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THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.33496 of 2021

An application under Articles 226 & 227 of the Constitution of India.

Sri Surath Chandra Mallick Petitioner

-Versus-

State of Odisha & another Opp. Parties

For the Petitioner : Mr. Sameer Kumar Das, Advocate

For the Opp. Parties : Mr. A.K. Sharma, AGA

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

सत्यमेव जयते

Date of Hearing: 30.10.2023 : Date of Judgment : 06.11.2023

JUDGMENT

6th November, 2023

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioner explores for the following reliefs:

“to quash the departmental proceeding instituted against the petitioner in Office Memorandum No.26999/Gen. dated 03.12.2020

of the opposite party No.1 under Annexure-6 and direct the opposite party No.1 to grant the consequential service benefits to the petitioner within a stipulated period as deem fit and proper.”

2. Meanwhile, the petitioner had also approached the learned Central Administrative Tribunal, Cuttack Bench, Cuttack by filing Original Application bearing O.A. No.260/00344 of 2021, inter alia, praying for direction to the respondents/opposite parties to appoint him on promotion to the IAS cadre from the date of his batch-mates have been given such promotion i.e. from 26.03.2021 with all consequential service and financial benefits.

Learned Central Administrative Tribunal, Cuttack Bench, Cuttack vide its judgment dated 31.01.2023 has been pleased to allow the original application of the petitioner and issued the following operative direction.

*“6. In the peculiar facts and circumstances of the matter, the respondents are directed to notify the name of the applicant for appointment on promotion by way of Regularion-1955 against the Select List- 2019 with effect from the date other 19 SCS Officers were appointed on promotion to IAS cadre vide Notification dated 26.03.2021 with **all consequential service and financial benefits.**”*

3. In view of the foregoing, the petitioner is confining this writ petition to a singular prayer regarding quashment of the departmental proceeding initiated against him vide Office Memorandum No.26999/Gen. dated 03.12.2020 by the opposite parties under Annexure-6 to the writ petition.

4. The facts as averred in the petition under the shade and cover of which the aforementioned relief is being claimed are that the petitioner being an Scheduled Caste candidate selected for appointment to OAS-II cadre in the Government on 01.07.1989. He was posted at different places in different capacities and earned unblemished track record. Owing to his unblemished service record, he was also promoted to the OAS grade-A and then super time scale and superior administrative grade. Eventually he was promoted to OAS (Special Secretary) grade in the Government on 15.07.2020. The petitioner was considered for promotion to the cadre of IAS. The petitioner's name was recommended for promotion to the IAS cadre from Odisha Civil Service by the UPSC, as the petitioner was found eligible and selected for the said promotion in the IAS cadre in the year 2019. The said recommendation was made on 17.12.2020. The relevant portion of the recommendation of the selection committee constituted under Regulation-3 of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 dated 17.12.2020 is reproduced below:

“9. On the basis of the above assessment, the Committee selected the Officers whose names are indicated below, as suitable for promotion to the Indian Administrative Service of Odisha Cadre and placed them in the following order:

Sl. No.	Name (S/Shri/Smt.)	Date of Birth
1.	Ashok Kumar Naik	28.03.1962

2.	Ganesh Chandra Patra	20.07.1963
3.	Sasadhara Nayak	21.01.1965
4.	Bikash Chandra Mohapatra	15.05.1963
5.	Biswa Mohan Ray	03.03.1963
6.	Bratati Harichandan	19.11.1963
7.	Manoj Kumar Pattnaik	02.07.1963
8.	Surath Chandra Mallick (Petitioner in the present writ petition)	20.04.1963
9.	Sadananda Nayak	05.05.1963
10.	Mary Lakra	14.08.1964
11.	Dayanidhi Nayak	21.06.1963
12.	Srinibas Behera	07.05.1964
13.	Yudhisthir Nayak	14.06.1964
14.	Udaya Narayan Das	24.05.1965
15.	Sujata Sahoo	30.06.1964
16.	Gangadhar Sahoo	08.06.1963
17.	Aswini Kumar Mishra	06.10.1964
18.	Ramasis Hazra	15.01.1965
19.	Susanta Kumar Mohanty	15.07.1963
20.	Jyoti Prakash Das	08.07.1965
21.	Sitansu Kumar Rout	21.04.1963
22.	Krushna Prasad Pati	13.02.1963

The names at S. Nos.1, 5 and 8 have been included in the list provisionally subject to clearance in the disciplinary proceedings pending against them.”

5. Although 22 Officers were recommended to be promoted to the IAS cadre, but only 19 out of them were given promotion vide Notification dated 26.03.2021. The case of the petitioner was dropped only because fourteen days prior to the recommendation for promotion made by the opposite party i.e. on 03.12.2020 a memo was issued to the petitioner for initiation of a departmental proceeding. The recitation of article of charges indicates that the alleged irregularity committed by the petitioner way back in 2010 became the cause for initiation of the proceeding. For ready reference, the imputation of misconduct reflected in article of charges dated 03.12.2020 is reproduced below:

“That Sri Suratha Chandra Mallick during his service period from 01.07.1989 to 12.10.2010, neither obtained prior permission nor intimated to his disciplinary authority regarding acquisition/ purchase of valuable properties both immovable/movable in his name and in the name of his family members, details of which are furnished below. Such act violated Rule-21(1) & (3) of OGS Conduct Rule, 1959.

Sl.	Description of Property	Value in Rs.
1	Purchased a piece of land vide Plot No.1122, Khata No.486, Mouza- Ahiyas under Jajpur Tahasil in the year 1994.	7,000.00
2	Purchased a piece of land vide Plot No.272, Khata No.09, Mouza- Dubagadia, PS- Tahasil, Dharmasala, Dist.- Jajpur in the year 1997	9,000.00
3	One double box pattern bed purchased in the year 2009.	15,000.00
4	One LG Flat TV purchased in the year 2004.	20,000.00
5	One LG Washing Mahine purchased in the year 2008.	12,000.00

6	One double door LG Fridge purchased in the year 2009.	10,000.00
7	One Inverter purchased in the year 1995.	10,000.00
8	One box pattern double bed cut purchased in the year 2005.	20,000.00

That delinquent officer Sri Suratha Chandra Mallick, OAS did not submit his Property Statement as required under Rule-21(4) of O.G.S. Conduct Rule, 1959 regarding acquisition of properties in his name or in the name of his family members during his service period from 01.07.1989 to 12.10.2010. Such act reveals his lack of honesty and integrity. Rather he submitted his property statement and revised property statement showing acquisition of immovable & movable properties vide letter No.218 dated 25.01.2012 and letter No.378 dated 08.02.2012 after his house search on 12.10.2010, which were received on 01.02.2012 & 25.02.2012 respectively in G.A. Department, Government of Odisha, Bhubaneswar.

As such, lapses, omissions and commissions on the part of Sri Suratha Chandra Mallick, OAS discussed above, constitute his misconduct and violation of Rule-3 OGS Conduct Rules, 1959.”

6. It is contended by learned counsel for the petitioner that the imputation of charges is completely false and manufactured one, because the petitioner has been submitting his property statement regularly from his date of entering into the service till 12.10.2010 when the search and seizure was conducted by the Vigilance Department.

7. It is borne out of the record that lastly on 15.09.2009, the petitioner had indeed submitted his property statement for the period from 01.07.1989 till date. However, on 12.10.2010, the Vigilance Department made a house search of the petitioner and registered an F.I.R. being Cuttack Vigilance P.S. Case

No.55 of 2011 corresponding to VGR Case No.55 of 2011. Surprisingly albeit the criminal law was set in motion against the petitioner but till date no charge sheet has been filed by the Vigilance Department, hence there is no question of commencement of trial.

8. On the self-same allegations, a departmental proceeding has been initiated after more than a decade and just 14 days before the name of the petitioner was considered for promotion to the IAS cadre. After registration of the Vigilance Case pursuant to the raid conducted on 12.10.2010, three promotions were given to the petitioner namely from OAS Grade-A Senior Branch to OAS (super time scale) in the Government on 02.08.2012, from OAS (super time scale) grade to Superior Administrative Grade in Government on 01.07.2017 and from OAS (SAG) grade to OAS (Special Secretary) grade in the Government on 15.07.2020. However, when the next promotion to the IAS cadre was scheduled, all of a sudden, a departmental proceeding was initiated for the irregularities alleged to have been committed ten years back.

9. On the basis of the aforementioned factual scenario, the petitioner seeks quashment of the departmental proceeding.

10. The petitioner has demitted the office on attaining the age of superannuation on 30th April, 2023. The petitioner has also succeeded before

the learned Central Administrative Tribunal. Therefore, notional promotion to the cadre of IAS under Regulation 55 has been directed to be granted and the consequential service and financial benefits has been restored. The only grievance left to be addressed in the writ petition is the tenability of the long pending departmental proceeding.

11. Mr. Sameer Kumar Das, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh vs. Bani Singh and another**, reported in AIR 1990 SC 1308 wherein, it has been held by the Hon'ble Supreme Court that the long pending departmental proceeding is liable to be quashed because of the unexplained delay and latches on the part of the department to conclude the same. Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in **M. Bijlani vs. Union of India** reported in 2006 (5) SCC 88 to buttress his argument regarding termination of long pending departmental proceeding.

12. Learned counsel for the State opposed the prayer made by the petitioner and contended that as per Rule-21 of the Odisha Government Servant Conduct Rules, 1959, every Government Officer is bound to submit the property statement triennially. Failing to submit the property statement may entail the erring officer to a major penalty of dismissal from service. He has strongly

emphasized sub-rule(4) of Rule-21 of the Odisha Government Servant Conduct Rules, 1959 which reads as under:

“21(4) Every Government servant is required to make a true and complete declaration before the end of January at an interval of every three years of all his assets movables and immovable and the value thereof as on the 31st December of the previous year in the form given in the Appendix ‘A’. The declaration shall contain detailed particulars of the officer’s assets and must include and specify the assets which are held by or in the name of his wife, children, other dependants or benamidars. The declaration shall be written by the officer in his own hand and submitted in a sealed cover to the authority as directed by the Government and such authority shall be responsible for its careful preservations. [It shall be obligatory on the part of the Government servants to submit the declarations in every three years and in the event of their failure to do so in time they shall be liable to disciplinary action. An officer making a declaration found to be materially incomplete, misleading or false shall be liable for disciplinary action and even for dismissal from Government service.]”

13. I have perused the materials on record. The undisputed facts borne out of the record indicates that on 15.09.2009, the petitioner had lastly submitted his property statement. In the writ petition, it is averred that the petitioner has been continuously submitting his property statement to his superior officer and lastly, he has submitted the property statement on 15.09.2009 for the entire period from 01.07.1989 till date. This averment has not been controverted by the opposite parties in the counter affidavit in express terms. Besides that, the RTI information placed on record by the petitioner also fortifies the said averment in the writ petition. However, nothing has come on record to give an indication as to whether the petitioner has periodically submitted the property

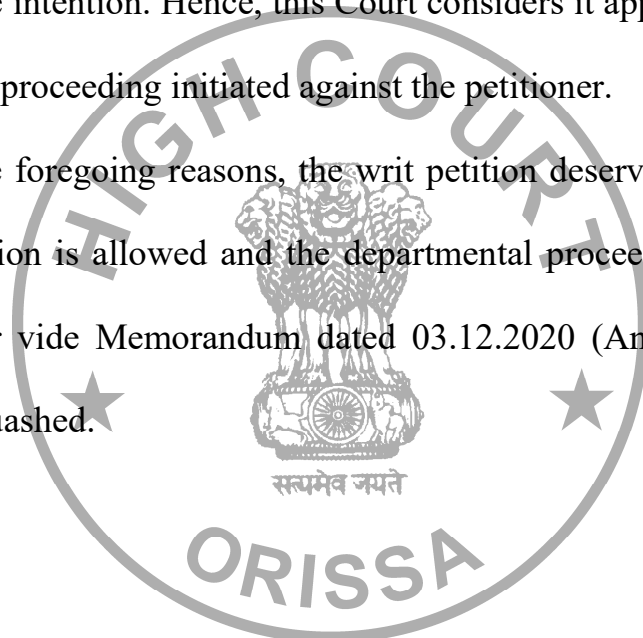
statement every three years as required under Rule 21(4) of the Odisha Government Servant Conduct Rules, 1959.

14. Be that as it may, by the time the Vigilance Department carried out the house search on 12.10.2010, the upto date property statement of the petitioner had already been filed on 15.09.2009. Moreover, the vigilance case registered against the petitioner in the year 2011 has not even progressed an inch. Even the charge sheet has not yet been filed. Three promotions meanwhile have been given to the petitioner. It is trite to say that the disciplinary proceeding must be conducted soon after the alleged irregularities are committed or soon after discovery of the irregularities. That cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes task of proving the charge difficult for the department. As such, it is also not in the interest of the administration. Delayed initiation of proceeding is bound to give room for allegation of bias, malafide and misuse of power. If the delay is too long and is unexplained, the Court should interfere and quash the entire proceeding. But how long a delay is too long is the question stares on the face of record of every case.

15. In the instant case, delay of the initiation of the departmental proceeding is about ten years. That apart, the timing of initiation of the proceeding also smacks malafide intention. The departmental proceeding was initiated on

03.12.2020 whereas, the petitioner's name was recommended for promotion to the IAS cadre on 17.12.2020. The department chose not to initiate the proceeding against the petitioner for ten years, rather granted three promotions meanwhile and all of a sudden, issued memo just 14 days before his name was considered for promotion to the IAS cadre. Therefore, initiation of the departmental proceeding is not only hit by delay and latches but also poised with malafide intention. Hence, this Court considers it appropriate to quash the departmental proceeding initiated against the petitioner.

16. For the foregoing reasons, the writ petition deserves merit. As a result, the writ petition is allowed and the departmental proceeding initiated against the petitioner vide Memorandum dated 03.12.2020 (Annexure-6 to the writ petition) is quashed.



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S.S. Mishra
(Judge)