
(2008) 02 OHC CK 0015
In the Orissa High Court

Shib Sankar Mohapatra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Citation : (2010) 1 OLR 102 : (2008) 1 OLR 879

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Judgement

I.M. Quddusi, J.—Since similar question is involved in all the five writ petitions, they were heard together and are being disposed of by this common judgment.

2. The brief facts of the case are that Original Application No. 23 of 2000 was filed by one Sudhir Chandra Roy, one of the opposite parties in the instant writ petitions alleging that he was appointed as regular Sub-Inspector of Police and joined the post on 4.1.1973. Thereafter he was given promotion to the rank of Inspector of Police with effect from 12.3.1991. A provisional gradation list of Inspectors of Police was circulated with the forwarding letter dated 23.6.1999 in which his name was shown at SI. No. 135. It was claimed by him that the previous gradation list alleged to have been prepared in 1979 showing the seniority of Sub-Inspectors of Police of different categories was never circulated and as such his position in that gradation list was not known to him and when the promotion was made in the year 1991 he had no idea about the gradation list which was prepared in 1999. When a combined gradation list was prepared, he submitted a representation, which was turned down on the ground that it was a time barred representation. Grievance was also made that persons who joined service after him were shown much above him. Similarly, O.A. No. 203 of 2001 was filed by Sushanta Kumar Biswal and four others who were recruited as regular Sub-Inspectors of Police challenging the gradation list published in 1999. The Tribunal vide impugned order dated 8.12.2005 has set aside the gradation list prepared on 1st April, 1999 on the ground that the same was not properly circulated and has issued a direction to the opposite parties to take steps for

preparation of final gradation list in the manner directed by the Tribunal and thereafter to take effective steps for promotion of the respective candidates on the basis of the seniority fixed in the final gradation list. The Tribunal while disposing of the Original Applications held that there was no proof in the counter affidavit filed by the State Government that the gradation list of Sub-Inspectors of Police was ever circulated and as such the preparation of gradation list of Sub-Inspectors of Police cannot be construed to be a final one. Combined gradation list was published in 1999, though promotions were given 8-9 years before the publication of the combined gradation list, which shows that the gradation list was not properly circulated among the candidates.

The petitioners in these five writ petitions, who were initially appointed as Steno Sub Inspectors of Police and later on were taken to the general line of Sub-Inspectors of Police, being aggrieved by the impugned order dated 8.12.2005 passed by the Orissa Administrative Tribunal in O.A. No. 23 of 2000 and O.A. No. 203 of 2001 have approached this Court.

3. These writ petitions have been filed inter alia on the ground that the Tribunal has wrongly quashed the seniority list of 1999.

While issuing notice, this Court directed the learned Additional Government Advocate to produce the tentative seniority list, if any, issued before publication of final gradation list of Sub-Inspectors of Police as on 1st April, 1999, but the same was not produced. In the meantime, intervention applications were filed which were allowed.

4. Though all these writ petitions have been filed challenging the order of the Tribunal, the dispute centers round the fixation of seniority between Sub-Inspectors appointed directly in the police force and those who were appointed as Steno Sub-Inspectors of Police. In other words, the question is whether seniority of Steno Sub-Inspector of Police should be reckoned from the date of their appointment as Steno Sub-Inspector as such or from the date of passing the police training course.

5. Before proceeding further it is necessary to peruse the relevant provisions of the Police Rules for the purpose of determination of seniority and the eligibility criteria for promotion to the rank of Inspector of Police. In this regard it is to be pointed out that a set of rules called the Orissa Police Rules are applicable to the petitioners. In the instant matter, the petitioners were recruited as Steno Sub-Inspectors and the opposite parties as Sub-Inspector (General line). For the recruitment of Sub-Inspectors, the provisions prior to 1988 were as under:

653.(a) In July the Inspector-General will intimate to each Superintendent the number of vacancies allotted to each district and the C.I.D. and the number to be filled by direct recruitment and by promotion of Assistant Sub-Inspectors (Rule 659(a)). He will also indicate what limitations, if any, are to be observed as to the appointment of any particular sections of the community.

(b) In accordance with Rule 659 (a) vacancies up to 50 per cent may be filled by selection from the rank of Assistant Sub-Inspector. The remainder shall be filled in the manner laid down in the following rules.

The aforesaid Rule 653(a) underwent some change in 1988. The amended Rule 653 reads as under:

653.(a) The Inspector-General may decide the number of vacancies in the rank of Sub-Inspector to be filled by direct recruitment as well as by promotion of Assistant Sub-Inspector (Rule 659 (a)) and may call for nominations from districts and establishments. He may also indicate what relaxation, if any, is subject to reservation or special concessions for members of Scheduled Caste/ Scheduled Tribes and other categories, as prescribed by State Government from time to time.

(b) In accordance with Rule 659 (a) vacancies up to 50 per cent may be filled by selection from the rank of assistant sub-inspector. The remainder shall be filled in the manner laid down in the following rules.

6. The minimum requisite qualifications for the post of Sub-Inspector were given under Rule 658 which are quoted as under:

658. The qualifications which a candidate for direct appointment must possess are the following:

(i) He must be of good social standing and respectable parentage and an Oriya or domiciled in Orissa.

(ii) He must be of good moral character.

(iii) He must be 20 years and maximum 23 years. Relaxation up to 3 years shall be granted in cases of candidates having degree in law and a post graduate degree. Upper age-limit shall be relaxed in cases of scheduled caste/ tribe candidates.

(iv) He must be a graduate from a recognized University.

(v) He must be free from disease, constitutional affection or bodily infirmity, likely to unfit him for police duties.

(vi) He must be not less than 5 feet 6 inches (167.64 cm.) in height, 32 inches (81.25 cm.) round the chest and 120 lbs (54.53 kg.).

In cases of candidates coming from the Scheduled caste and Scheduled Tribe, the physical standard may be reduced by 2, both in respect of height and chest and 10 lbs in weight.

After 1988, Rule 658 was amended which is reproduced as under:

658. Qualifications to be possessed by candidates:

(i) He must be a citizen of India.

Note- He is able to speak, read and write Oriya and he has passed a test in Oriya equivalent to M.E. Standard,

(ii) He must be of good moral character and social standing;

(iii) He must be between 20-25 years of age on the 1st January following the date of selection. In the case of Law Graduate/ Post-Graduate and of Government employees the maximum shall be 28 years whereas in the case of Scheduled Castes/ Scheduled Tribes candidates, the maximum age limit is relaxable by 5 years.

(iv) He must be a Graduate of a recognized University and in case of candidate having approved Military service, he should have passed the Intermediate or equivalent examination of a recognized University.

(v) He must be free from disease, constitutional affliction or bodily infirmity, likely to render him unfit for police duties.

Note-Shattering or stammering renders an applicant ineligible.

(vi) He must not be less than 55 KGs. in weight, 168 cm. in height and 79 cm (unexpanded) and 84 cm. (expanded) round the chest. For Scheduled Caste/ Tribe Candidates, 50 Kgs. in weight, 163 cm. in height, 76 cm (unexpanded) and 81 cm. (expanded) round the chest.

(vii) If married the candidate must not have more than one spouse living.

(viii) The verification of character and antecedents must prove satisfactory.

(ix) he must not have been debarred from Government service by dismissal etc.

Note-1 In special circumstances, the D.G. and Inspector-General has the discretion to condone the deficiencies in measurement and the over-age.

Rule 683 provided that the rules for the recruitment, training, examination and posting of steno-typist Sub-Inspectors will be found in Appendix 42. In appendix 38, the rules for appointment of Sub-Inspectors have been given. Therefore, it is necessary to peruse Appendix 38 and 42 which are reproduced as under:

Appendix 38.

(Rule 658)

Rules for appointment of Sub-Inspectors

1. Candidates must apply in P.M. No. 102 obtainable from the office of the Superintendent of Police.

2. The completed form should be sent to the Superintendent of Police of the district of which he is a permanent resident, not later than.... Oriyas permanently residing outside Orissa should sent their applications to the Superintendent of the district of their choice.

No notice will be taken of applications sent direct to the Inspector-General or Deputy/Assistant Inspector General. The Inspector-General has no specialist of candidates and no one will on any account be considered for appointment who has failed to apply in the manner prescribed. Any attempt to canvass in any way whatsoever will disqualify the candidate on whose behalf the attempt is made. This rule will be strictly observed.

3. To be eligible, a candidate must be:

a. A permanent resident of Orissa

b. Of good social standing

c. Over 20 and under 23 years of age on 1st January following the date of selection. In the case of graduates and of Government employees the maximum shall be 25 and 28 respectively.

Age is to be determined from the Matriculation or Secondary School leaving certificate. If this certificate does not contain sufficient particulars to judge applicant's age, a certificate from his University or College showing his date of birth as declared on entering that institution must be furnished.

Ordinarily age, as recorded in the Matriculation Certificate or on entering the University, will be regarded as correct. If it is disputed, a satisfactory explanation of the circumstances in which a wrong age was recorded and or any attempts made to have the Matriculation certificate or the University record amended and the result thereof should be furnished.

d. Not less than 5 feet 4 inches in height and 32 inches round the chest and also be free from disease, constitutional affliction or bodily infirmity unfitting or likely to unfit him for police duties.

e. In possession of the Entrance, the Matriculation or the School leaving certificate. (A good knowledge of English and of Oriya is necessary. It is also desirable in areas where Telugu is spoken to recruit a certain number of candidates with a working knowledge of Telugu).

Only attested true copies of all University and other certificates should be furnished with the application form, the original should be produced in person before the Selection Board.

4. The Additional minimum qualification for a stenographer Sub-Inspector is a short-hand speed in English of 80 words a minute, and a speed in type-writing of 355 words a minute with not more than 10 per cent of error in each subject.

5. While under training at the Police Training College for one year cadet Sub-Inspectors receive monthly salary as applicable to their rank. Those who fail in the annual examination shall be given two chances to clear their examination. Services of those who fail in two chances shall be terminated. After successful completion of training the Cadet S.Is. will get their annual increment.

Stenographer Sub-Inspectors who are not required to go to the PTC in the first instance received monthly salary like Sub-Inspectors with annual increments. All directly recruited Sub-Inspectors who will come out successful in the Annual Examination will be on probation for two years and will receive the annual increments as usual. The Stenographer S.Is. will be on probation for one and half years after appointment.

Appendix 42, i.e. the Rules for the recruitment, training, examination and posting of Steno-Typist Sub-Inspectors and Assistant Sub Inspectors, reads as under:

(i) In order to provide stenographers for the districts the corps of trained steno-typist Sub Inspectors shall be not less than eight.

(ii) Every year, at the time of the selection of candidates for the post of Sub-Inspector, districts will be called upon to nominate in the same manner as laid down in Rules 654 and 655 for the post of steno-typist, one candidate each, who has a sound knowledge of English and who is able to take down in shorthand at not less than 80 words a minute for 5 minutes and transcribe the result in 40 minutes and to type at not less than 35 words a minute for 5 minutes without making more than 10 per cent mistakes in each subject. Those who pass will appear before the Central Selection Board (Appendix 72(1)).

(iii) The candidates finally selected by the Board (the number depending on vacancies) will be allotted to districts and will serve as steno-typist for a period of 5 years, after which they will ordinarily revert to district work and undergo the usual course of training at the Police Training School for ordinary police duties. The Inspector-General shall be at liberty to retain them as steno-typist for a longer period.

(iv) In order that there may be a reserve to fill temporary vacancies, a small number of specially selected Assistant Sub-Inspectors, who have passed the Matriculation Examination, will be trained in stenography. An Assistant Sub-Inspector before training, will be required to execute an agreement, in the form given below, that he will serve in the Police Department for a period of not less than five years from the date of completion of the course. This agreement shall be deposited with the Inspector-General of Registration. Passed Steno-Typist, Assistant Sub-Inspectors, who are well reported on will be specially considered for early promotion as Sub-Inspectors in officiating vacancies.

(v) Assistant Sub-Inspectors selected for the shorthand course will be shown as on deputation for training in Stenography.

(vi) Steno-Typist Sub-Inspectors and Assistant Sub-Inspectors will be allotted to districts by the Inspector-General.

(vii) In order to encourage efficient reporters, a monthly allowance shall be granted to a few Steno-Typist Sub-Inspectors and Assistant Sub-Inspectors. The total number of allowances admissible is 4. The eligibility of the steno-typists to

draw the allowance shall be determined by the Inspector-General on the result of an examination to be held once a year by the Assistant Inspector General and shall be published in the Police Gazette. The standard of this examination shall be at least 100 words a minute in shorthand and 40 in typing within a 10 per cent maximum of error.

(viii) In order that shorthand-writers may maintain and improve their skill constant practice is necessary, officers who have been trained in shorthand should, therefore, be employed at headquarters stations and have daily practice in

(a) reporting evidence and speeches in Court;

(b) reporting speeches at political and other meetings;

(c) recording drafts etc. dictated by the Superintendent.

(ix) The primary object to be aimed at is the provision of a body of trained stenotypists capable of reporting verbatim a speech delivered in English, for which a speed varying from 150 to 200 words a minute is necessary and Superintendents should see that work is arranged with a view to attain that object and, failing that, other regular daily practice is obtained.

7. In Appendix 38, i.e. the rules for Appointment of Sub-Inspectors, It has been mentioned that the Stenographer Sub-Inspectors who are not required to go to the PTC in the first instance receive monthly salary like Sub-Inspectors with annual increments. All directly recruited Sub-Inspectors who will come out successful in the Annual Examination will be on probation for two years and will receive the annual increments as usual. The Stenographer S.Is. will be on probation for one and half years after appointment. But this was added on 31.7.1993. This was not applicable to those cases where recruitment was made prior to the said date. However, in Appendix-42 it has been provided in Clause (iii) that the candidates finally selected by the Board will be allotted to districts and will serve as steno-typists for a period of 5 years after which they will ordinarily revert to district work and undergo the usual course of training at the Police Training School for ordinary police duties. The Inspector-General shall be at liberty to retain them as steno-typists for a longer period meaning thereby that the Steno-typist Sub-Inspectors will first work as steno-typists in the district for a period of at least five years and thereafter they will be sent for training at the Police Training School for ordinary police duties as regular Sub-Inspectors to perform ordinary police duty. Therefore, naturally they would join the regular post of Sub-Inspector only after completing the training at the PTC. In Rule 650 the eligibility of Sub-Inspectors for promotion to the rank of Inspectors has been given. Clause (ii) of Rule 650(a) reads as under:

(ii) Sub-Inspector having rendered a minimum period of ten years of continuous service after passing the S.Is. course of training will be eligible for consideration for promotion to the rank of Inspector.

(emphasis supplied).

The above quoted rule in unambiguous terms provides the eligibility criteria for consideration for promotion of Sub-Inspectors to the rank of Inspectors according to which first of all a Sub-Inspector has to pass the S.I. course of training and thereafter should have rendered minimum 10 years of continuous service meaning thereby that prior to passing of the S.Is. course of training the service rendered by a Sub-Inspector of Police, may be a Steno Sub-Inspector or a regular Sub-Inspector, would not be counted for the purpose of consideration for promotion. Therefore, the crucial date for the purpose of seniority is the date of passing of the training course. If the combined gradation list of Steno Sub-Inspectors and Non-stenographer Sub-Inspectors is prepared according to their dates of appointment, it could not be used for the purpose of promotion because of the separate eligibility criteria for appointment.

In view of the above, we are of the view that combined eligibility list should have been prepared for the purpose of consideration of promotion of Sub-Inspectors and Stenographer Sub-Inspectors in accordance with the above quoted Clause (ii) of Sub-rule (a) of Rule 650 of the Rules, i.e., taking into consideration the date of passing the Sub-Inspector's course of training.

On perusal of the records in O.A. No. 23 of 2000, it appears that a copy of the gradation list of Inspectors as on 31.5.1999 had been filed as Annexure-5, the covering letter of which reads as under:

ORISSA POLICE STATE HEAD QUARTERS, CUTTACK. No. ITT-44-99/35813/Exe.Dt. 23.6.99. To All Heads of Police Estts. Including Vigilance Estt./Addl.T.C. (Enf.)/CBI/CVO.Gridco, Orissa Bhubaneswar. Sub: Printing of State Gradation List of Inspector of Police (General).

The up-to-date gradation list of Inspector of Police (General) is enclosed herewith for circulation among the staff of your District/Estts. A copy may be fixed in notice board as well. If any discrepancies are noticed relating to such gradation list be noticed, it should be reported to this Hdqrs. By 25.7.1999 positively for finalisation and for printing of the gradation list. If no representation/compliance is received within scheduled date, it will be presumed that there is no complaint against it and action will be taken for printing the same.

Sd. Illegible. DIG of Police (Admn.), Orissa

8. Therefore, while circulating the gradation list, objections were invited against the placement of the Inspectors of Police. Therefore, for all purposes, it cannot be treated as a final gradation list and as such we have no hesitation to hold that that gradation list was a provisional gradation list and could not have been treated as final.

Considering the facts and circumstances of the case, we are of the opinion that the Tribunal has committed manifest error of law in directing the opposite parties to prepare the final gradation list taking into consideration the date of joining on

appointment of Steno Sub-Inspector/non-steno sub-inspector. The date of joining is not relevant in view of Rule 650 of the Rules.

Therefore, we allow the writ petitions in part, quash the impugned orders passed by the Tribunal and direct the opposite parties 1 & 2 to prepare the gradation list of Steno Sub-Inspectors and non-Steno Sub-Inspectors in accordance with the dates of passing out of the Sub-Inspector training course and thereafter if it is found that promotion of a Sub-Inspector was not considered before consideration of Sub-Inspector placed below him in the seniority list, his promotion shall be considered with effect from the date of promotion of his junior in case he had fulfilled minimum eligibility criteria for promotion at the time of consideration of his junior. This shall be done as expeditiously as possible preferably within a period of six months from the date of service of copy of this order.

9. No order as to costs.

N. Prusty, J.

10. I agree.