972 in the Valuation Organization of the Housing and Urban Development Department. At that time, a question had arisen to fill up the post of Revenue Supervisor. The Director, Municipal Administration, who was also the appointing authority in respect of the post of Revenue Supervisor, decided to fill up the vacant post from amongst the qualified Amins, who were Matriculates.

3. At the very outset, it is necessary to mention here that there were no statutory rules or Government Order by which the posts of Revenue Supervisor could be filled up by promotion from amongst the Amins. The posts of Revenue Supervisor were not in the cadre of Amin and there were no promotion avenues for the Amins. As such, the Director of the Department decided to fill up the posts of Revenue Supervisor not from outside but from amongst the qualified Amins, meaning thereby that he wanted to make selection on the posts of Revenue Supervisor and the selected persons from amongst the Amins were to be promoted in absence of any statutory rules or instructions in that regard.

4. Consequently, the petitioner and one Gobardhan Jena were selected, as they were having Matriculation qualification and were given promotion to the posts of Revenue Supervisor. One of the Amins, namely, Bhagirathi Nayak, who was not selected for promotion on the post of Revenue Supervisor being not qualified, as he was not having Matriculation qualification, approached the Orissa Administrative Tribunal by filing O.A. No.270 of 1986 challenging the appointment of the petitioner and one Gobardhan Jena on the post of Revenue Supervisor with a prayer that he should be considered for promotion to the post of Revenue Supervisor. The Tribunal vide its judgment and order dated 18th August, 1988 decided the O.A. by

holding that Bhagirathi Nayak, applicant before it, was entitled to be considered for promotion to the post of Revenue Supervisor when the petitioner and the other person had been given promotion and non-consideration of his case for promotion amounted to violation of Article 16 of the Constitution. It directed that Bhagirathi Nayak should be considered for promotion to the post of Revenue Supervisor with effect from the date of promotion of the petitioner and the other person. The Tribunal, however, did not quash the promotion of the petitioner and the other person. It also nowhere directed that the petitioner be reverted. But, while implementing the said judgment of the Tribunal, an order of reversion dated 30th June, 1990 was passed by opposite party no.3, i.e., Director, Municipal Corporation. Being aggrieved, the petitioner approached the Tribunal by filing O.A. No.669 of 1990 which was dismissed, as mentioned above, along with O.A. No.670 of 1990 filed by Gobardhan Jena. Hence the instant writ petition.

5. Mr. Rath, learned counsel for the petitioner, has submitted that since the petitioner was not aggrieved by the earlier order passed by the Tribunal in O.A. No.270 of 1986 filed by Bhagirathi Nayak and he had no objection in the promotion of Bhagirathi Nayak, he did not file any writ petition challenging that order of the Tribunal, although the order was bad in law. But as he had no concern with the findings of the Tribunal, which were not against him, and as it was only directed that the promotion of Bhagirathi Nayak should be considered from the date of promotion of the petitioner, the petitioner did not challenge the same.

6. Before proceeding further, it is necessary to consider the back-ground on the basis of which the direction was issued by the Tribunal to consider the promotion of Bhagirathi Nayak from the date of promotion of the petitioner. The Tribunal had framed the following two points for determination:

- (i) Whether the Director of Municipal Administration had the authority to lay

down the qualification of Matriculation for the Amins in the Valuation Organization for filling up the posts of Revenue Supervisor by promotion from amongst the Amins.

- (ii) Whether the petitioner was entitled to be considered for promotion along with O.Ps. 4 and 5 to the post of Revenue Supervisor.

As regards point no. (i) above, the Tribunal had held that it was admitted on behalf of the opposite parties that the qualification of Matriculation was prescribed by the appointing authority, namely, Director of Municipal Administration, and on perusal of records also it came out that the Director Municipal Administration had taken a decision to lay down the qualification of Matriculation for the Amins in the Valuation Organization for promotion to the post of Revenue Supervisor. The Tribunal had decided that the Director, Municipal Administration had no authority to lay down the qualification of Matriculation for promotion to the post of Revenue Supervisor on the ground that the qualification could have been fixed only by statutory rules or Government Order. As such, point no. (ii) was decided in favour of the applicant in the said O.A., namely, Bhagirathi Nayak, as he was not having Matriculation qualification, but was senior to the petitioner on the post of Amin. We feel that while deciding that O.A., the Tribunal had not taken care of the fact that it was the Director, Municipal Administration who had decided to fill up the posts of Revenue Supervisor not from outside but from amongst the Amins, who had qualification of Matriculation. Thus, both the decisions, i.e., to promote the Amins as well as fixing qualification, were taken by the Director, Municipal Administration. If the decision to fix qualification was bad, the other decision to make promotion was equally bad. The Tribunal had also not kept in mind the qualification prescribed for the post of Revenue Supervisor and held that the Director, Municipal Corporation had no jurisdiction to fix qualification to fill up the post of

Revenue Supervisor by promotion from amongst Amins having the qualification of Matriculation. Under the statutory rules, namely, the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 a person can be promoted from the post of Revenue Inspector to the post of Revenue Supervisor in the Valuation Organization under the administrative control of the Director, Municipal Administration-cum-Deputy Secretary, Urban Development Department, Bhubaneswar. But for the post of Revenue Inspector, minimum qualification is fixed as Matriculation. Therefore, no person can hold the post of Revenue Supervisor, who was not having Matriculation qualification. Therefore, it appears that the Director, Municipal Corporation following the statutory rules in respect of the Revenue Supervisor of the Revenue Department decided to fill up that post from amongst the persons possessing the qualification prescribed for that post in absence of any rule in the Housing and Urban Development Department. However, it is to be noticed that the rules implemented for the first time vide Government Extraordinary Gazette Notification dated 20th July, 1993 has no concern with the instant matter.

7. To our mind, a person can claim consideration of his promotion as a matter of right when there is channel of promotion provided by statutory rules or Government Order in the cadre in which he is holding a post. In absence of the same, a person similarly circumstanced with that person, who is considered for promotion ignoring his case, can only make a grievance. Bhagirathi Nayak was not a similarly circumstanced person with the petitioner, as he was not having the requisite qualification, i.e., Matriculation, which qualification the petitioner had. Therefore, the direction given by the Tribunal to consider the promotion of Bhagirathi Nayak as a matter of right irrespective of his qualification was bad in law. However, our intention to consider the findings of the Tribunal in the case filed by

Bhagirathi Nayak is not to quash that judgment or give a direction against Bhagirathi Nayak. It is not material if a person is given the benefit of an order, which is bad in law, but it is very much material to see that by such an order a person should not be a sufferer. If the Tribunal issued a direction for consideration of promotion of Bhagirathi Nayak, it should not have any adverse effect on the service career of the petitioner. Therefore, we are of the opinion that the impugned order of reversion of the petitioner is liable to be quashed.

8. In the case of **Sarat Kumar Dash v. Biswajit Patnaik**, 1995 Supp. (I) SCC 434, the Supreme Court was considering the matter of promotion of Drug Inspectors to Assistant Drugs Controller (Junior Class-I). In absence of any rules for such promotion, the Government decided to adopt “merit-cum-suitability with due regard to seniority” as a principle to consider the cases of Drug Inspectors for promotion to the posts of Assistant Drugs Controller (Junior Class-I). The Hon’ble Apex Court held that in case of merit-cum-suitability, seniority has no role to play.

9. In the result, the writ petition is allowed. The impugned judgment and order passed by the Tribunal as well as the impugned order of reversion of the petitioner dated 30th June, 1990 is quashed. The petitioner shall be entitled to get all consequential benefits accrued to him as if there was no reversion order in existence. No order as to costs.

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I.M.Quddusi,J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack
February 15, 2006 / *Samal*

Under the statutory rules, namely, the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 a person can be promoted from the post of Revenue Inspector to the post of Revenue Supervisor in the Valuation Organization under the administrative control of the Director Municipal Administration-cum-Deputy Secretary, Urban Development Department, Bhubaneswar. But for the post of Revenue Inspector, minimum qualification is fixed as Matriculation. Therefore, no person can hold the post of Revenue Supervisor, who was not having Matriculation qualification. Therefore, it appears that the Director, Municipal Corporation following the statutory rules in respect of the Revenue Supervisor of the Revenue Department decided to fill up that post from amongst the persons possessing the qualification prescribed for that post in absence of any rule in the Housing and Urban Development Department. However, it is to be noticed that the

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