

HIGH COURT OF ORISSA: CUTTACK

W.A. No.61 of 2014

From the judgment/order dated 29.01.2014 passed by the learned Single Judge in W.P.(C) No.28310 of 2011.

Sri Kailash Nath Behera Appellant

Versus

Orissa State Financial Corporation
and others Respondents

For Appellant : Mr. S.K. Sarangi, Advocate

For Respondents : None

P R E S E N T:

**THE HON'BLE CHIEF JUSTICE MR. AMITAVA ROY
AND
THE HON'BLE DR. JUSTICE A.K.RATH**

Date of hearing: 22.10.2014

Date of Judgment: 22.10.2014

Dr. A.K. Rath, J. Challenging, inter alia, the judgment and order dated 29.01.2014 passed by the learned Single Judge in W.P.(C) No.28310 of 2011, the appellant has filed appeal under Clause 10 of the Letters Patent. By the said judgment, learned Single Judge dismissed the writ petition holding, inter alia, that there is no illegality or infirmity committed by the Selection Committee of Orissa State Financial Corporation (hereinafter referred to as "OSFC") in not recommending the name of the appellant for promotion to the rank of Deputy Manager (F) and did not incline to interfere with the order dated 20.1.2011 passed by the Managing Director, OSFC, vide Annexure-3.

2. Shorn of unnecessary details, the short facts of the case of the appellant are that he joined as a Junior Assistant in OSFC in the year

1982. His services are governed under State Financial Corporation Act, 1951 and Orissa State Financial Staff Regulations. He was promoted to the post of Senior Assistant in the year 1989. Thereafter, he was promoted as Assistant Manager in the year 1997. In the gradation list published on 30.11.2009, vide Annexure-1, in respect of Assistant Manager (F), his name found place at Serial No.30, whereas the names of respondent nos.4,5 and 6 found place at Serial Nos.31, 32 and 33 respectively. The gradation list was not challenged by the respondent nos.4, 5 and 6 at any point of time. Thus the respondent nos.4, 5 and 6 were juniors to him. While the matter stood thus, the selection committee issued a letter on 31.12.2010 to him to appear before it for interview on 19.1.2011. He appeared before the selection committee. He had a legitimate expectation that his case would be considered for promotion to the post of Deputy Manager (F). By order dated 20.01.2011, vide Annexure-3, the Managing Director, OSFC published office order empanelling the names of the employees mentioned therein to the next higher grade in their respective stream. He was shocked and flabbergasted after going through the list. All the Asst. Managers (F) were promoted to the next higher posts. On enquiry, he was informed by the authorities that it was an accidental omission and the list would be corrected within a short time. The promotees joined on 01.2.2011. Thereafter, he filed a representation to the authorities on 02.2.2011, vide Annexure-4 series. Again, he filed another representation on 28.06.2011. Thereafter he filed the writ application.

3. Pursuant to issuance of notice, a counter affidavit was filed on behalf of opposite party nos.1 to 3. The case of opposite party nos.1 to 3 is that the appellant was in the cadre of Asst. Manager (F). He was not suitable to the next higher post of Deputy Manager (F). It is further stated that the selection committee was constituted as per the decision of the Board of Directors meeting held on 11.08.2010 to consider the candidates on the basis of merit-cum-seniority for promotion in the post of Category

‘A’. Basing on the seniority, the appellant was considered for promotion. He appeared before the selection committee. The selection committee taking into consideration the merit-cum-seniority and suitability of the employees prepared a list for promotion to the next higher grade and recommended the same to the Board of Directors. The same was accepted and approved in the meeting of the Board of Directors held on 17.3.2011. The appellant did not qualify. Accordingly, his name was not recommended by the selection committee. A rejoinder affidavit has been filed by the appellant to the counter affidavit enclosing certain documents which were obtained by him under the R.T.I. Act.

4. In an elaborate judgment, learned Single Judge came to hold that there is no illegality committed by the selection committee of OSFC in not recommending the name of the appellant for promotion to the rank of Deputy Manager (F). Accordingly, the writ petition was dismissed. Hence, the present writ appeal.

5. Heard Mr. S.K. Sarangi, learned counsel for the appellant.

6. Mr. Sarangi submits that before the selection committee, the Annual Confidential Report (ACR)/Performance Appraisal Report (PAR) of the appellant for the year 2006-07 and 2007-08 were not produced. He further submits that when the part record of PAR was not available, the selection committee committed a manifest illegality in not awarding ‘15 marks’ for outstanding ACR. To buttress his submission, Mr. Sarangi relies on the decision of the Hon’ble Supreme Court in the case of **Dev Dutt v. Union of India and others**, AIR 2008 SC 2513. He further submits that the appellant has not visited with any departmental proceeding at any point of time and his service career was blemishless. In view of the same, the appellant ought to have been promoted to the rank of Deputy Manager (F) from the date when the juniors were promoted.

7. Regulation 21 of the OSFC Staff Regulation provides that the selection committee appointed by the Board shall recommend the

candidate whom they consider suitable from amongst employees on selection basis for promotion to posts in Category 'A'. It further provides that the Board of Directors may, on the advise of the selection committee, make such promotion in regard to the officers as it deems proper on the basis of suitability and merit having due regard to seniority. The Managing Director may make such promotions in regard to the post in Category 'B' and 'C' on the basis of merit with due regard to seniority. Admittedly the appellant belongs to Category 'A'. The promotion to the next higher post is on the basis of the suitability and merit with due regard to the seniority.

8. In course of hearing to the writ petition, learned counsel appearing for the OSFC produced the original records regarding the minutes of the meeting of Board of Directors held on 11.8.2010 pertaining to constitution of selection committee and the mode of selection. Learned Single Judge on perusing the same held that the selection committee was constituted for promotion of 'A' class employees consists of Chairman of the Board, Managing Director of OSFC, Director of Industries, Odisha, Director to Board and one Professor, Department of Commerce, Utkal University. The selection committee reviewed the PAR's of the employees and decided to add marks on the overall performances of the employees in the following manner.

"Excellent/Outstanding	-	15 mark
Very Good	-	12 mark
Good	-	10 mark
Average	-	8 mark"

The selection committee decided to assess the PAR's preferably for the period 2007-08, 2008-09 and 2009-10. In case of non-availability of PAR of any of the employees for a particular year, the marking shall be made on average basis basing upon the PAR readily available. The selection committee assessed the ACR/PAR's of the appellant and awarded '10', '12' and '10' marks for the years 2007-08, 2008-09 and 2009-10 respectively. Even if part PAR's was not available for

the year 2008-09, the selection committee awarded '12' marks and '10' marks for the year 2009-10. The selection committee awarded '10' marks in the interview and the appellant in toto was awarded '42' marks. The selection committee recommended the names of the employees, who had secured more marks than the appellant. From the said list, it was found that the name of three persons were also not recommended for promotion and one Bisad Bhanjan Mohanty, who was absent, was also not recommended for promotion.

9. In Dev Dutt (supra), the appellant was in the service of the Border Roads Engineering Service. He was promoted to the post of Executive Engineer on 22.2.1988 and was eligible to the post of Superintending Engineer on completion of 5 years on the grade of Executive Engineer. Accordingly, his name was included in the list of candidates eligible for promotion. The Departmental Promotion Committee held its meeting on 16.12.1994. In the said meeting, he was not held to be eligible for promotion, but his juniors were promoted. He filed the writ petition before the Gauhati High Court, which was dismissed. The Department took the stand that according to the guidelines for promotion to the post, the bench mark grade should be 'very good' for the last five years before the Departmental Promotion Committee. In other words, only those candidates who had 'very good' entries in their Annual Confidential Reports for the last five years would be considered for promotion. Since the appellant did not have very good entry, but only 'good' entry for the years 1993-94, he was not considered for promotion to the post of Superintending Engineer. The grievance of the appellant was that he was not communicated the 'good' entry for the year 1993-94. It was further submitted that had he been communicated that entry, he would have had an opportunity of making a representation for upgrading that entry from 'good' to 'very good' and if that representation was allowed, he would have also become eligible for

promotion. In paragraph 11 of the report, the apex Court held that the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'.

The fact of the said case is totally different from the present one. Thus the said case is distinguishable.

10. On a query from the Bench as to whether the appellant has been given excellent/outstanding in the PAR, learned counsel for the appellant did not produce any document. There is no whisper in the writ petition that the appellant has been given excellent/outstanding in the PAR at any point of time. Even if part of PAR was available for the year 2008-09 and 2009-10, '12' and '10' marks given to him which is meant for 'very good' and 'good'. Thus the selection committee is perfectly justified in recommending the name of the employees who had secured more marks than the appellant.

We concur with the findings of the learned Single Judge and dismiss the writ appeal.

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JUDGE

CHIEF JUSTICE : I agree.

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CHIEF JUSTICE