

ORISSA HIGH COURT, CUTTACK

O.J.C. NO.14304 OF 2001

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

Kelu Charan Samal

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Petitioner

Versus

State of Orissa & Others
Parties

.....

Opposite

For Petitioner - M/s S.K. Rath, R. Samal,
S. Samal & P. Samal

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 : 09.03.2006

I.M.QUDDUSI, J. This writ petition has been filed against the judgment and order dated 21.08.2001 passed by the Orissa Administrative Tribunal, Cuttack Bench, in O.A. No.1469(C) of 1994 filed by the present petitioner. By the said order, while disposing of the O.A., the Tribunal has directed that if the review D.P.C. finds the petitioner suitable, he would be promoted and appropriate seniority would be assigned to him. But, as he has already retired from service with effect from 28.02.2001, he would be given notional promotion to the rank of Superintendent (Inspector-M) from the date of his

reversion, i.e., 30.05.1997 till the date of his retirement, i.e., upto 28.02.2001. But, as during this period he has not worked in the promotional post, he would not get the differential back wages.

2. The brief facts of the case are that when the petitioner was working as Senior Assistant in the establishment of opposite party no.4, a disciplinary proceeding was initiated against him. In that proceeding, he was found guilty and the disciplinary authority reduced his pay to the stage of Rs.532/- per month for a period of two years vide order dated 07.12.1982. The departmental appeal filed by the petitioner having failed, he filed O.A. No.963 of 1992 before the Orissa Administrative Tribunal. While the earlier proceeding was pending, the authority initiated another proceeding against the petitioner on the self-same charge. The petitioner filed O.J.C. No.1612 of 1983 before this Court against initiation of second proceeding for the self-same charge, but the same was dismissed. In the second proceeding, the petitioner was dismissed from service. However, in the appeal filed by him, it was directed to continue the proceeding from the stage of second show-cause. After filing of the second show-cause, a fresh order was passed on 03.05.1986 forfeiting one increment for a period of one year, which would carry the value of two Black Marks in his Service Book. The said order having been upheld in appeal, the petitioner filed another O.A., i.e., O.A. No.962(C) of 1992. Both the proceedings drawn up against the petitioner and the orders of punishment were quashed by the Tribunal vide its order dated 01.02.2000.

3. In the meantime, the petitioner had been given ad hoc promotion on the post of Superintendent (Inspector-M) on 02.01.1991. Thereafter, a D.P.C. was held for regular promotion on 25.04.1994. But, after perusing the records, the D.P.C. did not consider the petitioner suitable for promotion and his junior was given promotion. Consequently, he was reverted vide order dated

30.05.1994. Against the order of reversion, the petitioner filed O.A. No.1469(C) of 1994. While disposing of the same by the impugned order, the Tribunal has observed that the record of the preceding five years, i.e., 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 should have been taken into consideration by the D.P.C. However, the D.P.C., instead of considering the same, took into consideration the disciplinary proceedings initiated against the petitioner and the punishments awarded to him, which had already been quashed by the Tribunal, vide its order dated 01.02.2000. Therefore, the Tribunal ordered for holding a review D.P.C. meeting to review the case of the petitioner for promotion applying the same principle and criteria, which were followed at the time of D.P.C. held on 25.04.1994, barring the two proceedings initiated against him and the penalties inflicted in the same. The Tribunal ultimately directed that if the petitioner is found suitable, he would be given notional promotion, but would not be entitled to get differential back wages.

4. Learned counsel for the petitioner submits that since the Tribunal felt that injustice has been done in case of the petitioner, it directed to reconsider his case. Therefore, denial of differential back wages was not proper. In support of his submission, he placed reliance upon the case of **Union of India -v- K.V.Jankiraman**, AIR 1991 SC 2010. In the said decision, the apex Court has held as under:-

“ There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post.

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The normal rule of ‘no work no pay’ is not applicable to cases such as the present one where the employee although he is willing to

work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstance when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of

paragraph 3 of the said Memorandum, viz., 'but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion', we direct that in place of the said sentence the following sentence be read in the Memorandum:

However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/ criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

5. In the instant case, the punishments imposed in the departmental proceedings had been quashed by the Tribunal. As such, the D.P.C. should not have considered the fact of initiation of departmental proceedings against the petitioner. Undoubtedly, depriving the petitioner of promotional benefits was not his fault. However, other records are to be seen by the D.P.C. Therefore, we are of the view that instead of directing not to pay the differential back wages, the Tribunal should have directed the authorities concerned to take into consideration of payment of differential back wages considering all the facts and circumstances.

6. In view of the above-mentioned facts and circumstances, the impugned order of the Tribunal is modified to the extent that instead of denial of differential back wages, it is directed that the authorities shall decide the question of payment of arrears of differential back wages to the petitioner on promotional post with effect from the date of his notional promotion considering the facts and circumstances of the case. However, if the authorities deny the arrears of salary or part of the same, they shall record reasons for

doing so. The above exercise will be completed within a period of three months from the date of receipt of this order.

7. With the above modification, the writ petition stands disposed of.

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I.M.QUDDUSI,J.

PRADIP MOHANTY, J. I agree.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack
March 9, 2006/ *Nayak*