
(2017) 01 OHC CK 0098

In the Orissa High Court

Case No : 895 of 1999

Padma Lochan Pradhan

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Citation : (2017) 01 OHC CK 0098

Hon'ble Judges : Sanju Panda, Sujit Narayan Prasad

Bench : DIVISION BENCH

Advocate : S. K. Das, S. B. Jena, S. Behera, S. S. Mohapatra, A. K. Mishra, J. Sengupta, P.R. Jibandas, G. Singh, D. K. Nanda

Final Decision : Allowed

Judgement

1. In this writ petition the petitioner has assailed the order passed by the Orissa Administrative Tribunal dtd.24.11.1998 passed in O.A. No.1750

of 1998 whereby and where under direction has been issued upon the opposite parties to fill up the vacancy by a non-matriculate constable in

accordance with the government instruction while refusing to cancel the reversion of the petitioner from the post of Assistant Sub-Inspector to

Constable as also to declare the letter bearing no.1286 dtd.3.8.1989 as ultra-virus.

2. We have heard the learned counsels for the parties and perused the documents available on record.

The fact which is not in dispute in this case is that the district of Sambalpur while continued as one district prior to 1993, a gradation list was

published in which name of 108 members were reflected. The district of Sundargarh was bifurcated to four districts and the names reflected in the

gradation list were equally distributed amongst the said districts. In the year 1993 Deogarh district was created and the name of the petitioner had

come under the district of Deogarh after Sambalpur district bifurcated in which the name of the petitioner found place apart from the other 12

persons. The petitioner was promoted on 02.07.1996 from the post of Excise Constable to the rank of Assistant Sub-Inspector of Excise vide

order dtd.2.7.1996, on the basis of the Government decision as contained in letter No.1286 dtd.3.8.1989 issued by the Revenue and Excise

Department of the State of Odisha.

The petitioner, immediately after getting promotion, had joined the post of Assistant Sub-Inspector of Excise on 3.7.1996, being relieved from the

post of Excise Constable on the same day. The Commissioner of Excise has accorded ex-post-facto approval to the decision of promotion of the

petitioner. One Sribatsa Kumar Acharya, the opposite party no.5 herein had filed a case before the Tribunal being O.A. No.2899 of 1996

wherein the promotion order of the petitioner has been challenged on the ground that the petitioner had been given preference only because he was

matriculate Constable, while even though he being non-matriculate, was senior under the cadre of Constable of Excise. The authorities have passed

an order of reversion against the petitioner on 4.8.1997, the petitioner being aggrieved with the same has also assailed the order of reversion

before the Tribunal in O.A. No.1750 of 1997. The Tribunal has taken up the matter together and decided the issue by passing an order rejecting

the prayer to cancel the reversion of the petitioner from the post of Assistant Sub-Inspector to Constable and the prayer of the opposite party no.5

to issue direction to fill up the vacancy by a non-matriculate Constable in accordance with the Government instruction, has been allowed.

3. We have gone through the Government instruction dtd.3.8.1999 whereby and where under the competent authority of the Government has

issued criteria for filling up of the post of Assistant Sub-Inspector by which the 50% post in the cadre of A.S.I. of Excise shall be reserved for

matriculate constables and 50% shall be filled up by non-matriculate constables.

If suitable matriculate constables are not available, the vacancies may be filled up by suitable non-matriculate constables in any particular year.

A constable whether matriculate or non-matriculate shall not be considered for

promotion unless he has completed at least 8 years of service as

Constable on the 1st day of January of the year in which his name is considered for promotion and he has been confirmed as Constable.

No non-matriculate constable shall be considered for promotion unless he has knowledge of English.

Promotion of Excise Constables whether matriculate or non-matriculate shall be done on the basis of seniority subject to elimination of the unfit.

Senior constable shall be given preference in promotion unless there are adverse remarks in the service records.

There shall be no interview for promotion (except the test of English as per paragraph 2)

In case of exceptional merit and performance a Junior Constable may be promoted to the post the Assistant Sub-Inspector but in all other cases

order of Excise Commissioner shall be taken with adequate justification before such promotion.

Good service remarks and information leading to detection of cases may be taken into account for this purpose.

It is evident from the Government instruction that the post of Constable is to be filled up from 2 sources, i.e. one source will be the matriculate from

which 50% vacant posts will be filled up while the other source will be non-matriculate to be filled up 50% of the remaining vacancies. It is evident

from the Government instruction that there are two sources from which the post of Assistant Sub-Inspector is to be filled up.

Admittedly the petitioner belongs to matriculate category while the opposite party no.5 belongs to non-matriculate.

It is settled that the moment a post is directed to be filled up from two sources having two sets of eligibility conditions, the position in the seniority

list will be of no paramount consideration with respect to the candidates holding the post of Constable in matriculate or non-matriculate, for

example if a candidate belonging to matriculate category is below in the seniority list than that of the non-matriculate category and if the vacancies

are there and the matriculate candidate is eligible as per the norms fixed by the selection committee, irrespective of his position in the seniority list in

comparison to the non-matriculate candidate, he can be granted promotion even though junior in the combined seniority list.

The authorities after taking into consideration this aspect of the matter and considering the fact that the petitioner was matriculate, had granted him

promotion as Assistant Sub-Inspector vide order dtd.02.07.1996 as contained in office order No.324/X and accordingly joined as Assistant Sub-

Inspector of Excise on 03.07.1996. His promotion has been approved by the Commissioner of Excise vide order dtd.13.09.1996.

The opposite party no.5, being aggrieved with his promotion, has approached the Tribunal and while the matter was pending there, the authorities

have passed an order on 4.8.1997 reverting the petitioner to his original post on the ground that he was junior in the seniority list to that of the

opposite party no.5.

The petitioner being aggrieved has approached the Tribunal and the Tribunal has passed the following order:-

In conclusion, the prayer to cancel the reversion of P.L. Pradhan from the post of A.S.I. to Constable is rejected and the prayer of

S.K. Acharya to issue direction to fill up the vacancy by a non-matriculate constable in accordance with the Government instruction is

allowed.

The petitioners had approached this Court and this Court while issuing notice vide order dtd.3.2.1999 has passed an interim order to the effect ""as

an interim measure operation of order in Annexure-9 is stayed until further orders"". It has been informed in course of argument that the opposite

party no.5 in the meanwhile has superannuated from service.

It has further been informed that the petitioner has been granted promotion and now he is working as Sub-Inspector of Excise.

We after going through the pleadings made in the affidavits and the documents annexed with the record, are of the considered view that the

authorities have not committed error in promoting the petitioner as Assistant Sub-Inspector since he was matriculate during the relevant time and he

was well within the consideration zone in view of the Government instruction dtd.3.8.1999 being a matriculate candidate, moreover the order

granting promotion has been approved by the Commissioner of Excise and the order of approval has not been assailed by the opposite party no.5

before the Tribunal.

4. So far as the case of the opposite party no.5 is concerned, he being a non-

matriculate candidate has got no case over and above the case of the petitioner.

Taking into consideration this aspect of the matter, we decline to interfere with the decision of the authorities by which the petitioner has been

granted promotion as Assistant Sub-Inspector of Excise. Accordingly, the order granting promotion to the petitioner to the post of Assistant Sub-

Inspector is hereby approved and as such the part of the order passed by the Tribunal to the effect to fill up the vacancy in question at that time by

non-matriculate as per Government Instruction is hereby quashed.

In the result the writ petition is allowed.