

(2023) 02 OHC CK 0178
In the Orissa High Court
Case No : Writ Petition (C) No.35645 Of 2021

Sreepati Ranjan Dash

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2023) 02 OHC CK 0178

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : B.B. Mohanty, P.K. Behera

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J. :

1. By filing the present writ application, the Petitioner calls in question the legality and propriety of the conduct of opposite parties in issuing the impugned rejection order vide letter No.8735 dated 11.10.2021 under Annexure-9 to the present writ application and accordingly the petitioner has prayed for quashing of the impugned order under Annexure-9. Further, the petitioner has prayed for a direction to the Opposite party nos.1 & 2 to convene a Departmental Promotion Committee meeting for the purpose of considering the promotion of Assistant Section Officer like the Petitioner to the post of Assistant Regional Transport Officer (ARTO) within a stipulated period of time against 16 substantive posts of ARTO which are lying vacant at the moment and available to be filled up for the year 2021 as per the letter of the Transport Commissioner, Odisha dated 03.09.2021.

3. The factual matrix of the present controversy which has led to filing of the present writ application, in a nutshell, is that the Petitioner was initially appointed for the post of Junior Assistant in the Office of the Transport Commissioner-cum-Chairman-cum-State Transport Authority, Odisha vide

appointment letter dated 16.03.2013 under OCS (Rehabilitation Assistance) Rule, 1990. Pursuant to the said appointment letter, the Petitioner had joined in duty on 18.03.2013.

4. While continuing as a Junior Assistant in the office of the Transport Commissioner-cum-Chairman, State Transport Authority, the Petitioner was found suitable and was otherwise eligible for promotion, as per the Rules in force, by the DPC held for the purpose and accordingly the petitioner was given promotion to the post of Senior Assistant vide office order dated 10.06.2016. Pursuant to the promotion order, the Petitioner joined in the promotional post of Senior Assistant on 13.06.2016. Upon joining against the new post, on promotion, the pay scale of the Petitioner was fixed at Rs.9300/- to Rs.34,800/- with Grade Pay of Rs.4200/- with effect from 13.06.2016 vide Office order dated 20.07.2016.

5. While the matter stood thus, the Government of Odisha in G.A. & P.G. Department was pleased to restructure the cadre of Odisha Ministerial Service (Assistant & Section Officer) cadre in the Office of the Heads of Department and the Odisha Heads of Department Establishment Officers cadre by Resolution dated 24.01.2019 which was published in the Odisha Gazette on 30.01.2019. Further, as per the said Resolution dated 24.01.2019, the post of Senior Assistant was re-designated as Assistant Section Officer (ASO) with the existing scale of pay i.e. Level-9 as per ORSP Rule, 2017. Thereafter, the petitioner continued to discharge his duty on a regular basis in the new designated post of Assistant Section Officer (ASO) with effect from 24.01.2019 in terms of the specific order passed by the Transport Commissioner, Odisha dated 16.02.2019.

6. It is also relevant to mention here that as per the restructuring Resolution dated 24.01.2019 the Ministerial Cadre in the Office of the Heads of Department, the post of Section Officer, Establishment Officer, Administrative Officer and Senior Administrative Officers are the promotional posts in the cadre hierarchy which are available to be filled upon promotion from the post of ASO. Moreover, the final gradation list of Senior Assistant (re-designated as Assistant Section Officer) dated 02.03.2021 under STA, Odisha and Heads of Departments, the Petitioner's name finds place at Sl.No.5. Moreover, under the ministerial cadre, the post of Assistant RTO and Additional RTO, which are non-ministerial and non-technical posts, were also available to be filled up by promotion. Furthermore, since those posts are not in ministerial cadre, no specific and separate recruitment Rules were framed for recruitment/ filling up those posts while exercising power conferred upon the Government under the proviso to Article 309 of the Constitution of India.

7. Thereafter, the Commerce and Transport Department, Government of Odisha vide Office letter dated 17.11.1981 had laid down criteria and procedure for filling up the post of Assistant RTO. As per the said executive instruction dated 17.11.1981 Grade-I Assistant (Senior Assistant) having five years of service as Grade-I Assistant were eligible for promotion to the post of ARTO. In order to be

eligible for promotion as indicated above, the Ministerial officers working under both the departments of Commerce and Transport as well as of Transport Commissioner's Office were also made eligible to be considered for such promotion. Therefore, in view of the policy decision of the Government vide letter dated 17.11.1981, the post of Assistant RTO was to be filled up by selection from different categories of post in the feeder cadre for which, obviously, no common seniority list is available. The Petitioner has further asserted in the writ application that the Notification dated 17.11.1981 was still holding the field with suitable modification from time to time i.e. vide letter dated 23.08.1991 and letter dated 04.07.1995. It was also specifically pleaded that the aforesaid policy with suitable modification was being followed by the department and promotions were being effected until the year 2019.

8. Per contra, a counter affidavit has been filed on behalf of the opposite parties. In the counter affidavit, it has been averred that the post of Assistant R.T.O. were created earlier with the objective to post them at Border Check Gates for collection and assessment of MV Tax, Passenger Tax and issue of permit. In absence of any Rule, the post of Assistant R.T.Os. were earlier being filled up by way of selection from different feeder cadres under the administrative control of Transport department and in pursuant of executive instruction issued by the Government on 17.11.1981 with subsequent modification to it. Further, all the Border Check Gates have been closed for free passage of Inter State vehicle on the advice of the Central Government since April, 2017. After abolition of check gates, the posts of Assistant R.T.Os. were adjusted in different R.T.O. Offices. The post of Assistant RTO comes under Group C/ Class-III and after restructuring, the same has been upgraded to Group B/ Class-II with effect from 17.10.2017.

9. In the counter affidavit, it has also been specifically stated that the pending finalization of the cadre Rules, the posts were being filled up by way of selection from different posts such as Senior Assistant of Secretariat in Transport Department, Senior Assistant of STA and other non-ministerial posts under STA/ RTO. Furthermore, after the post of Senior Assistant of Secretariat was re-designated as ASO, they were not being considered for selection to the post of Assistant RTO as per the above executive instruction. In the meantime the post of Senior Assistant in the concerned department including the STA has been re-designated as ASO and as such there is no justification to consider their names for selection to fill up the post of Assistant RTO in terms of the above noted instruction.

10. It has also been stated in the counter affidavit that there exists no justification on the part of the Petitioner to claim for promotion to the post of Assistant RTO as because the said post does not come under the promotional hierarchy of his parent cadre. Rather the cadre in which the Petitioner is posted and continued is being governed by Odisha Ministerial Service (Assistant and Section Officers Cadre) of Heads of Department. As per the restructuring cadre,

which was issued in the year 2019, there are five promotional posts in the hierarchy after initial post of Junior Assistant. Those are Assistant Section Officer, Section Officer, Establishment Officer, Administrative Officer and Senior Administrative Officer.

11. Further, the counter affidavit filed by the Opposite Parties reveals that in obedience to the order passed by this Court in W.P.(C) No.19531 of 2021, Government of Odisha has rightly rejected the representation of the Petitioner vide order dated 11.10.2021 which is the subject matter of dispute in the present writ application. The counter affidavit further reveals that in the meantime a well definite cadre Rule namely, Orissa Transport Service (Method of Recruitment and Conditions of Service) Rules, 2021 has been framed in consultation with the OPSC and the same has been approved by the Cabinet. The new rule has also received the final approval of the Governor of Odisha and has been notified in the Gazette dated 03.01.2022. Under the new Rule, there exist no provision for filling up of the post of Assistant R.T.O., by way of selection and henceforth the same can only be filled up through a competitive recruitment examination to be conducted in accordance with the Rules, 2021. Therefore, it is pleaded that since the new Rule has come into force, the claim of the petitioner for promotion to the post of Assistant RTO by way of selection as per the executive instruction is baseless and unsustainable in law.

12. Heard Mr. B.B. Mohanty, learned counsel for the petitioner and Mr. P.K. Behera, learned Standing Counsel for the Transport Department. Perused the pleadings as well as materials placed before this Court by both sides.

13. Learned counsel for the petitioner at the outset submitted that the petitioner has completed 5 years of service as Grade-I Assistant (Senior Assistant) re-designated as ASO and he is aged about 37 years old and as such, he is eligible to be considered for promotion by way of selection/ induction against the post of RTO which is in addition to his chance of being promoted in the normal course in Ministerial Cadre to the post of Section Officer. He further submitted that the grade pay attach to the post of ARTO under the ORSP Rules authorizes the Transport Commissioner to hold DPC. However, the Transport Commissioner vide his letter dated 08.01.2021, 24.06.2021 and 30.06.2021 appraised the Government in Commerce and Transport Department that as on 2021, 17 posts of ARTO are lying vacant. The Government was further appraised that such posts are required to be filled up as such posts are important and essential for smooth functioning of the RTO Offices.

14. It was further contended that although the Transport Commissioner is competent to give promotion by holding DPC to the post of ARTO in view of the Grade Pay attached to such posts under the ORSP Rules, however, the Transport Commissioner referred the names of eligible ASOs including the petitioner for promotion against the post of ARTO with a specific request to hold the DPC at the Government Level vide his letter No.9356 dated 03.09.2021. Additionally, the petitioner also submitted a representation before the opposite party No.1 on

16.06.2021 with a prayer to consider the case of his promotion to the post of ARTO through DPC. Since, no action was taken on the representation of the petitioner by the office of opposite party No.1, the petitioner was compelled to approach this Court by filing W.P.(C) No.19531 of 2021. The said writ application was disposed of by order dated 13.07.2021 with a specific direction to the Government in Commerce and Transport Department to consider the representation of the petitioner dated 16.06.2021 and pass appropriate orders in accordance with law within three months. Thereafter, the representation of the petitioner was rejected by opposite party No.1 vide order dated 11.10.2021.

15. While assailing the impugned rejection order dated 11.10.2021, the learned counsel for the petitioner contended that the representation of the petitioner has not been considered in accordance with law and the rules in force at the relevant point of time. In other words, it was contended that the opposite party No.1 has rejected the representation by passing a mechanical, perverse and arbitrary order. Further, it was submitted that the impugned order passed by opposite party No.1 is a result of complete non-application of mind and by ignoring the recommendation made by the Transport Commissioner in accordance with law.

16. The learned counsel for the petitioner further contended that the impugned order passed by the opposite party No.1 is illegal and arbitrary, perverse and unsustainable in law and accordingly, the said order of rejection dated 11.10.2021 has been challenged by the petitioner on the following principal grounds:-

I)The ground taken by the Department in rejection order dated 11.10.2021 to the effect that the post of ARTO is an ex Cadre post is factually and legally incorrect and further the same is self-contradictory to other grounds relied upon in the rejection order by the Department.

II) The ground of rejection in order dated 11.10.2021 to the effect that promotional prospect is available to the petitioner in the Ministerial Cadre under the Heads of Department in which the petitioner is working runs contrary to the letter of the Government dated 17.11.1981 which provides that the post of ARTO is a selection post and the feeder Cadre for such post includes the post of Senior Assistant now ASO working in the office of Transport Commissioner. In such view of the matter, it was submitted that the opposite party No.1 while rejecting the representation of the petitioner proceeded entirely on a wrong notion. Further, in the absence of any recruitment rule providing for the Cadre hierarchy for the post of ARTO under the Proviso 2 Article 309 of the Constitution of India thereby replacing the executive instruction in the shape of letter dated 17.11.1981, the executive instruction dated 17.11.1981 was still holding the field by the time the representation of the petitioner was being considered by the opposite party No.1. Moreover, the opposite party No.1 has nowhere denied that the executive instruction dated 17.11.1981 has been superseded by any other executive instruction or any rules framed by the Government under Proviso 2 Article 309 of the Constitution of India. As such, it was demonstrated by learned counsel for

the petitioner that while rejecting the representation of the petitioner the executive instruction vide letter dated 17.11.1981 has not been followed by the opposite party No.1.

III) Up to the year 2019, the DPC was being conducted with the representation of Commerce and Transport Department Government of Odisha for filling up the post of ARTO following the executive instruction dated 17.11.1981. However, while rejecting the case of the petitioner for promotion to the post of ARTO, the opposite party No.1 has adopted a different principle and has not followed the executive instruction dated 17.11.1981. Therefore, it was alleged that the petitioner has been grossly discriminated by the opposite party No.1 while considering his case for promotion.

IV) The stand of the Department in the impugned order dated 11.10.2021 to the effect that re-designation of the post of Senior Assistant which was the feeder grade, as per the executive instruction dated 17.11.1981, to that of ASO, makes the executive instruction dated 17.11.1981 inapplicable to the case of the petitioner inasmuch as by the time the case of the petitioner was being considered by opposite party No.1 he had already been re-designated as ASO. In reply to that learned counsel for the petitioner contended that in view of notification dated 30.01.2019 although the petitioner was re-designated from Senior Assistant to ASO, he was still continuing as a Ministerial Officer in the office of Transport Commissioner. Therefore, it was contended that only the designation of the post was changed, however, the petitioner was continuing to discharge the functions of Senior Assistant which is the feeder Grade for Selection to the post of ARTO pursuant to executive instruction dated 17.11.1981. Thus, it was also argued that after re-designation of the post as ASO, the petitioner was still eligible for selection on appointment to the post ARTO pursuant to executive instruction dated 17.11.1981. Hence, the rejection of the representation of the petitioner on that ground is grossly illegal and arbitrary.

V) The ground of rejection in the impugned order dated 11.10.2021 that after the post of Senior Assistant was re-designated as ASO with Grade Pay of Rs.4,600/- which was the feeder grade as per the executive instruction dated 17.11.1981, such executive instruction dated 17.11.1981 became redundant and the same is inapplicable to the case of the petitioner. Such a ground taken by the opposite party No.1 in rejection order dated 11.10.2021 is absolutely baseless, erroneous and vague and it was argued that the same is only intended to deprive the petitioner of promotion to the post of ARTO on the basis of executive instruction dated 17.11.1981. It was also contended that if such a ground is to be accepted as correct, then there would be no post in the feeder grade for consideration for selection to the post of ARTO which carries the Grade Pay of Rs.4,600/- in PB-2 under ORSP Rules, 2008. Thus, considering the Grade Pay and the Pay Band under the ORSP Rules, it was contended that the Transport Commissioner is the competent authority to hold the DPC as its Chairman in

terms of the existing rules and instruction of the G.A. & P.G. Department. Thus, there was no necessity to send the matter for consideration to opposite party No.1 as has been done in the present case.

VI) Finally, it was contended that the impugned rejection order dated 11.10.2021 has been passed without application of mind and without considering the issue in its proper perspective and that the impugned order is devoid of any justifiable reason. Further, the ground of rejection as has found in the rejection order dated 11.10.2021 that the post of ARTO does not come within the promotional channel for the Ministerial service under Transport Commissioner is a baseless and mechanical ground inasmuch as the post of ARTO was created vide executive instruction dated 17.11.1981 and the same being a selection post is governed and guided by the executive instruction dated 17.11.1981. Moreover, the petitioner being a Senior Assistant later on designated as ASO having eligibility was recommended by the Transport Commissioner taking into consideration his eligibility and suitability for the post. Therefore, the opposite party No.1 by rejecting the claim of the petitioner vide impugned order dated 11.10.2021 without having authority to do so has committed a gross illegality.

17. Learned Standing Counsel for the Transport Department, on the other hand contended that the post of ARTO were created to man them mostly at the Border Check Gates for collection and assessment of MV Tax, passenger Tax and issue of permits. He further contended that in the absence of a proper rule governing the recruitment and appointment of ARTOs, such posts of ARTOs were being filled up from different cadres under the administrative control of Transport Department. Pursuant to executive instruction dated 17.11.1981. Although, the check gates have been abolished since April 2017, the ARTOs who were already appointed were adjusted in different RTO offices.

18. Learned Standing Counsel appearing for the opposite parties further contended that pending finalization of cadre rules, the posts of ARTOs were being filled up from different post of Senior Assistant in the Department and STA by following the executive instruction dated 17.11.1981. It was also contended by the learned Standing Counsel that after the post of Senior Assistant in the Department/ STA were re-designated as ASO, they were not being considered for selection to the post of ARTO under the executive instruction dated 17.11.1981. To justify the impugned rejection order dated 11.10.2021, it was also argued that there is no justification to consider the name of the petitioner and similarly situated other ASO's for selection and appointment to the post of ARTO.

19. Additionally, it was also contended by learned Standing Counsel for the opposite parties that since the post of ARTO does not come within the promotional hierarchy of the Ministerial Officers appointed either in the Department or under STA, as such, the post of ARTO does not come within the promotional hierarchy of the parent cadre and accordingly, the petitioner has no right to claim promotion to such a post. In course of his argument he also referred to the Rules of 2021 which provides for 5 promotional posts in the

hierarchy of the cadre to which the petitioner originally belong to.

20. While justifying the conduct of the opposite party No.1 in rejecting the claim of the petitioner vide impugned order dated 11.10.2021, the learned Standing Counsel for the opposite parties contended that a new cadre rule namely, Odisha Transport Service (Method of Recruitment and Conditions of Service) Rules, 2021 has been framed with due consultation of OPSC and the same has been notified vide notification dated 03.01.2022. Referring to the said Rule 2021, he further contended that there is no provision for filling up the post of ARTO by way of selection and that under the new Rules, the post of ARTO are to be filled up directly through Combined Competitive Recruitment Examination. Therefore, learned Standing Counsel for the opposite parties contended that since a new rule has come into force with specific provision for appointment to the post of ARTO, the impugned rejection order dated 11.10.2021 is justified, valid and legal.

21. After hearing learned counsels for the respective parties and upon a careful consideration of the materials placed before this Court, this Court observed that most of the facts stated in the writ petition have not been controverted by the opposite parties. The only controversy that arise for consideration in the present case is whether the opposite parties were justified in rejecting the representation of the petitioner pursuant to the order passed by this Court in the earlier writ petition bearing W.P.(C) No.19531 of 2021 vide order dated 11.10.2021. On a careful reading and analysis of the impugned order dated 11.10.2021 under Annexure-9, this Court observed that the opposite party No.1 although considered the case of the petitioner pursuant to the order dated 13.07.2021 passed in the above noted writ application, however the opposite party No.1 proceeded on the footing that the executive instruction dated 17.11.1981 is not applicable to the facts of the petitioner's case principally on the ground that the post of Senior Assistant which the petitioner was holding was re-designated as ASO and as such the petitioner goes out of the purview of executive instruction dated 17.11.1981. On a perusal of the counter affidavit this Court found that nowhere the opposite parties have controverted the assertion of the petitioner that till the year, 2019 Senior Assistant post was a feeder grade for selection and appointment to the post of ARTO and accordingly Senior Assistant were earlier being appointed on selection to the post of ARTO till the year, 2019.

22. This Court on a careful analysis of the factual background of the case also found that it is not the case of the opposite parties that the petitioner is not eligible and suitable for appointment to the post of ARTO. On the contrary, the Transport Commissioner vide his letter dated 03.09.2021 under Annexure-7 requested the opposite party No.1 for holding of DPC at Government Level to fill up the vacant post of ARTO. On further scrutiny, it is very clear that the letter under Annexure-7 of the Transport Commissioner includes the name of the petitioner along with two other persons for appointment to the post of ARTO against 16 nos. of existing vacancies in the post of ARTO. Thus, there is no doubt whatsoever in the mind of this Court that the present petitioner along with two

other persons were eligible and suitable for being appointed to the post of ARTO against 16 nos. of existing vacancies.

23. Considering the Grade pay attached to the post of ARTO and Pay Band under the ORSP Rules, the Transport Commissioner is the competent authority to hold DPC as Chairman and to appoint eligible persons to the post of ARTO. However, in the present case, the Transport Commissioner instead of convening the DPC by himself and considering the case of the petitioner recommended the case of the petitioner to the opposite party No.1 the Principal Secretary to Government C & T Department with a request to hold DPC in respect of three eligible candidates including the petitioner against 16 nos. of existing vacancies.

24. Learned counsel for the petitioner argued that earlier the Transport Commissioner was convening the DPC and appointing Ministerial Officers to the post of ARTO. However, in the case of the petitioner although the petitioners were eligible, their cases were recommended to the Government by the opposite party No.1 to hold the DPC. The answer to such departure is probably the fact which has been mentioned in letter dated 03.09.2021 under Annexure-7. That is, this Court in the earlier writ petition bearing W.P.(C) No.19531 of 2021, filed by the petitioner, disposed of the same vide order dated 13.07.2021 directing the opposite party No.1 i.e. the State of Odisha represented by Principal Secretary C & T Department to consider the representation filed by the petitioner and pass appropriate order. Thus, this Court is of the view that the Departure in the present case in holding the DPC is as a result of the order passed by this Court in the earlier writ petition dated 13.07.2021.

25. At this juncture it would be profitable to extract letter No.9356/TC/Estt (RTA) dated 03.09.2021 under Annexure-7;

OFFICE OF THE TRANSPORT COMMISSIONER-CUM-

CHAIRMAN,

STATE TRANSPORT AUTHORITY, ODISHA, CUTTACK.

No.9356/ TC/ Estt. (RTA)

Dated-03.09.2021

X-315/2021

To

The Principal Secretary to Government,

Commerce & Transport Department,

Odisha, Bhubaneswar.

Sub:- Holding of DPC at Govt. Level to fill up the vacant post of Asst. RTO

regarding.

Sir,

In inviting a reference of order dated 23.08.2021 passed by the Hon'ble High Court of Orissa in W.P.(C) No.23090 of 2021 filed by Sri Aditya Bhanjan Sahoo-vrs-State of Odisha and others, it is to state that proposal was submitted to Govt. vide this office letter no.6269/TC dated 24.06.2021 to hold the DPC at Government Level from among the eligible Senior Assistants re-designated as Assistant Section Officers of this office to fill up the vacant posts of Assistant RTO. But the said proposal was not considered by the Govt. as communicated to this office vide Govt. Letter No.6539/T dated 26.07.2021 intimating that selection of ASO to the post of Assistant RTO deserve no merit for consideration.

Subsequently, Sri Aditya Bhanjan Sahoo, ASO of this office has filed a Writ Petition vide W.P.(C) No.23090 of 2021 before the Hon'ble High Court of Orissa. The Hon'ble Court has disposed of the matter with a direction to quash the impugned order dated 26.07.2021 passed by the Government and has remitted the matter back to Government for reconsideration of the recommendation made under Annexure-6 dated 24.06.2021 for holding of DPC at Government level to fill up the 16 nos. of vacant post of Assistant RTO afresh by passing reasoned and speaking order in accordance with law by affording opportunity of hearing to the parties as expeditiously as possible preferably within a period of 04 months from the date of communication of this order (copy enclosed).

It is to mention here that the post of Senior Assistant in HODs including this office was re-designated as Assistant Section Officer with the existing level of pay i.e. Level-09 in the pay Matrix of ORSP, Rule 2017 and without any financial benefit, as Senior Assistant post also stood in the same pay matrix.

At present there are 16 nos. of vacancies in the rank of Assistant RTO. Out of which three posts may be filled up from among three eligible Senior Assistants re-designated as Assistant Section Officers of this office namely Sri Sreepati Ranjan Dash, ASO Sri Aditya Bhanjan Sahoo, ASO and Smr. Ritushree Baral, ASO.

In view of the order passed by the Hon'ble High Court, it is therefore requested to convene DPC at Govt. Level. The detailed particulars, vigilance clearance report, final gradation list and up-to-date CCRs for last five years of the above three Senior Assistants re-designated as Assistant Section Officers of this Office is sent herewith so that the process of convening DPC will be expedited.

26. A bare reading of the aforesaid letter dated 03.09.2021 under Annexure-7 reveals that the Transport Commissioner on scrutiny found three persons eligible including the petitioner for appointment as ARTO against 16 nos. of existing vacancies and accordingly a request was made to the Government to convene the DPC in view of the order passed by this court on 13.07.2021. Otherwise, the entire process would have been completed by the Transport Commissioner under the executive instruction dated 17.11.1981 earlier and in such view of the

matter, this Court has no hesitation in coming to a conclusion that the Transport Commissioner should have considered the case of the petitioner by convening DPC keeping in view the executive instruction dated 17.11.1981 which was very much in force then. Moreover, there is no doubt with regard to eligibility and suitability of the petitioner and the other persons whose name has been recommended by the Transport Commissioner to the Government. Accordingly, the Transport Commissioner has committed an illegality by not convening the DPC meeting himself and not considering the case of promotion of the petitioner to the post of ARTO. However, in the facts and circumstances of the present case and keeping in view the order passed by this Court, the blame for such failure cannot be put on the Transport Commissioner alone, as he had acted pursuant to the order passed by this Court on 13.07.2021.

27. So far the rejection order under Annexure-9 is concerned, this Court on a careful analysis observed that the opposite party No.1 proceeded on the footing that since the post of Senior Assistant has been re-designated as ASO, the executive instruction dated 17.11.1981 is not applicable to the petitioner. At this juncture, this Court would like to observe that mere change of designation, everything else remaining the same including the pay structure and the nature or work, the same will not, by itself, disentitle the petitioner to claim the benefit under executive instruction dated 17.11.1981. Rather, in view of the change in designation by virtue of a Rule the post of Senior Assistant as mentioned in executive instruction dated 17.11.1981 is to be read as ASO inasmuch as the change in designation has not changed the nature and character of the job and there was no change in the pay structure. Therefore, this Court is of the considered view that the opposite party No.1 has committed grossly illegality by rejecting the representation of the petitioner under Annexure-9 and as such, the order dated 11.10.2021 under Annexure-9 is unsustainable in law and accordingly, the same is liable to be quashed.

28. In course of argument learned Standing Counsel appearing for the opposite parties took a plea that a new rule 2021 has been notified on 03.01.2021. Therefore, in view of the provisions contained in the new rule, the posts of ARTO are to be filled up directly through a combined recruitment test. While considering such submission of the learned Standing Counsel appearing for the opposite parties, this court observed that the Rule was notified and came into force w.e.f. 03.01.2022 and further it was observed that the impugned order was passed on 11.10.2021 under Annexure-9 which is much prior to the new rule came into force. As such, while rejecting the representation of the petitioner the opposite party No.1 could not have taken resort to and rightly he has not discussed the new Rule 2021 which came into force w.e.f. 03.01.2022. Moreover, the recommendation under Annexure-7 was much prior to the new Rule came into force and the present writ petition was filed on 11.11.2021. Since, the impugned rejection order has been passed prior to the new rule came into force, the petitioner cannot be debarred to get the benefit of promotion under executive instruction dated 17.11.1981 on the basis of the recommendation

under Annexure-7 merely because a new rule has come into force. Moreover, this Court has to confine this adjudication to the law applicable when the impugned order was passed and the present writ application is to be adjudicated on the factual background that was existing at the time of passing of the impugned order by the opposite party No.1 pursuant to the direction of this Court in the earlier writ petition.

29. In view of the aforesaid analysis of fact as well as law and upon a conspectus of the materials placed before this Court and upon hearing the learned counsels appearing for the respective parties, this Court is of the considered view that the impugned order under Annexure-9 is unsustainable in law and the same is hereby quashed. Further, the opposite party No.2 i.e. the Transport Commissioner-cum-Chairman STA, Odisha is directed to immediately convene the DPC and consider the case of the petitioner along with two other persons found eligible by him vide his letter dated 03.09.2021 under Annexure-7 in the light of executive instruction dated 17.11.1981 and take a decision within a period of four weeks from the date of production of the copy of this judgment. It is further directed that in the event, the opposite parties are planning to fill up the vacant post of ARTO in view of the new Rule 2021, which was notified on 03.01.2022, they are free to do so, however, three posts of ARTO as has been recommended under Annexure-7 by the Transport Commissioner shall not be filled up till a final decision is taken by the opposite party No.2 as has been directed hereinabove. In the event, any advertisement has been published to fill up such posts, suitable modification be made in the said advertisement by way of corrigendum forthwith.

30. Accordingly, the writ petition stands allowed. There shall be no order as to cost.

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