(2024) 02 OHC CK 0109

Orissa High Court

Case No: Writ Petition Civil (OAC) No.3124 Of 2015

Arati Mishra		APPELLANT
	Vs	
State Of Odisha		RESPONDENT

Date of Decision: Feb. 12, 2024

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227
- Administrative Tribunals Act, 1985 - Section 19

Hon'ble Judges: Murahari Sri Raman, J

Bench: Single Bench

Advocate: Kali Prasanna Mishra, Saswati Mohapatra, T.P. Tripathy, L.P. Dwivedy, Ajodhya Ranjan Dash

Final Decision: Disposed Of

Judgement

Murahari Sri Raman, J.â€

THE CHALLENGE BY THE PETITIONER:

1. Questioning propriety of Office Order No.608, dated 18.06.2014 passed by the Director General & Inspector General of Police, Odisha, Cuttack in allowing promotion retrospectively from the year 2008 instead of 2006, the

petitionerapproachedtheOdishaAdministrative Tribunal, Cuttack Bench, Cuttack invoking Section 19 of the Administrative Tribunals Act, 1985, by way of filing Original Application beseeching following relief(s):

â€œ(i)Quash the impugned Order under Annexure-5 and grant promotion to the applicant in CSB (Central Selection Board of Constables) held in the year 2006 and thereby allow all the consequential and monetary benefit with effect from the date her admitted

juniors were promoted in the year 2006 CSB;

(ii)Pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice.â€

1.1. After abolition of the Odisha Administrative Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E).], dated 2nd

August, 2019), the said case having been transferred to this Court, O.A. No. 3124 (C) of 2015 has been re-registered as WPC (OAC) No. 3124 of 2015.

FACTS AS ADUMBRATED BY THE PETITIONERS:

2. Shorn off irrelevant material suffice it to narrate the facts as available in the pleadings.

2.1. The petitioner while working as Sub-Inspector of Police Cuttack District Proceeding Nos.44/2001 and 09/2002 were initiated against her in the year 2001 and 2002. As there occurred inordinate delay in completion of the proceedings, the

petitioner approached the Odisha Administrative Tribunal, Bhubaneswar in O.A. No.1227 of 2011 and O. A. No.1323 of 2011 praying therein to quash the said disciplinary proceedings.

2.2. O.A. No.1227 of 2011 was disposed of by the Odisha Administrative Tribunal, Bhubaneswar on 05.07.2013 with the following observation:

â€œ11. The second show cause notice dated 18.8.2011 at Annexure 15Â wasÂ served onÂ theÂ applicant on 19.8.2011 and the applicant made an application on 20.8.2011 praying for reasonable time to submit her explanation but the Disciplinary Authority

rejected the prayer on 22.08.2011 and passed the impugned order of punishment on 23.08.2011. This shows that sufficient opportunity was not given to the applicant to prepare her defence and to reply to the second show cause notice. When the Disciplinary

Authority took ten years to complete the proceeding, there was no reason why the applicant should not be given reasonable time to reply to the second show cause notice. The learned Standing counsel argued that in view of the order of the Tribunal fixing the

time limit for disposal of the O.A., the Disciplinary Authority could not have given a longer time to the applicant. Nothing prevented the Disciplinary Authority to approach the Tribunal praying for extension of time. Since the Disciplinary Authority took 10

years to complete its part of the job, it was not expected of the authority to reject the applicantâ€™s prayer for reasonable time and to pass the impugned order of punishment within 3 days. The conduct of the Disciplinary Authority to conclude the

inquiry in hot

haste also shows that the applicant was not given a fair deal. The Disciplinary Authority and the Inquiring Officer are squarely responsible for inordinate delay in completion of the evidence on behalf of the department.

12.Ordinarily, I would have remanded the matter back to the Disciplinary Authority to dispose of the matter afresh after giving reasonable opportunity to the applicant to reply to the second show cause notice but this is an unfortunate case where the

disciplinary proceeding is pending against the applicant for last more than 10 years for the latches of the Disciplinary Authority and the applicant also suffered repeated supersession during last seven years and I am therefore not inclined to remand the matter

as it would cause further delay in disposal of the matter and in the process the applicant would be subjected to further harassment.

13.In the result, the O.A is allowed. The impugned order of Punishment dated 23.8.2011 at Annexure 18 stands quashed. The O.A is accordingly disposed of.â€

2.3. Similarly, O.A. No.1323 of 2011 also got disposed of on 09.10.2013Â byÂ theÂ OdishaÂ AdministrativeÂ Tribunal, Bhubaneswar with the following order:

â€œ9.The proceeding was initiated by framing of charge on 4.2.2002. But there was virtually no progress in the departmental proceeding till the matter came up before this Tribunal and a direction was issued on 17.5.2011 in O.A.No.102(C)/2011 at Annexure-4

to conclude the departmental proceeding within three months from the date of communication of the order. It is explained by the respondents that the delay was due to sickness/continued of absence of the applicant and also her non-cooperation in the matter.

Such an explanation is difficult to accept. Nothing prevented the respondents to proceed ex-parte in case of non-cooperation of the applicant. It is thus seen that the departmental proceeding was conducted in hot haste without strictly observing the procedure

provided under the Rules, thereby causing serious prejudice to the applicant. The impugned order of punishment, therefore, is not sustainable and is liable to be quashed. I would have ordinarily remitted the matter back to the respondents for fresh disposal of

the proceeding by observing the rules. However, I am not inclined to do so in this case in view of the fact that the applicant (delinquent officer) is suffering due to pendency of this departmental proceeding for more than ten years.

10.In the result, the original application is allowed and the impugned order of punishment at Annexure-14 stands quashedâ€

2.4. Be that as it may, due to pendency of disciplinary proceedings, the CSB held for promotion to the post of Inspector of Police in the year 2006 and 2007, did not consider the case of the petitioner. However, after the Odisha Administrative

Tribunal quashed the orders of punishment as discussed supra the petitioner made representations before the competent authority to open the sealed cover and allow her to avail the promotional benefits.

2.5. On consideration of such representation, the petitioner was promoted to the post of Inspector of Police and directed to be relieved from her duty on 07.07.2014 to join Special Branch, Bhubaneswar. Since she was given promotion from the

year 2008 instead of 2006, the petitioner submitted a representation to the Director General & Inspector General of Police, Odisha drawing attention to open the sealed cover pertaining to Central Selection Board Meeting in the year 2006. The

Additional Inspector General of Police (Personnel), Odisha, Cuttack vide Letter No.Y-65-13/30237/Board, dated 08.08.2014 intimated as follows:

â€œAfter careful consideration, the DG&IG of Police, Odisha, Cuttack has been pleased to reject the representation dated 01.07.2014 of S.I. Arati Mishra relating to her retrospective promotion to the rank of Inspector of Police from 2006, being devoid of merit.

The representationist may please be intimated accordingly under intimation to this Headquarters for reference.â€

2.6. Said letter dated 08.08.2014 contained copy of the following Office Order dated 18.06.2014:

â€œOdisha Police

State Headquarters

Cuttack.

608/ExeÂ Â

Â Date: 18.06.2014

The case of SI Arati Mishra now in Cuttack district was taken into consideration by the Central Selection Boards held in 2006, 2007, 2008 and 2010 for promotion to the

rank of Inspector of Police; but the findings of the C.S.Bs. regarding her promotion were

kept in Individual sealed covers due to pendency of Cuttack District Proceeding No. 44/2001 and 9/2002 against her. In the meantime the major punishments awarded to her in the above two proceedings have been quashed vide Cuttack district DO, No. 2581

dated 22.10.2013 and 1223 dated 26.04.2014. As such, the sealed covers were opened and it was found that she was not selected by the CSB-2006, 2007 and 2010; but selected by the CSB-2008. Hence, she is allowed promotion retrospectively to the rank of

Inspector of Police from the year 2008 as per the results of CSB 2008 held on 22.09.2008 in the Pay Band of Rs.9300-34800/- with Grade Pay of Rs.4600/- per month. This promotion is subject to the decision of Honâ€™ble High Court in W.P (C) No. 426/06.

The conditional promotion will take effect from the date of her assuming higher charge in the promotional post. She may be reverted to her substantive rank of S.I. of Police depending upon the outcome of the judgement of Honâ€™ble High Court In W.P.(C) No.

426/06. An undertaking to this effect will be furnished by her prior to joining in promotional post.

Her inter-se-seniority in the rank of Inspector is fixed above Inspector Chakrapati Kanhar (ST), who was allowed promotion to the rank of Inspector of Police retrospectively from the year 2008 vide State Police Hdqrs. O.O. No.2207/Exe dated 13.12.11.

Her pay will be fixed notionally in the pay band of Inspector of Police from the date her immediate junior was promoted to the rank of Inspector of Police. She will not be eligible for any financial benefits for the period she has not actually worked in the higher

grade/post.

Her posting is to be decided by the Police Establishment Board in accordance with Home Department Notification No. 18407/D&A dated 06.04.2007. (ID-54-08)

Sd/-

D.G & IG of Police,

Odisha, Cuttackâ€

2.7. The pleading reveals that the petitioner having not been communicated with any adverse remarks at any point of time, but for institution of the disciplinary

proceedings

in the years 2001 and 2002, which remained inconclusive by the time CSB held in the years 2006, 2007 and 2008, she strongly believes that there was no point for non-consideration of her promotion to the post of Inspector of Police. As in the

years 2006, 2007 and 2008 similar circumstances prevailed, giving her retrospective promotion from 2008 instead of 2006 does not stand to reason. Therefore, the petitioner represented before the Competent Authority by stating that the

punishments awarded in two disciplinary proceedings are quashed by the Odisha Administrative Tribunal and requested said Authority to consider her case to accord promotion from 2006 instead of 2008.

2.8. It is alleged that the impugned order vide Annexure-5, though is mentioned to be passed on 18.06.2014 by the opposite party No.2-DG & IG of Police, Odisha, the same was not communicated to the petitioner till 01.09.2014.

2.9. It is asserted by the petitioner that she was stated to have been found unsuitable for promotion to the post of Inspector of Police in CSB held in the year 2006 and 2007. During said periods when CSB Meetings were held for preceding

five years thereto there was no adverse remark of any nature. By asserting fact that the petitioner has stated that she was never communicated with adverse remarks. With much vehemence the petitioner submitted that the reason that the

petitioner was found unsuitable for promotion in the years 2006 and 2007 cannot be held to be sustainable or maintainable in the eye of law.

2.10. Craving indulgence in the matter, the petitioner approached the Odisha Administrative Tribunal for a direction in the manner as prayed for by way of filing the Original Application which was registered as O.A. No.3124 (C) of 2015, and

later re-registered as WPC (OAC) No.3124 of 2015.

REPLIES OF THE OPPOSITE PARTIES TO THE CONTENTS OF THE WRIT PETITION:

3.On taking up the matter for â€œAdmissionâ€ this Court vide Order dated 30.09.2022 issued notice to the opposite parties, consequent upon which counter-affidavit has come to be filed sworn to by Additional Superintendent of Police, State

Police Headquarters on behalf of the opposite party No.2-DG & IG of Police, Odisha.

3.1. In the counter-affidavit while it has been admitted that the Odisha Administrative Tribunal has nullified the punishmentsâ€" â€œforfeiture of increment for a period of six months with cumulative effect carrying the value of one black

markâ€ vide D.O. No.3395, dated 23.08.2011 in connection with Cuttack District Proceeding No.44 of 2001 and â€œforfeiture of time scale increment for a period of six months with cumulative effect carrying the value of one black markâ€

vide D.O. No.3396, dated 23.08.2013 in connection with Cuttack District Proceeding No.09/2002â€" awarded to the petitioner, the answering opposite party explained as follows:

â€œWhile the situation stood thus, the Petitioner submitted a representation dated 23.10.2013 to the then DGP for consideration of her promotion to the rank of Inspector of Police by opening the sealed cover. Upon approval of the then DGP, the sealed cover

containing the recommendations of the Central Selection Board for promotion to the rank of Inspector of Police for the years 2006, 2007, 2008 and 2010 was opened. After opening, it was found that the Petitioner was not selected by the CSB for the year 2006,

2007 & 2010 but selected by the CSB for the year 2008 only for promotion to the rank of Inspector of Police. Accordingly, the Petitioner was allowed promotion to the rank of Inspector of Police retrospectively from the date her juniors were promoted from the

year 2008 vide State Police Headquarters Office Order No.608/Exe, dated 18.06.2014.

Promotion to the Post of Inspector of Police is done as per Rule 650(ii) of Police Manual Rule. The criteria for promotion is on the basis of merit-cum-suitability with due regard to seniority.

The contention of the Petitioner with regard to promotion to the rank of Inspector of Police from the year 2006 is misconceived and untenable. The Central Selection Board meeting for considering the promotion of eligible S.I. of Police to the rank of Inspector of

Police was convened on 19/20.09.2006. The case of the Petitioner was placed before the said Central Selection Board along with the cases of other eligible S.Is for promotion to the rank of Inspector of Police. The Central Selection Board duly examined the

service record of the Petitioner and did not recommend the name of the Petitioner for promotion to the rank of Inspector of Police with the remark â€˜Not selected.

Reportedly absconding while on sick leave and kept in a sealed coverâ€™. The Central Selection Board acted appropriately as it assessed the case of the Petitioner when deciding her promotion to that of the Post of Inspector of Police. Since, the Petitioner was

not found suitable by the CSB for 2006 & 2007 for promotion to the Post of Inspector of Police, the petitioner is not entitled promotion to the Inspector of Police from the year 2006. Since the petitioner was found suitable in the year 2008 by the CSB, she has

been given promotion to the post of Inspector of Police from the year 2008. Hence, the contrary averments being devoid of merit are liable to be rejected.â€

HEARING OF WRIT PETITION BEFORE THIS COURT:

4.ThisÂ CourtÂ onÂ earlierÂ occasionÂ videÂ OrderÂ dated 30.09.2022 made it clear while issuing notice to the opposite parties that â€œthe matter is likely to be disposed of at the stage of admissionâ€.

4.1. The matter was on board on 08.02.2024 for â€œAdmissionâ€ and the counsel for respective parties conceded that this matter can be disposed of on the available material on record and it requires no further adjournment. Sri Kali Prasanna

Mishra, learned Senior Advocate fairly stated that no rejoinder need be filed on behalf of the petitioner. Therefore, on the consent of Sri Kali Prasanna Mishra, learned Senior Advocate appearing for the petitioner and Sri Ajodhya Ranjan

Dash, learned Additional Government Advocate appearing for the opposite parties this matter is heard at length and counsel for both sides concluded their arguments on 08.02.2024.

SUBMISSIONS AND ARGUMENTS OF RESPECTIVE PARTIES:

5.Sri Kali Prasanna Mishra, learned Senior Advocate for the petitioner reiterating the pleading urged that no adverse remarks being communicated to the petitioner at any point of time prior to 2006 or thereafter and the punishmentsÂ

awardedÂ inÂ twoÂ CuttackÂ District ProceedingsÂ areÂ â€œquashedâ€Â byÂ theÂ learnedÂ Odisha Administrative Tribunal, which fact has candidly been admitted and accepted by the opposite parties vide paragraph 4 of the

counter-affidavit filed on 15.11.2022, there remains no justification for sustaining the impugned Order dated 18.06.2014 of the DG & IG of Police, Odisha, Cuttack as communicated by Letter dated 08.08.2018 vide Annexure-6.

5.1. Whereas during the currency of disciplinary proceedings CSB was required to consider the case of the delinquent for promotion and result of the same was to be kept in sealed cover, there was no plausible reason put forth by the opposite

party No.2 as to why she was not considered for promotion to the post of Inspector of Police in the year 2006, particularly when no adverse remark had ever been communicated to her. Even though during the year 2008 the situation was not

different, she was considered for said promotion in the year 2008.

5.2. The explanation proffered by the opposite party No.2 in the counter-affidavit that she was not selected for the post of Inspector of Police in the year 2006, because â€œreportedly absconding while on sick leave and kept in a sealed

coverâ€. Sri Kali Prasanna Mishra, learned Senior Advocate showing his anxious concern continued to argue that such a reason cannot withstand judicial scrutiny inasmuch as when the petitioner is stated to be on â€œsick leaveâ€, it is

inconceivable that she could be said to be â€œabscondingâ€. The opposite party No. 2 has not applied his mind while stating contradictory facts in the same breath. No iota of evidence has been placed with respect to communication of such

fact of â€œabscondingâ€ during the period of â€œsick leaveâ€ to the petitioner. It is submitted that â€œabscondingâ€ and â€œsick leaveâ€ cannot co- exist. Sri Kali Prasanna Mishra vehemently contended that the opposite party No.2 by way

of counter-affidavit cannot import new fact other than what has been stated in the Order dated 18.06.2014. Such reason is not forthcoming from the said Order of the Director General & Inspector General of Police, Odisha.

5.3. To buttress his argument that adverse report not communicated cannot be acted upon to deny promotional opportunity, Sri Kali Prasanna Mishra, learned Senior Advocate placed reliance on Gurdial Singh Fijji Vrs. State of Punjab, AIR

1979 SC 1622 = (1979) 2 SCC 368 = (1979) 3 SCR 518; and Amar Kant Choudhary, AIR 1984 SC 531 = (1984) 1 SCC 694 = (1984) 2 SCR 299.

6.Sri Ajodhya Ranjan Dash, learned Additional Government Advocate submitted that as promotion is not matter of right, it is not within the domain of the petitioner to claim for the same. He went on to say that at paragraph 4 of the counter-

affidavit filed by the opposite party No.2 it has been clarified as follows:

â€œThe Central Selection Board after scrutinizing her service record kept the findings in respect of her in a sealed cover as per Government of Odisha, General Administrative Department Office Memorandum No.3928/Gen., dated 18.02.1994, as Cuttack District

Proceeding Nos.44/2001 and 09/2002 were pending against her. Her case was again placed before the Central Selection Board for the years 2007, 2008, 2010, 2011, 2012 and 2013 respectively for consideration of her promotion to the rank of Inspector of

Police. The Central Selection Board after scrutinizing her service record adopted the sealed cover procedure in the year 2007, 2008 and 2010 due to the pendency of Cuttack District Proceeding Nos.44/2001 and 09/2002 respectively. Further, the petitioner

was not selected by the Central Selection Board in the years, 2011, 2012 and 2013 due to bad service record.â€

6.1. It is strenuously contended by Sri Ajodhya Ranjan Dash, learned Additional Government Advocate that the petitioner had â€œbad service recordâ€ with two disciplinary proceedings instituted since 2001 and 2002 on account of dereliction

of duty and disobedience of orders of superior authorities. Said proceedings were under progress at the time of consideration of promotion to the rank of Inspector of Police by the Central Selection Board. The punishment of â€œforfeiture of

her time scale increment for a period of six months with cumulative effect carrying the value of one black markâ€was awarded, which is apparent from the Final Order dated 23.08.2011 passed by Deputy Commissioner of Police, Cuttack in

connection with Cuttack District Proceeding File No.44/2001 vide Annexure-A/2. Similar punishment was also inflicted in Cuttack District Proceeding File No.09/2002. Nevertheless, by virtue of Order dated 05.07.2013 in O.A. No.1227 of

2011 and Order dated 09.10.2013 in O.A. No.1323 of 2011 passed by the Odisha Administrative Tribunal, Bhubaneswar, the punishments so inflicted were nullified on the ground of inordinate delay in completing the proceedings. Thus, the

record manifest that in the years 2006, 2007, 2008 and 2010, when the Central Selection Board met, there was no occasion for them to know about the result of the proceedings. In such view of the matter, it is argued by the learned Additional

Government Advocate that no irrationality or illogical appreciation of fact can be attributed to the Central Selection Board for not selecting the petitioner for promotion to the post of Inspector of Police.

DISCUSSIONS AND ANALYSIS:

7.In appreciating rival contentions and examining the averments of respective parties it transpires that the promotion was not accorded to the petitioner in view of pendency of disciplinary proceedings in the year 2006; but there is no iota of

evidence placed on record to suggest that in the year 2008 when the Central Selection Board was considering the promotion to the post of Inspector of Police said circumstance was not continuing. If in the year 2008 same situation continued

as that was prevailing in 2006, there was no point not to consider the promotion in the year 2006. It is quite queer to notice that the reason for non-consideration of the petitioner for promotion was on account of â€œabsconding while on sick

leaveâ€, which fact, in the considered view of this Court cannot co-exist. Therefore, it is but irrational to find the petitioner â€œabscondingâ€ and at the same time she was â€œon sick leaveâ€.

7.1. Sri Kali Prasanna Mishra, learned counsel has laid much stress on the point that in absence of any communication with respect to adverse remarks to the petitioner, it cannot be speculated that on account of bad service record, as stated in

the counter-affidavit, the promotion was denied in the year 2006. Sri Ajodhya Ranjan Dash, learned Additional Government Advocate could not throw light through the counter-affidavit that there was communication of adverse remark at any

stage. Mere pendency of disciplinary proceedings cannot be good ground not to consider the petitioner for the post of Inspector of Police.

7.2. At this juncture it may be relevant to have reference to Gurdial Singh Fijji Vrs. State of Punjab, (1979) 3 SCR 518, wherein the following was the observation:

â€œThe principle is well-settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an

opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation

offered by the person concerned, whether the adverse report is justified. Unfortunately, for one reason or another, not arising out of any fault on the part of the appellant, though the adverse report was communicated to him, the Government has not been able to

consider his explanation and decide whether the report was justified. In these circumstances, it is difficult to support the non-issuance of the integrity certificate to the appellant. The chain of reaction began with the adverse report and the infirmity in the link of

causation is that no one has yet decided whether that report was justified. We cannot speculate, in the absence of a proper pleading, whether the appellant was not found suitable otherwise, that is to say, for reasons other than those connected with the non-

issuance of an integrity certificate to him.â€

7.3. In Amar Kant Choudhary Vrs. State of Bihar, (1984) 2 SCR 299, after noticing Gurdial Singh Fijji (supra), the Honâ€™ble Supreme Court of India observed as follows:

â€œIt is not disputed that the classification of officers whose cases are taken up for consideration into â€˜outstandingâ€™, â€˜very goodâ€™, â€˜goodâ€™ or â€˜badâ€™ etc. for purposes of promotion to the Indian Police Service Cadre is mainly based upon

the remarks in the confidential rolls.

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After giving our anxious consideration to the uncontroverted material placed before us we have reached the conclusion that the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair

way and his case has been disposed of contrary to the principles laid down in Gurdial Singh Fijjiâ€™s case (supra). The decisions of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of

reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant and its order is, therefore, liable to be set aside. We accordingly set aside the order of the High Court. We

hold that the appellant has made out a case for reconsideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar as on December 22, 1976 and if he is not selected as on that date for being considered again as on March 12,

1981. If he is not selected as on March 12, 1981 his case has to be considered as on October 14, 1981. The Selection Committee has now to reconsider the case of the appellant accordingly after taking into consideration the orders passed by the State

Government subsequently on any adverse entry that may have been made earlier and any other order of similar nature pertaining to the service of the appellant. If on such reconsideration the appellant is selected he shall be entitled to the seniority and all other

consequential benefits flowing therefrom. We issue a direction to the respondents to reconsider the case of the appellant as stated above. We hope that the above direction will be complied with expeditiously but not later than four months from today.â€

7.4. In this respect noteworthy it is to have regard to the decision rendered by the Honâ€™ble Supreme Court of India in the case of Sukhdev Singh Vrs. Union of India, (2013) 9 SCC 566, wherein it has been observed as follows:

â€œ3.The question as to whether such a downgradation of Annual Confidential Report would amount to adverse remark and thus it would be required to be communicated or not fell for consideration before this Court in U.P. Jal Nigam and Ors. Vrs. Prabhat

Chandra Jain and Ors., (1996) 2 SCC 363 in the following terms:

â€˜3.We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the

Nigam that when

the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step

down like falling from â€˜very goodâ€™ to â€˜goodâ€™ that may not ordinarily be an adverse entry since both have a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on

the personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the

employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise, they shall be

communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service

record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam we do

not find any difficulty in accepting the ultimate result arrived at by the High Court.â€™

4.Several High Courts as also the Central Administrative Tribunal in their various judgments followed the decision of this Court in U.P. Jal Nigam (supra), inter alia, to hold that in the event the said adverse remarks are not communicated causing deprivation

to the employee to make an effective representation there against, thus should be ignored. Reference may be made to T.K. Aryaveer Vrs. Union of India, (2003) 1 ATJ 130; A.B. Gupta Vrs. Union of India, (2005) 1 ATJ 509; Bahadur Singh Vrs. Union of India,

(2003) 2 SCT 514.

5.Our attention, however, has been drawn by the learned Additional Solicitor General appearing for the respondents to a recent decision of this Court in Union of India & Anr. Vrs. Major Bahadur Singh, (2006) 1 SCC 368 where a Division Bench of this Court

sought to distinguish the U.P. Jal Nigam (supra) stating as follows:

â€˜8.Â As has been rightly submitted by learned counsel for the appellants U.P. Jal Nigam case has no universal application. The judgmentÂ itselfÂ showsÂ thatÂ itÂ was intended to be meant only for the employees of U.P.Jal Nigam only.â€™

6.With utmost respect, we are of the opinion that the judgment of U.P. Jal Nigam (supra) cannot (be) held to be applicable only to its own employees. It has laid down a proposition of law. Its applicability may depend upon the rules entirely in the field but by it

cannot be said that no law has been laid down therein.

We, therefore, are of the opinion that the matter should be heard by a larger Bench.â€™ ***â€

7.5. In Sukhdev (supra) the Honâ€™bleÂ CourtÂ answeredÂ the reference as follows:

â€œ3.Subsequent to the above two decisions, in Dev Dutt Vrs. Union of India, (2008) 8 SCC 725, this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two-Judge

Bench [Dev Dutt Vrs. Union of India, (2008) 8 SCC 725] on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in U.P. Jal Nigam Vrs. Prabhat Chandra Jain, (1996) 2 SCC 363 and principles of

natural justice exposited by this Court from time to time particularly in A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262; Maneka Gandhi Vrs. Union of India, (1978) 1 SCC 248; Union of India Vrs. Tulsiram Patel, (1985) 3 SCC 398; Canara Bank Vrs. V.K.

Awasthy, (2005) 6 SCC 321 and State of Maharashtra Vrs. Public Concern for Governance Trust, (2007) 3 SCC 587 concluded that every entry in the ACR of a public servant must be communicated to him within a reasonable period whether it is poor, fair,

average, good or very good entry. This is what this Court observed in paras 17 and 18 of the Report in Dev Dutt Vrs. Union of India, (2008) 8 SCC 725:

â€˜17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the

employee in two ways:

(1)had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future;

(2)he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation.

Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi Vrs. Union of India, (1978) 1 SCC 248 that arbitrariness violates Article 14 of the Constitution.

18.Thus, it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural

justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.â€™

4.Then in para 22 at SCC p. 734 of the Report this Court in Dev Dutt Vrs. Union of India, (2008) 8 SCC 725made the following weighty observations:

â€œ22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidical structure where often the principle of elimination is followed in selection for

promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this

arbitrariness, while officers of inferior merit may be promoted.â€™

5.In paras 37 and 41 of the Report this Court then observed as follows: [Dev Dutt Vrs. Union of India, (2008) 8 SCC 725] , SCC pp. 737-38)

â€˜37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and

within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would

be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then

would good governance be possible. ***

41.In our opinion, non-communication of entries in the annual confidential report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for

promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.â€™

6.We are in complete agreement with the view in Dev Dutt Vrs. Union of India, (2008) 8 SCC 725 particularly paras 17, 18, 22, 37 and 41 as quoted above. We approve the same.

7.A three-Judge Bench of this Court in Abhijit Ghosh Dastidar Vrs. Union of India, (2009) 16 SCC 146 followed Dev Dutt Vrs. Union of India, (2008) 8 SCC 725. In para 8 of the Report this Court with reference to the case under consideration held as under:

(Abhijit Ghosh Dastidar case, (2009) 16 SCC 146, SCC p. 148)

â€˜8.Â Coming to the second aspect, that though the benchmark â€˜very goodâ€™ is required for being considered for promotion, admittedly the entry of â€˜goodâ€™ was not communicated to the appellant. The entry of â€˜goodâ€™ should have been

communicated to him as he was having â€˜very goodâ€™ in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed

forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above

referred decision [Dev Dutt Vrs. Union of India, (2008) 8 SCC 725, SCC p. 738, para 41] relied on by the appellant. Therefore, the entries â€˜goodâ€™ if at all granted to the appellant, the same should not have been taken into consideration for being

considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.â€™

8.In our opinion, the view taken in Dev Dutt Vrs. Union of India, (2008) 8 SCC 725 that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the

communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public

servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks

relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACRâ€" poor, fair, average, good or very goodâ€" must be communicated to him/her within a reasonable period.

9.The decisions of this Court in Satya Narain Shukla Vrs. Union of India, (2006) 9 SCC 69 and K.M.Mishra Vrs. Central Bank of India, (2008) 9 SCC 120 and the other decisions of this Court taking a contrary view are declared to be not laying down good

law.â€

7.6. The legal position as to the nature of relief extended to the delinquent, exonerated from departmental proceeding subsequently, has been settled by this Court in State of Odisha Vrs. Joseph Barik, 2023 (II) ILR-CUT 361w, herein it has

been held as follows:

â€œ11. It is clarified that as and when the criminal proceedings end in favour of the Government servant by way of an acquittal and such Government servant also stands exonerated from the departmental proceedings then notwithstanding the superannuation

of such Government servant, the notional benefits attaching to the promotion that is due to the Government servant would be calculated and the pension fixed accordingly.â€

7.7. The counter-affidavit filed at the behest of the opposite party No.2 merely showed that sealed cover procedure was followed in the years 2007, 2008 and 2010 as Cuttack District Proceeding Nos.44/2001 and 09/2002 was pending and in

respect of 2011, 2012 and 2013 it is stated that Central Selection Board did not select the petitioner for promotion â€œdue to bad service recordâ€.

Nonetheless, there is no pleading whatsoever as to whether there was any communication of adverse remark at any point of time to the petitioner. Both the reasons recited by the opposite partiesâ€" (i) pendency of Cuttack District

Proceedings and (ii) bad service recordâ€" cannot form the basis to deny the promotion to the petitioner inasmuch as the former has been nullified by the Odisha Administrative Tribunal and latter was to be ignored in view of ratio of the

decisions referred to supra. Thus, the decision of the Central Selection Board to deprive the petitioner for consideration of promotion at the relevant point of time cannot withstand judicial scrutiny.

8. Notwithstanding the above, this Court may require to take cognizance of the fact of non-assigning reason by the authority concerned so as to enable the petitioner to know as to why she was not found suitable. It is ex facie clear from the

record that the authority while taking decision on the representation of the petitioner vide Order dated 18.06.2014 as communicated in Letter dated 08.08.2014, simply stated that â€œsealed cover was opened and it was found that she was not

selected by the CSB-2006, 2007 and 2010â€, but in the same decision it is found mentioned that â€œshe is allowed promotion retrospectively to the rank of Inspector of Police from the year 2008 as per the results of CSB-2008 held on

22.09.2008â€. There is no reason ascribed therein to show as to why she was not found suitable in 2006, but found suitable in 2008, but not suitable in subsequent years.

8.1. In Competition Commission of India Vrs. Steel Authority of India Ltd., (2010) 11 SCR 112 it is held that reasons are links between the material and conclusion arrived at and the Honâ€™ble Court held as follows:

â€œEven in cases of supersession, it was held in Gurdial Singh Fijji Vrs. State of Punjab, (1979) 2 SCC 368 that reasons for supersession should be essentially provided in the order of the authority. Reasons are the links between the materials on which certain

conclusions are based and the actual conclusions. By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and in fact, is a mandatory requirement of the

procedural law. Clarity of thoughts leads to clarity of vision and therefore, proper reasoning is foundation of a just and fair decision.â€

8.2. In Union of India Vrs. E.G. Nambudiri, (1991) 3 SCC 38 = (1991) 2 SCR 451 it has been observed that,

â€œ6.Entries made in the character roll and confidential record of a Government servant are confidential and those do not by themselves affect any right of the

government servant, but those entries assume importance and play vital role in the matter relating to

confirmation, crossing of efficiency bar, promotion and retention in service. Once an adverse report is recorded, the principles of natural justice require the reporting authority to communicate the same to the government servant to enable him to improve his

work and conduct and also to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being to enable the superior authorities to decide on a consideration of the explanation offered by the person

concerned, whether the adverse report is justified. The superior authority competent to decide the representation is required to consider the explanation offered by the government servant before taking a decision in the matter. Any adverse report which is not

communicated to the Government servant, or if he is denied the opportunity of making representation to the superior authority, cannot be considered against him. See: Gurdial Singh Fijji Vrs. State of Punjab, (1979) 2 SCC 368 = (1979) 3 SCR 518. In the

circumstances it is necessary that the authority must consider the explanation offered by the Government servant and to decide the same in a fair and just manner. The question then arises whether in considering and deciding the representation against adverse

report, the authorities are duty bound to record reasons, or to communicate the same to the person concerned. Ordinarily, courts and tribunals, adjudicating rights of parties, are required to act judicially and to record reasons. Where an administrative

authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any

suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal. But in the absence of any statutory or

administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the

authority concerned to place reasons before the court which may have persuaded it to pass the orders. Such reasons must already exist on records as it is not permissible to the authority to support the order by reasons not contained in the records. Reasons are

not necessary to be communicated to the Government servant. If the statutory rules require communication of reasons, the same must be communicated but in the absence of any such provision absence of communication of reasons do not affect the validity of the

order.

7.*** It is true that the old distinction between judicial act and administrative act has withered away and the principles of natural justice are now applied even to administrative orders which involve civil consequences, as held by this Court in State of Orissa

Vrs. Dr (Miss) Binapani Dei, (1967) 2 SCR 625= AIR 1967 SC 1269. What is a civil consequence has been answered by this Court in Mohinder Singh Gill Vrs. Chief Election Commissioner, (1978) 1 SCC 405 = (1978) 2 SCR 272.Krishna Iyer, J. speaking for the

Constitution Bench observed: (SCC p. 440, para 66)

â€˜But what is a civil consequence, let us ask ourselves, bypassing verbal booby-traps? â€˜Civil consequencesâ€™ undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages.

In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.â€™

The purpose of the rules of natural justice is to prevent miscarriage of justice and it is no more in doubt that the principles of natural justice are applicable to administrative orders if such orders affect the right of a citizen. Arriving at the just decision is the aim of

both quasi-judicial as well as administrative enquiry, an unjust decision in an administrative enquiry may have more far-reaching effect than decision in a quasi-judicial enquiry. Now, there is no doubt that the principles of natural justice are applicable even to

administrative enquiries. See: A.K. Kraipak Vrs. Union of India, (1969) 2 SCC 262 = (1970) 1 SCR 457.

8. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an

administrative order is

passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or

where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of

natural justice do not require the administrative authority to record reasons for the decision as there is no general rule that reasons must be given for administrative decision. Order of an administrative authority which has no statutory or implied duty to state

reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina Vrs. Gaming Board for Great Britain, exp. Benaim and

Khaida, (1970) 2 QB 417, 431 = (1970) 2 All ER 528. Though the principles of natural justice do not require reasons for decision, there is necessity for giving reasons in view of the expanding law of judicial review to enable the citizens to discover the

reasoning behind the decision. Right to reasons is an indispensable part of a sound system of judicial review. Under our Constitution an administrative decision is subject to judicial review if it affects the right of a citizen, it is therefore desirable that reasons

should be stated. ***

10.There is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. In the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation

made by a Government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, he must act in a fair and just manner. He is required to consider the

questions raised by the Government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer countersigning the same. If the representation is rejected after its consideration in a fair and just

manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons. In the absence of any statutory or administrative provision requiring the competent authority to record reasons or to communicate reasons, no exception

can be taken to the order rejecting representation merely on the ground of absence of reasons. No order of an administrative authority communicating its decision is rendered illegal on the ground of absence of reasons ex facie and it is not open to the court to

interfere with such orders merely on the ground of absence of any reasons. However, it does not mean that the administrative authority is at liberty to pass orders without there being any reasons for the same. In Governmental functioning before any order is

issued the matter is generally considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If the order as communicated to the

Government servant rejecting the representation does not contain any reasons, the order cannot be held to be bad in law. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may

have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action.â€

8.3. In Union of India Vrs. Mohan Lal Capoor, AIR 1974 SC 87, it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to

the subject-matter for a decision whether it is purely administrative or quasi judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt mechanism to take decision and arrive at the

conclusion. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of indicating that justice is meted out to the person. Refer, Uma Charan Vrs. State of

Madhya Pradesh, AIR 1981 SC 1915; Patitapaban Pala Vrs. Orissa Forest Development Corporation Ltd., 2017 (I) OLR 5; Banambar Parida Vrs. Orissa Forest Development Corporation Limited, 2017 (I) OLR 625.

8.4. In the aforesaid perspective when the instant matter is examined, the reasons assigned for non-consideration of promotion of the petitioner to the rank of Inspector of Police from 2006 are construed to be jejune. It is sought to be stated in

the counter-affidavit that pendency of two Cuttack District Proceedings led to non-selection of the petitioner for promotion to the post of Inspector of Police in CSB Meeting held in 2006. It is worth noticing that on the date of taking decision

on the representation of the petitioner, i.e., 18.06.2014, such a reason does not exist as both the proceedings are quashed by the Odisha Administrative Tribunal in the year 2013, which fact was apprised to the authority concerned in the

representation dated 23.10.2013. At this stage the authority concerned was required to act in accordance with the provisions contained in the Odisha Civil Services (Criteria for Promotion) Rules, 1992. Rule 8 of said Rules also empowers the

Government to invoke provisions of relaxation.

8.5. The petitioner in the present case does not question decision of CSB held subsequent to 2008. The propriety of decision taken in the Meeting of Central Selection Board held in 2006 is questioned inasmuch as the Senior Counsel for the

petitioner confines his argument to the extent that when the circumstance, namely pendency of Cuttack District Proceedings, prevailing in 2006 remained the same in 2008, and as there was absence of any adverse remark during said period,

there is no scope not to select the petitioner for promotion in 2006. There was sheer non-application of rational mind to the facts while according promotion with retrospective effect from 2008. Record is silent, and nothing adverse could be

elicited by the learned Additional Government Advocate to counter above argument of Sri Kali Prasanna Mishra, learned Senior Advocate.

8.6. This Court on examination of the Office Order dated 18.06.2014 finds further fact recorded to the following effect:

â€œ*** This promotion is subject to the decision of Honâ€™ble High Court in W.P.(C) No.426/06. The conditional promotion will take effect from the date of her assuming higher charge in the promotional post. She may be reverted to her substantive rank of

S.I. of Police depending upon the outcome of the Judgment of Honâ€™ble High Court in W.P.(C) No.426/06. An undertaking to this effect will be furnished by her prior to joining in promotional post.â€

8.7. As per information available on the web-portal of this Court with regard to result of the aforesaid case, it is ascertained that Division Bench of this Court has passed the following Order on 18.07.2019 inW .P.(C) No. 426 of 2006 [Shiba

S. Mohapatara Vrs. State of Odisha] as follows:

â€œ37. 18.07.2019

On 26.04.2019 the following order was passed:

â€˜Learned counsel for the petitioner is not present. In the interest of justice, the matter to come up on 09.05.2019.â€™

On 16.05.2019 the following order was passed:

â€˜Though the matter is ready for hearing learned counsel for the petitioner is not present. Put up this matter on 27.06.2019.â€™

Again on 27.06.2019 the following order was passed:

â€˜None appears for the parties. In the interest of justice, as a last chance, the matter to come up on 18.07.2019.â€™

Even today none appears for the petitioners. Accordingly, the writ petition stands dismissed for non-prosecution.â€

8.8. In the above circumstance, the impugned Office Order No. 608/Exe, dated 18.06.2014 cannot be held to be tenable in the eye of law, and it deserves to be set aside.

9.Glossing over the issue whether reason given in the counter-affidavit can be taken into consideration while testing the veracity of impugned Order dated 18.06.2014, with profit it would suffice to state that in view of the Judgment of this

Court in Shree Ganesh Construction Vrs. State of Odisha, 2016 (II) OLR 237, wherein the Judgment of the Supreme Court of India rendered in Mohinder Singh Gill Vrs. The Chief Election Commissioner, New Delhi, AIR 1978 SC

851 was followed, no further enquiry is necessary. In paragraphs 7 and 8 of the Judgment in Shree Ganesh Construction mentioned supra, this Court observed as under:

â€œ7.Â In the counter affidavit filed, the reasons have been assigned, which are not available in the impugned order of cancellation filed before this Court in Annexure-4Â datedÂ 05.02.2016.Â MoreÂ so,Â while cancelling the tender, the principles of

natural justice have not been complied with. It is well-settled principle of law laid down by the Apex Court in Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851 that:

Â â€˜When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning

may by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

8.In Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, AIR 1952 SC 16, the Apex Court held as follows :

â€˜Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made

by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine

becoming better as they grow older.â€™ ***â€

9.1. When foundation for denying the promotion to the petitionerÂ isÂ removed,Â asÂ theÂ CuttackÂ District Proceedings bearing Nos.44/2001 and 09/2002 were quashed by the Odisha Administrative Tribunal in the year 2013, there

seems no impediment for the authority concerned to consider the case of the petitioner for promotion with retrospective effect from 2006 instead of 2008, more so, when there is no objection from the side of opposite parties to falsify the

argument of Sri Kali Prasanna Mishra, learned Senior Advocate that no communication whatsoever was made with respect to adverse remark.

CONCLUSION & DECISION:

10.Sri Kali Prasanna Mishra, learned Senior Advocate for the petitioner very fairly began his argument by saying that the petitioner confines its claim for consideration of her promotion to the post of Inspector of Police with retrospective effect

from 2006 instead of 2008 as stated to have been granted in the impugned Office Order dated 18.06.2014.

10.1. It appears the impediment available during the year 2006, when the Central Selection Board Meeting was convened for considering the promotion of eligible Sub-Inspector of Police to the rank of Inspector of Police was convened on

19/20.09.2006, was two Cuttack District Proceedings, which were in progress. However, said proceedings came to an end in the year 2013 by the Odisha Administrative Tribunal.

10.2. Furthermore, nothing is placed on record to show that at any point of time any adverse remark was communicated to the petitioner. Such contention of the petitioner has also not been disputed by way of counter-affidavit filed by the

opposite party No.2. Only reason as is found mentioned in the counter affidavit is that the petitioner was â€œabsconding while on sick leaveâ€. It is not

understandable as to coexistence of both the factsâ€" â€œabscondingâ€ and â€œwhile on

sick leaveâ€. It is also not forthcoming from the record available to demonstrate that the petitioner was called upon to explain.

10.3. Even otherwise, the adverse remark, if at all, was existing at the time of consideration of promotion of the petitioner in the Central Selection Board in the year 2006, in the absence of communication thereof, the same could not be taken

into consideration.

10.4. In this respect regard may be had to R. K. Jibanlata Devi Vrs. High Court of Manipur (2023) 3 SCR 96, wherein the position has been explained as follows:

6.4 In the present case the petitioner got â€œGoodâ€ gradings for the year 2016-17 and received â€œVery Goodâ€ gradings in her ACRs for the years 2017-18 and 2018-2019. It was the specific case on behalf of the petitioner which has not been denied that the

ACRs grading of â€œGoodâ€ for the year 2016-17 was never communicated to the petitioner even till the DPC met. Therefore, as per the law laid down by this Court in catena of decisions more particularly, as observed and held by this Court in Rukhsana

Shaheen Khan Vrs. Union of India and others, (2018) 18 SCC 640; Sukhdev Singh Vrs. Union of India and Others (2013) 9 SCC 566 = (2013) 5 SCR 1004 and Dev Dutt Vrs. Union of India, (2008) 8 SCC 725 = (2008) 8 SCR 174 uncommunicated adverse ACRs

may be even with â€œGoodâ€ entry which can be said to be adverse in the context of eligibility for promotion is not to be relied upon for consideration of promotion. Therefore, uncommunicated ACR for the year 2016-17 having the grading â€œGoodâ€ could

not have been relied upon for consideration for promotion.â€

10.5. This apart, further fact emanating from the Order dated 18.06.2014 vide Annexure-6 that â€œThe promotion is subject to the decision of Honâ€™ble High Court in W.P.(C) No.426/06. â€¦ She may be reverted to her substantive rank of

Sub-Inspector of Police depending upon the outcomeÂ ofÂ theÂ JudgmentÂ ofÂ Honâ€™bleÂ HighÂ CourtÂ in W.P.(C) No.426/06â€ appears to have lost its significance in view of dismissal of said case by Division Bench of this

Court vide Order dated 18.07.2019.

11.With the aforesaid perspective of law and in consideration of the factual matrix discussed supra there is no ambiguity in mind but to hold that the consideration of the case of the petitioner for promotion to the rank of Inspector of Police

from 2006 instead of 2008 is not based on germane factors and the reasons assigned are not countenanced.

11.1. This Court is, therefore, of the considered view that the Office Order No.608/Exe dated 18.06.2014 passed by the Director General & Inspector General of Police, Odisha, Cuttack as communicated in Letter No.Y-65-13/30237/Board,

dated 08.08.2014 does suffer from infirmity warranting interference. Hence, it is a fit case to remand the matter to the Director General & Inspector General of Police, Odisha, Cuttack to consider all the grounds urged by this petitioner in the

light of the discussions made in the foregoing paragraphs.

12.Under aforesaid premises, this Court is, therefore, inclined to quash the Office Order dated 18.06.2014 passed by the Director General & Inspector General of Police, Odisha, Cuttack as at Annexure-6. The matter is, thus, remitted to said

Authority to hear the petitioner afresh and dispose of the matter on merit in accordance with law. Resultantly, the writ petition stands disposed of, but in the circumstances without any order as to costs.

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