

(2010) 1 ILR (Ori) 304

Orissa High Court

Case No: Writ Petition (C) No. 5488 of 2006

Premanjan Parida

APPELLANT

Vs

State of Orissa and
Another

RESPONDENT

Date of Decision: Jan. 25, 2010

Citation: (2010) 1 ILR (Ori) 304

Hon'ble Judges: L. Mohapatra, J; B.P. Ray, J

Bench: Division Bench

Final Decision: Allowed

Judgement

L. Mohapatra, J.

This writ application is directed against the order of Orissa Administrative Tribunal, Bhubaneswar dated 27.2.2006 passed in O.A. No. 1229 of 2004.

2. The Petitioner, who was Applicant before the Tribunal, entered into Government service as Sub-Inspector of Police having been directly recruited to the post in the year 1975, subsequently he was promoted to the post of Inspector of Police in the year 1992. While working as such, a departmental proceeding was initiated against him and ultimately he was exonerated of the charges by order dated 13.5.2004. When the matter was pending before the disciplinary authority, promotion of officers to the rank of Deputy Superintendent of Police was considered and the Petitioner's case was also considered and the opinion of Promotion Committee had been kept in sealed cover. After the Petitioner was exonerated of the charges, the sealed cover should have been opened and on the basis of recommendation of Selection Board, he should have been given promotion to the post of Deputy Superintendent of Police. No action in this regard having been taken, the Petitioner approached the Tribunal in O.A. No. 1214 of 2004. The said O.A. was disposed of on 11.10.2004 directing the Government to consider the matter and in pursuance of the direction of the Tribunal, the Government by order dated 12.4.2005 gave promotion to the Petitioner to the rank of Deputy Superintendent of Police. The Petitioner having been exonerated of the charges, he should have been given promotion

from the date others were given promotion in pursuance of the recommendation of D.P.C. in the year 2002 but such benefit was not extended to him and he was given promotion from 2005 only. The Petitioner therefore made a representation to give him promotion retrospectively from the date others were promoted on the basis of recommendation of D.P.C. but no action was taken. In order to prevent the Petitioner from getting any further promotion and the aforesaid benefits, a fresh proceeding was initiated and charges were communicated to the Petitioner on 29.9.2004. The Petitioner therefore approached the Tribunal challenging initiation of the proceeding in respect of the charges which relate to an incident of 1997 and sought for quashing the departmental proceeding.

3. It was contended before the Tribunal that the departmental proceeding having been initiated after laps of seven years from the alleged date of occurrence, which constitute the subject matter of charges, initiation of such proceeding is unsustainable under law. Reliance was placed on some decisions by the Petitioner before the Tribunal. However, the Tribunal on analysis of the decisions relied upon by the Petitioner found that the said decisions relate to delay in disposal of the departmental proceeding and do not relate to delay in initiation of the departmental proceeding. Accordingly the Tribunal dismissed the Original Application.

4. Shri R.K. Rath, the learned Senior Counsel appearing for the Petitioner assailed the impugned order on the ground that the decisions relied upon by the Petitioner before the Tribunal not only relate to delay in disposal of departmental proceedings but also delay in initiation of departmental proceeding. The Tribunal without looking into the judgments cited by the Petitioner held the same to be inapplicable in the facts of the case and dismissed the Original Application. It was also contended by the learned Senior Counsel that the charges leveled in the departmental proceeding relates to some incidents in the year 1997 and after laps of seven years, the Petitioner could not have been proceeded with in respect of those charges. For the above reasons, according to the learned Counsel for the Petitioner, the Tribunal should have allowed the Original Application and quashed the proceeding.

The learned Counsel for the State submitted that though there is delay of initiation of departmental proceeding, there is no bar for initiation of such proceeding after laps of seven years. According to the learned Counsel for the State, the charges are serious in nature and, therefore the departmental proceeding has been rightly allowed to be continued by the Tribunal.

5. In order to appreciate the rival contention of the learned Counsel appearing for both parties, it is necessary to look into the charges leveled against the Petitioner in the departmental proceeding initiated in the year 2004.

Following are the charges leveled against the Petitioner:

Shri Premanjan Parida, Ex-IIC of Nayapalli Police Station now in P.T.C. is charged with gross negligence and dereliction of duty in that:

That Sri Premanjan Parida while functioning as I.I.C. of Nayapalli P.S., Bhubaneswar under Khurda district during the period from May 97 to August 97 committed grave misconduct for his failure to maintain the Station Diary of the P.S. properly in contravention to P.M.R.-116.

That during 1st week of June 97 though Sri Jagannath Prasad, Sri Ranjit Jena and Sri Ajaya Samal were brought to Nayapalli Police Station, Sri Parida enquired regarding the business transaction with a Calcutta party and noted their names and addresses on a piece of paper but did not enter the facts of the enquiry and other related factors in the General Diary/Station Diary of Police Station though required to make such entry in the General Diary/Station Diary as per P.M.R.-116.

That on 24.7.97 Sri Pramanjan Parida while functioning as Inspector-in-Charge of Nayapalli P.S. did not register the cognizable case pertaining to Car bearing No. ADH-1575 which dashed against the light post on N.H.-5 in front of CRPF Gate No. 2, carcass of a Bull was found lying on the spot, though the matter was reported to the Police Station immediately.

That on the same day on 24.7.97 one Sri K. Madhav Swamy was detained at Nayapalli P.S. lock-up without any corresponding Station Diary entry nor any registration of the case, rather there was demand of illegal gratification and acceptance of the gratification to release Sri K. Madhav Swamy from the lock-up.

The copy of the Station Diary dt. 24.7.97 was received at D.P.O., Khurda, Bhubaneswar on 6.8.97 after undue delay.

That even if the officers and men were not present at P.S., they were shown present at Police Station and their arrival and departure were not noted timely in Station Diary in violation of P.M.R.-116.

6. Admittedly, a departmental proceeding had been initiated against the Petitioner in the year 2001 on some charges and these charges were also available to be framed at the time of initiation of the first departmental proceeding. The opposite parties did not choose to frame the charges in the first departmental proceeding and the Petitioner had been exonerated of the charges in the first proceeding. Apart from above, there was no reason for the Department to frame the above charges seven years after the alleged incidents took place. In this connection, reference may be made to a decision of the Apex Court in the case of [The Secretary, Forest Department and Others Vs. Abdur Rasul Chowdhury](#), . In the said reported case, there was delay in conclusion of a departmental proceeding and the incumbent had retired from service. The proceeding was sought to be dropped on the ground of delay and the Apex Court held that delay is not always fatal to the inquiry. It depends on facts and circumstances of each case and unexplained protracted delay may

be one of the circumstances in not permitting the employer to continue with the enquiry proceedings. However, if the delay is explained satisfactorily, the proceedings should be permitted to continue. Though this case relates to delay in disposal of a departmental proceeding, the principles laid down therein can also be made applicable to the delay in initiation of a proceeding. Here is a case where admittedly there is delay of seven years in initiating a proceeding in respect of the aforesaid charges and there is no explanation whatsoever in the counter affidavit indicating the reasons therefor. Therefore the Department has not explained the reasons for delay of seven years in initiating the departmental proceeding. Reference in this connection may be made to another decision of the Apex Court in the case of [P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, .](#) In the said reported case, there was delay of ten years in issuance of charge memo and the Apex Court held that there being inordinate delay in initiation of the departmental proceeding, the same is vitiated.

7. In the present case, there being admittedly delay of seven years in initiation of the proceeding and no reason having been assigned by the Department explaining such delay in initiation of the departmental proceeding, we are of the view that the same is vitiated.

8. For the reasons stated above, we allow the writ application, set aside the impugned order of the Tribunal and also quash the departmental proceeding initiated against the Petitioner.