

(1989) 11 OHC CK 0043

In the Orissa High Court

Case No : Original Jurisdiction Case No. 140 of 1983

Krushna Chandra Sahoo

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:

Citation : (1990) 69 CLT 434

Hon'ble Judges : G.B. Patnaik, J;A.K. Padhi, J

Bench : Division Bench

Advocate : S. Misra and J.M. Mohanty, for the Appellant; A.B. Misra, Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—The Petitioner was appointed as a Constable under the Central Reserve Police Force on 22-10-1971. He had passed Matriculation at that point of time. He passed his Intermediate Examination in 1979. An advertisement was published for the post of Assistant Sub-Inspector (Ministerial) and as the Petitioner had all the requisite qualifications, he applied for the same on 2-5-1981. The said application has been annexed as Annexure-2. Thereafter the Commandant, 69th. Batalion Central Reserve Police Force. Hyderabad, issued a memorandum dated 4th of July, 1981, annexed as Annexure-3, indicating the persons who were found suitable for the post of Assistant Sub-Inspector (Ministerial) in the Central Reserve Police Force. The Petitioner's name was at serial No. 1 in the list appended to the said memorandum. On 16th of July, 1981, an office order was issued to the Petitioner stating therein that he had been selected as A.S.I. (Ministerial) in the Central Reserve Police Force and he should report to the Commandant, 69th. Batalion, C.R.P.F., Hyderabad, for further instruction. The Petitioner in response to the said order gave his joining report on 17-7-1981 and continued as Assistant Sub-Inspector (Ministerial) till 15-9-1981. The Petitioner further alleges that with effect from 15-9-1981, without any order being communicated to him, he was prevented from discharging his duties as

Assistant Sub-Inspector (Ministerial). He then made a representation to the appropriate authority and that representation was rejected by order dated 5-8-1982, which has been annexed as Annexure-6. The ground of rejection is that the advertisement was made for candidates sponsored by the Employment Exchange/Open market candidates and departmental candidates like Petitioner were not eligible to appear in the test. The Petitioner has thereafter approached this Court for the relief that the rejection of the Petitioner's representation under Annexure-6 be quashed and the Petitioner be permitted to continue as Assistant Sub-Inspector (Ministerial). It has been specifically averred in the writ application that the advertisement did not specify that the posts are not open for departmental candidates.

2. Though pursuant to notice learned Standing Counsel for the Central Government has entered appearance, but no counter affidavit has been filed on behalf of any of the opposite parties. In the premises, the assertions of the Petitioner made in the writ application remain uncontroverted.

3. The questions for our consideration, therefore, are:

(i) Whether the Petitioner having been appointed to the post of Assistant Sub-Inspector (Ministerial) and he having joined the said post could be prevented to discharge the said duties without any order reverting him to the post of Constable ? and

(ii) Whether the basis of rejection of the Petitioner's representation communicated under Annexure-6 can at all be sustained in view of the positive assertion of the Petitioner in the writ application and in the absence of any denial to the same?

4. So far as the first question is concerned, the Petitioner has himself asserted in the writ application that there has been no order of reversion passed nor has there been any communication to him in that respect. He was only physically prevented from discharging his duties as Assistant Sub Inspector (Ministerial). We are clearly of the opinion that a Government servant cannot be prevented from discharging his duties orally without passing any order of reversion and without communicating the same to him. The fact that no order of reversion has been passed and has not been communicated has not been controverted by the opposite parties. In this view of the matter, the physical prevention of the Petitioner from discharging his duties as Assistant Sub-Inspector (Ministerial) is wholly unwarranted and without jurisdiction.

5. So far as the order of rejection of Petitioner's representation contained in Annexure-6 is concerned, we also cannot sustain the same. The only ground on which the representation appears to have been rejected is that the advertisement in question was not meant for departmental candidates. The Petitioner in his writ application has positively averred that there was no such condition in the advertisement and there was no prohibition for any departmental candidates to make the application. There has been no denial to the same nor

the advertisement has been produced by the opposite parties. Consequently, the uncontroverted assertion of the Petitioner must be sustained. That apart, pursuant to the advertisement, the Petitioner was selected and was offered the job and the Petitioner also joined the post. In the premises, it is difficult to sustain the ground of rejection of Petitioner's representation contained in Annexure-6. In our considered opinion, in the facts and circumstances of the present case, the order conveyed to the Petitioner under Annexure-6 must also be held to be illegal and the same is quashed. Treating the Petitioner to have been illegally appointed, the concerned authorities have directed for recovery of the extra money that had been paid to the Petitioner and the said order of recovery has been annexed as Annexure 8. In view of our conclusion earlier, the said order under Annexure-8 also cannot be sustained and accordingly the same is quashed.

6. In the net result, therefore, we direct that the Petitioner be permitted to continue as Assistant Sub-Inspector (Ministerial) in which post he had joined on 17-7-1981 pursuant to order under Annexure-4 and we further observe that the Petitioner would be entitled to all the monetary benefits as available for the post of Assistant Sub-Inspector (Ministerial). During the intervening period if the Petitioner has got the salary as a Constable, he is entitled to the balance salary on being calculated.

The writ application is accordingly allowed, but in the circumstances there will be no order as to costs. The Petitioner is directed to file necessary requisites for issue of writ by day after tomorrow failing which this order will not be given effect to.

A.K. Padhi, J.

I agree.

Writ application allowed.