

HIGH COURT OF ORISSA, CUTTACK

W.P.(C)NO.6844OF 2018 AND W.P.(C) NOS.13517 and 19023 OF 2019

(In the matter applications under Articles 226 and 227 of the Constitution of India)

W.P.(C) No.6844 of 2018

Manoranjan Biswal

...

Petitioner

Versus

State of Odisha and others

...

Opposite Parties

For Petitioner:Mr.Budhadev Routray, Sr.Advocate
M/s.Babita Kumari Pattnaik and
Advocates

J.K. Digal,

For Opposite Parties:Mr.J. P. Patnaik

Additional Government Advocate
(For opposite party Nos.1 and 2)

Mr.Asok Mohanty,Sr. Advocate
Mr. Gautam Misra, Sr. Advocate
M/s. Devashis Panda and Associates
M/s. B.B. Mohanty and Associates
M/s. K.P. Mishra and Associates
Mr. S. Mohapatra, Advocate

W.P.(C) No.19023 of 2019

Akshaya Kumar Nayak

...

Petitioner

Versus

State of Odisha and others

...

Opposite Parties

For Petitioner

:Mr. Budhadev Routray, Sr. Advocate
M/s. Babita Kumari Pattnaik and
J.K. Digal, Advocates
M/s. R.N. Mishra 2 and Associates

For Opposite Parties:Mr.J. P. Patnaik

Additional Government Advocate
(For Opposite Party Nos.1 and 2)

Mr. Gautam Misra, Senior Advocate

M/s. P.K. Rath and Associates

M/s. B.B. Mohanty and Associates

Ms. Saswati Mohapatra

W.P.(C) No.13517 of 2019

Suresh Kumar Behera

...

Petitioner

Versus

State of Odisha and others

...

Opposite Parties

For Petitioner:M/s. K.P. Mishra, L.P. Dwibedy, S. Rath, A. Mishra
and K. Hussain, Advocates

For Opposite Parties:Mr. J. P. Patnaik
Additional Government Advocate
(For Opposite Party Nos.1 and 2)

P R E S E N T:

THE HON'BLE DR. JUSTICE SANJU PANDA

AND

THE HON'BLE MR. JUSTICE S. K. PANIGRAHI

Date of hearing:08.03.2021

Date of judgment: 25.06.2021

S. K. Panigrahi, J.

1. As the grievance and prayer sought for by the petitioners in all these Writ Petitions are one and the same, all the Writ Petitions were heard together and are being taken up for disposal by this common judgment. For convenience of discussion, W.P.(C) No.6844 of 2018 is taken up as the leading case.

Factual Matrix of the case:

2. The petitioner in W.P.(C) No.6844 of 2018 assails the order dated 26.10.2017 passed by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1530(C) of 2014 primarily on the ground that the said order is erroneous as well as improper sans proper service of notice.
3. The facts as narrated in the writ petition boils down to the issue of seniority in promotion. The petitioner was duly selected and appointed as Jamadar on 03.09.1990, later promoted to the post of Subedar on 25.08.2002 and on the basis of his seniority, he was posted in OSAP 7th Battalion, Bhubaneswar. He was further promoted to the rank of Assistant Commandant on 07.08.2008 and posted in OSAP 6th Battalion, Cuttack and, subsequently, he was promoted to the rank of Deputy Commandant vide order dated 14.07.2014 and posted in 2nd SS Battalion, Keonjhar.
4. On the other hand, Opposite Party No.3 who is the contesting opposite party herein was appointed as Sergeant on 04.09.1985 as per the Provisions prescribed under the Odisha Special Armed Police Act, 1946. He was promoted to the rank of Reserve Inspector on 02.12.2002 and, further, promoted to the rank of Assistant Commandant vide Notification dated 16.08.2008. The entire controversy in the present case rests on promotion of the petitioner to the higher rank/post earlier than the opposite party No.3 even though his initial appointment was much prior to him i.e., on

04.09.1985, which is about five years later and also one rank higher to the petitioner, leading to a natural heartburn at his end due to such adverse *inter se* seniority in service.

5. Aggrieved thereby, O.P. No.3 sent a representation to the opposite party No.1 seeking re-fixation of *inter se* seniority and claimed that he should be placed above the petitioner on the basis of his earlier entry into the service. Since his representation was kept unattended by the authority for a long time, the opposite party No.3 approached the learned Tribunal vide O.A. No.536(C) 2014. The said O.A. No.536(C) 2014 was disposed of on 14.02.2014 with a direction to the Government to dispose the representation filed by the opposite party No.3 within a stipulated period. Thereafter, the representation made by the opposite party No.3 was considered and rejected on 14.03.2014 by the Opposite Party No.1 relying on the Rule-17(ii) of the Odisha Special Arms Police (Method of Recruitment and Conditions of Service), Rules 2000. Being aggrieved by such rejection, Opposite Party No.3 and other similarly placed candidates approached the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack vide O.A.1530(C) of 2014 seeking a direction to respondent Nos.1 and 2 to re-fix the seniority of the said Opposite Parties Nos.3 to 15 in the rank of Assistant Commandant and to grant them all consequential service and financial benefits.

6. The Opposite Party No.3, further, prayed for a declaration that the provision of Rule-17(ii) of the Odisha Special Arms Police (Method of Recruitment and Conditions of Service), Rules 2000 to be void, being arbitrary and unreasonable. The learned Tribunal vide order dated 26.10.2017 disposed of the Original Application relying on an earlier order passed in Original Application being O.A.No.941 of 2014 and directed the Respondents to take appropriate action for modification of Rule-17(ii) and thereafter, to reconsider the seniority of the Opposite Party No.3 vis-à-vis the petitioner in accordance with the Rules in a time bound manner.
7. It is apposite to note that Rule-3 of the *Odisha Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000* mandates that the Orissa Armed Force Service shall consist of the following category of posts namely:
- “3. The service shall consist of the following categories of posts, namely :-
- (a) **Group-A**
- i) Commandant
- ii) Deputy Commandant, and
- (iii) Assistant Commandant
- (b) **Group-B**
- i) Subedar Major
- ii) Subedar; and
- iii) Reserve Inspector”

The recruitment of various posts under Rule-3 is to be governed in accordance with Rule-5 which reads as under:

5.(i) *Recruitment to the post of Commandant shall be made by way of promotion from the rank of Deputy Commandant.*

(ii) *Recruitment to the post of Deputy Commandant shall be made by promotion from the rank of Assistant Commandant.*

(iii) *Recruitment to the post of Assistant Commandant shall be made by promotion from the rank of Subedar/Subedar Major and Reserve Inspector of the District Reserve Police.*

(iv) *The promotion to the rank of Assistant Commandant shall be made from two categories of posts such as Subedar/Subedar Major and Reserve Inspector. The ratio of 2:1 is to be made to maintain equal representation from both the categories keeping in view the sanctioned strength of respective feeding category at their base level, i.e., Jamadars for the category of Subedar/Subedar Major and Sergeants for the Reserve Inspector.*

(v) *Recruitment to the post of Subedar/Subedar Major shall be made by promotion from the rank of Jamadar.*

(vi) *Recruitment to the post of Reserve Inspector shall be made by promotion from the rank of Sergeant.”*

Further, Rule-17 prescribes the inter-se seniority of the promotees in each rank as under:

“17 (i) The inter-se seniority of the promotee in each rank except the rank of Assistant Commandant shall be determined as per the position assigned to them in the Select List based on which they were promoted.

(ii) The inter se seniority in the rank of Assistant Commandant shall be fixed on the basis of their length of service in the rank of Subedar/Subedar Major and Reserve Inspector.”

- 8.** The essence of the dispute as it emanates from fixation of seniority in accordance with Rules 17(ii) of the aforesaid Rule on the basis of date of joining the rank of “Subedar” and “Reserve Inspector” without considering the date of promotion to the aforesaid posts. The distortion of the entire seniority, especially, of those who were initially appointed as “Sergeant” and were later promoted to

the post of “Reserve Inspector” and to the rank of “Assistant Commandant”, by placing them in the cadre of Assistant Commandant below their counterparts who were initially appointed as “Jamadars” and promoted as “Subedar/Subedar Major”, (who were junior in the feeder cadre), without reference to their length of service, triggered the issue to be taken before the learned Tribunal in O.A.No.941 of 2014.

9. The learned Tribunal, in the impugned judgment, came to a conclusion that the length of service as provided in Rule-17(ii) was to be determined from the date of promotion to the said feeder cadre; the provision arbitrarily and prejudicially affected the *inter se* seniority between the two feeder cadres of “Reserve Inspectors” and “Subedar/Subedar Major” to the benefit of the latter who even with lesser length of service and lower in rank at the entry level post stole a march over the former. Accordingly, Rule 17(ii) was found to be arbitrary and accordingly it was quashed. Consequently, the respondent Nos.1 and 2 were directed to make appropriate provision in consonance with Rule 5(iii), 6(iii) and 17(i) of the Odisha Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 to re-fix the seniority in the cadre of Assistant Commandant.

10. In the meantime, the Orissa Armed Police (Method of Recruitment and Conditions of Service) Rule, 2013 was notified in the Official

Gazette on 07.08.2013. The cause of action for filing O.A. No.1530(C) of 2014 arose for the first time in the year 2008 when the combined list of two separate cadres was published. The representation of Opposite Party No.3 was still pending before the Government and the rejection order came only in 2014 solely relying on Rule 17(ii) of the OSAP Rules, 2000. Aggrieved by the Order of rejection, the Opposite Party No.3 approached the learned Tribunal and since the Government relied on the Odisha Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 to fix the seniority in the cadre of Assistant Commandant, the Applicant challenged the *vires* of Rule 17(ii) of the 2000 being discriminatory and arbitrary. The learned Tribunal disposed of the Original Application by holding the 2000 Rules to be ultra-virus.

- 11.** The hierarchy of promotional prospects in question can be lensed through the following Flow Chart and Comparative table with respect to the parties to the petition:

FLOW CHART RE: SERGEANT AND JEMADAR

Commandant (in OSAP Battalions)
Group-A Service of Orissa Armed Police Service
↑
Dy. Commandant (in OSAP Battalions)
Group-A Service of Orissa Armed Police Service
↑
Asst. Commandant (in OSAP Battalions)
Group-A Service of Orissa Armed Police Service
/

Subedar (in OSAP Battalions)
Group-B Service of Orissa
Special Armed Police Service)

Reserve Inspector (in District
Police) Group-B Service of
Orissa Special Armed Police
Service)

13.

14.

15.



Jamadar, re-designated as Deputy Subedar (in OSAP Battalions)

Sergeant (In District Police)
As per Sec.4 of Orissa Military Police Act, 1946, Sergeant is at (iii) while Jamadar is at (iv) meaning one rank below

COMPARATIVE TABLE BETWEEN MANORANJAN BISWAL, LINGARAJ MISHRA AND BINOD DASH

Description	Writ Petitioner- Manoranjan Biswal	Lingaraj Mishra- O.P.No.3	Binod Kumar Das (Not made party to the two writ petitions)
Date of appointment in the rank of Sergeant/Jemadar	03.09.1990 As Jemadar	05.09.1985 As Sergeant	05.09.1985 As Sergeant
Date of appointment in the rank of Reserve Inspector/Subedar	27.08.2002 (As Subedar)	12.12.2002 (As Reserve Inspector)	12.12.2002 (As Reserve Inspector)
Date of joining in the rank of Reserve Inspector/Subedar	25.09.2002 As Subedar	18.12.2002 (As Reserve Inspector)	23.12.2002 (As Reserve Inspector)
Date of promotion to the rank of Asst. Commdt.	07.08.2008	07.08.2008	07.08.2008
Date of promotion to the rank of Dy. Commdt.	10.06.2014	10.06.2014	10.06.2014
Position in the gradation list of Dy. Commdt. of 2015	40	54	52
Position in the revised gradation list of Dy. Commdt. of 2018	25	11	09

It may be relevant to note that subsequent Odisha Armed Police Services (Methods of Recruitment and Condition of Service) Rules, 2013 did not

alter the landscape of promotional avenues. In particular, Rule 8 of the 2013 Rules provides for the procedure of Selection by the Departmental Promotion Committee. Rule 8 of the said Rules is extracted herein below:

“8. Procedure of Selection by the Committee: (1) *The Committee shall ordinarily meet at least once in each year preferably in the month of January to prepare a list of officers, as are held them, suitable for promotion to the next higher grade suitable for promotion to the next higher grade taking into account the existing and anticipated vacancies for the year.*

2. *The Committee while considering the cases for promotion of suitable officer, shall follow the provisions of*

a. *the Odisha Civil Services (Zone of Consideration for Promotion Rules, 1988*

b. *The Odisha Civil Services (Criteria for Promotion) Rules, 1992*

c. *Odisha Civil Services (Criteria for Selection including Promotion) Rules, 2003*

Provided that in case of promotion to Group A (Junior Branch) Grade, the reservation of vacancies in posts and services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules framed there under shall also be followed.”

Main Petitioner and some of the similarly placed Writ Petitioners’ Submissions:

12. The learned Counsel for the petitioner Mr. Budhadev Routray, Senior Advocate while opening his argument submitted that though the opposite party No.3 had approached the learned Tribunal seeking a declaration that the provision of Rule 17 (ii) of the Orissa Special Armed Police (Method of Recruitment of Conditions of Service) Rules, 2000 is arbitrary, unreasonable and, hence, void, he had woefully failed to substantiate his claims regarding the nullifying effect of the said provision.

13.He pressed further that the opposite party No.3 has grossly failed to bring to the notice of learned Tribunal that he was promoted to the rank of Deputy Commandant on 10.06.2014 and inter-se seniority of Deputy Commandant is governed by Rule 17(ii) of 2000 Rule which was repealed. According to him, Rule-11 of 2013 Rules presently holds the field. Even though the petitioner was arrayed as opposite party No.3 in the Original Application filed before the learned Tribunal by the present Opposite Party No.3, it is stated, no notice was served on him and this fact could not be brought to the notice of the learned Tribunal. The proceedings, the petitioner contends, was held behind his back and the Original Application was disposed of in violation of the principles of natural justice. An affidavit dated 16.12.2020 has been filed by the petitioner to this effect.

14.Mr.Routray while advancing his argument further submitted that the Opposite Party No.3 had challenged the fixation of *inter se* seniority, which was fixed in the year 2008 on the basis of promotion to the rank of “Subedar/Subedar Major” and “Reserve Inspector” in the feeder cadre of the rank of Asst. Commandant. He vehemently contented that the Opposite Party No.3, however, had not challenged the promotion of petitioner to the rank of “Subedar” in the year 2002, to the rank of Asst. Commandant in the year 2008 and to the rank of Dy. Commandant in the year 2014 in any of the

O.As filed before the learned Tribunal. When the promotion of the petitioner to the rank of Subedar was not challenged, he being senior in the feeder cadre to the Opposite Party No.3 is *estopped* to challenge the seniority in promotional cadre after eight years. Further, it is contended that the Opposite Party No.3 has failed to challenge the gradation list of Assistant Commandant and Deputy Commandant at any point in time. However, the learned Tribunal has directed the authorities to reconsider the seniority of Opposite Party No.3. He further underlined that in a similar case (O.A. No.2507 of 2015), the learned Tribunal dismissed the Original Application on the ground that matters of seniority cannot be challenged at a belated stage. He also objected to the direction of learned Tribunal to recast the gradation list after almost eight years. He strenuously argued that the Opposite Party No.3 cannot take the benefit of Rule-3 of OCS (Criteria for Promotion) Rules, 1992.

- 15.**He adverted to the fact that the Opposite Party No.3 had taken the pleathat he has approached the learned Tribunal after the disposal of his representation. However, on a bare perusal of the Original Application filed by Opposite Party No.3, it is easy to consummate that the cause of action arose on 07.08.2008 when the petitioner was promoted to the rank of Asst. Commandant. As the promotion to the rank of Subedar was not being challenged, the consequential action in promoting the petitioner to the rank of Assistant

Commandant cannot be challenged at such a belated stage. As per Section 21 of the Administrative Tribunal Act, he has to approach the Tribunal within one year. As the promotion to the rank of Assistant Commandant was given in the year 2008, based on the seniority of the year 2002, the learned Tribunal, it is contended, should have dismissed the case on the solitary ground of limitation. He further contends that it is the settled position of law that successive representation cannot be the lifeboat for inordinate delay as has been settled in **C.Jacob vs. Director of Geology and Mining¹** as under:

“11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of “acknowledgement of a jural relationship” to give rise to a fresh cause of action.”

16.He submitted that the Hon’ble Supreme Court of India has echoed same sentiments in **B.S. Bajwa and another Vrs. State of Punjab and others,²S. Sumnyan&Ors v LimiNiri³and Shiba Shankar Mohapatra and others Vs. State of Orissa and others⁴**wherein it was held that the matters of seniority cannot be re-opened and

¹2008) 10 Supreme Court Cases 115

²AIR 1999 SC 1510,

³[(2010) 6 SCC 791

⁴2010 (12) SCC 471

amputate the lapse of a reasonable period since it would result in unsettling the settled position.

17.He further submitted that the Odisha Special Armed Police (Method of Recruitment and Conditions of Service) Rules, 2000 was repealed on 27.07.2013 and new Rules, namely, Odisha Armed Police Services (Method of Recruitment and Conditions of Service) Rules, 2013 had come into force on 27.7.2013. Though the Opposite Party No.3 approached the learned Tribunal on 14.5.2014, the said Rules were not brought to the notice of the learned Tribunal. More importantly, the petitioner and Opposite Party No.3 were promoted to the rank of Dy. Commandant on 10.6.2014 in accordance with Odisha Armed Police Services (Method of Recruitment and Conditions of Service) Rules, 2013 which was also not brought to the notice of the Tribunal by any of the parties. The final gradation list in the rank of Dy. Commandant was also published on 17.8.2015, wherein the petitioner was placed above Opposite Party No.3. Curiously enough the same was also not brought to the notice of the Tribunal. It is the settled position of law when Rule has been repealed, the same cannot be challenged after repeal.

18.The Apex Court in ***State of Odisha and another Vs. Anup Kumar Senapati and another***⁵ has succinctly held that provisions of a Law, Rule, and Order etc. cannot be invoked at all after repeal

⁵Civil Appeal No.7295/2019 (SC)

of such Rule, Order etc. As the Opposite Party No.3 has not approached the learned Tribunal with clean hands, it is contended that, he is not entitled to any reliefs. If the materials are not placed before the adjudicating forum, it is contended, the same amounts to suppression of material facts.

19. To buttress the above arguments, he relied on judgments in ***Bhaskar Laxman Jadav vs. Karamveer Kakasaheb Wagh Education Society***⁶ and ***Ramjas Foundation vs. Union of India***,⁷ wherein it has been held that a person who does not come to the court with clean hands is not entitled to be heard on merit of his grievance in any case. The object underlying the principle is that every court is not only entitled but is also duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing the facts which have bearing on the adjudication of the issues arising in the case.

20. Further, the criteria for promotion, it is contended, has been enunciated in Orissa Civil Services (Criteria for Promotion) Rules, 1992 which regulates the promotion of different posts. Rule 3 prescribes as follows:

“3. Notwithstanding anything contained in the Recruitment Rules;

⁶2013 AIR SCW 34

⁷AIR 1993 SC 852

- a. all promotions to the posts or grades of different services/civil posts under the State Government shall be made by selection;
- b. Selection for such promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority and the names of persons included in the select list shall be arranged in order of seniority in the feeder service or grade:

Provided that any junior officer of exceptional merit and suitability may be assigned a place higher than his seniors and in such cases the assignment of higher position to the junior officer shall be limited to the same batch or year of allotment except where an officer of the earlier batch or year of allotment is found unsuitable for promotion:

Provided further that where promotion is made from different services or posts and no common seniority among such officers exists, their names in the Select List shall be arranged on the basis of their merit adjudged during selection.

1. Explanation: *The expression "batch or year of allotment means the calendar year of the select list on the basis of which an officer is promoted to the higher rank."*

2. (C) *In order to judge the suitability of an officer for promotion, the Orissa Public Service Commission or the Departmental Promotion Committee, the Selection Committee or Selection Board, as the case may be, shall scrutinize preceding five available Confidential Character Rolls [Performance Appraisal Reports (PARs)] and other documents, if any having a bearing on the performance and conduct of all eligible officers unless for reasons to be recorded, it is considered necessary to refer to any earlier record to adjudge an officer's suitability.*

Provided the available Confidential Character Rolls [performance Appraisal Reports (PARs) (CCRs/PARs) taken into consideration for promotion as above shall include CCRs/ (PARs) covering at least a period of three years in preceding five years.]

As per Rule 5(iv), recruitment to the post of Assistant Commandant shall be made by promotion from the rank of

Subedar/Subedar Major and Reserve Inspector of the District Reserve Police in the ratio of 2:1. Hence, the feeder cadre of Assistant Commandant is “Subedar/Subedar Major” of Battalions and “Reserve Inspector” of the District Reserve Police will be maintained in that ratio. In this context, the learned Counsel relied on ***State of Orissa vs. Pramod Kumar Satapathy***⁸ wherein it has been held that the seniority is to be fixed taking into account the seniority in the feeder cadre; the petitioner is senior in the feeder cadre. In the present case, the feeder cadre of Asst. Commandant is Subedar and Reserve Inspector respectively. As the petitioner is senior in feeder cadre, the promotion to the said post not being challenged by the Opposite Party No.3, he is estopped to challenge the seniority in the rank of Asst. Commandant. He further emphasised that the Rule-4 of Orissa Armed Police Service (Method of Recruitment and Condition of Service) Rules, 2013, prescribes for the method of recruitment to different grade in the service. As per Rule-11, the inter-se seniority of the officers appointed to various grades in the service shall be in the order in which their names appear in the select list under Rule-10. He further submitted that Orissa Police Service Rules, 1938 and the Orissa Special Armed Police (Method of Recruitment and Condition of Service) Rules, 2000

⁸ W.P.(C) No.8650/2003, Orissa HC

have already been repealed. In view of the above, he submitted that the Writ Petition ought to be allowed.

21. Appearing for some of the Writ Petitioners Mr. P.K. Rath, learned Advocate who are in the same page with the Present petitioner has reiterated the same points and more or less adopted the argument of Mr. Routray and held that the Petitioner and his clients are senior in the feeder cadre hence they ought to be placed above the Opposite Party No.3 in the merit list. In view of this, the present Writ Petition is a meritorious one.

Submissions by O.P.No.3 and some of the Writ Petitioners and similarly situated Interveners

22. Per Contra, Learned Counsel for Opposite Party No.3, Mr. Ashok Kumar Mohanty, Senior Advocate, submitted that Section 4 of the Orissa Military Police Act, 1946 provides that Sergeants would be senior to Jemadars in the classes. He further proceeded to contend that if the submissions of the writ Petitioners are accepted, the result would be highly unreasonable and the gradation list would be distorted completely. Section 4(1) of the Orissa Military Police Act, 1946 which governs the field state as under:

“4. (1) There may be all or any of the following classes of military Police Officers which shall take the rank in the order mentioned namely:

- i. Sergeant-Major*
- ii. Subedars*

- iii. *Sergeant*
- iv. *Jemadars*
- v. *Havildar-Major*
- vi. *Havildars*
- vii. *Naiks*
- viii. *Sepoys including Lance Naiks and such grades in each class as the State Government may direct."*

A conjoint reading of Rule-11 with Section 10 of Orissa Civil Services (Criteria for Promotion) Rules, 1992 and the above Rule crystallizes that the Opposite Party No.3 should be in a higher position in the seniority than the petitioner. The summed up with the following submissions to delineate the issue:

- a. Admittedly, the Opposite Party No.3 joined as Sergeant on 05.09.1985, which is a higher post than the Petitioner herein who joined as Jemadar on 03.09.1990. In other words, the petitioner was behind the Opposite Party No.3 both in terms of rank and date of joining.
- b. The shocking aspect of the matter is that while the Petitioner was promoted to the rank of Subedar on 25.08.2002, the Opposite party No.3 was promoted to the post of Reserve Inspector on 12.12.2002 after an artificial delay of about 4 months in order to put him behind the race. There was no cogent reason to delay his promotion by 4 months since the DPC meeting was held on the same day. He further contended that this is an engineered procrastination to put him off the pace in the seniority in the feeder cadre thereby a deliberate carnage has been inflicted on the O.P. No.3/RI group. They have twisted and subverted the spirit of fairness while effecting the promotion to the feeder cadre.

- c. The petitioner and the Opposite Party No.3 were promoted to the rank of Asst. Commandant on 7.8.2008 which is in accordance with the notification issued by the Home Department bearing Notification No. 36581 dated 7.08.2008 through a combined gradation list that exposes an underbellies of an insensitive transgression of the principle of relative merit.
- d. The mode and the channel of promotion of the Opposite Party No.3 and the petitioner are quite unsimilar. It is also admitted that no common gradation list is prepared for the Sergeant, Reserve Inspector and Subedar/Deputy Subedar in OSAP Battalion though Common Gradation list is maintained after promotion to the rank of Asst. Commandant as in the present case. Since wide ranging orbits of differences and similarities exist in their operational sphere without assessment of comparative merit, the exercise of promotion seems to be cavalier.
- e. The Opposite Party No.3 had no occasion to challenge the promotion of the petitioner to the rank of Subedar on 25.08.2002 and the promotion to the rank Asst. Commandant on 07.08.2008. It was the combined gradation list which gave rise to such anomaly and heartburn with largely tilted towards the petitioner and steamrolled to challenge before the Tribunal by the O.P. No.3 and not prior to that. The apparent promotional apartheid towards the O.P. No.3/RI Group was markedly demonstrative at the time of the promotion to the feeder cadre.
- f. The O.S.A.P. Rules 2000 read with O.C.S. (Criteria for Promotion) Rules 1992 neither prescribe any mechanism for enlistment of names of promotees nor provide any prescription for a Common Gradation list. There is absolutely no method prescribed for the manner in which the same shall be prepared when promotion is

effected from different posts in the feeder grade without common seniority. The so-called invention of common gradation of list sans any statutory backing acted as a super spreader of wrong at the level of Departmental Promotion Committee denting the morale of the O.P. No.3/RI group.

- g. The representation of the Opposite Party No.3 claiming seniority over the petitioner herein was rejected by the Home Department placing reliance on Rule 5(iv) and Rule 17(ii) of the O.S.A.P. Rules 2000 which is erroneous. The length of service in the feeder cadre, it is contended, cannot be the criteria for consideration of promotion has been shifted to the overall length of service impliedly and it is well fathomable.
- h. Since the provision of Rule 17(ii) of the O.S.A.P. Rules 2000 was declared unconstitutional and irrational vide order dated 08.05.2017 in O. A. No.941/2014 and the said order remained unchallenged and implemented by the State, the present writ petitioners lack merit in their claim. This spares no residual scope for the petitioner to resort to the tyranny of unnecessary litigation.
- i. The common order dated 26.10.2017 passed in O.A. No.1536(C) of 2014 was never challenged. Two years had been glided by since the said judgment and the same was implemented while preparing the gradation list dated 27.09.2019. The petitioner's believe that the finality does not decay is a flawed logic.
- j. Hence, the learned Tribunal's order regarding the recasting of seniority on the basis of the length of service is in conformity with law. The determination of inter se seniority in the rank of Asst. Commandant relying on the impugned Rule -17(ii) of Odisha Armed Police Service (Method of Recruitment and Conditions of Service)

Rules, 2000 which was struck down by the learned Tribunal and the said order dated 08.05.2017 in O.A. No.941 of 2014 has attained finality since it was not challenged in higher forums. It is stated that the State Government has implemented the same while recasting the *inter se* seniority in the cadre of Asst. Commandants.

- k. The contentions raised by the Petitioners pertaining to the applicability of Odisha Armed Police Service (Method of Recruitment and Conditions of Service) Rule, 2013, it is stated, are misconceived. It is contended that it is nothing but an act of unsettling the settled position in so far as the seniority is concerned and that too after marching some distance of time. Even if the said 2013 Rules are accepted, the Opposite Party No.3 will be still ahead in the race.

23. He further submitted that at the entry level itself Mr. Lingaraj Mishra and Binod Kumar Dash were appointed to a higher rank – **Sergeant** (keeping in mind Section 4 of the Orissa Military Police Act, 1946). The respective writ petitioners were appointed to the posts of Jemadars which is a rank below the Opposite Parties that too after 5 years(i.e., in 1990). If the case of the respective writ petitioners is accepted by this Hon'ble Court, then for posterity and for all times to come Jemadars will be placed higher than Sergeants in the gradation list even though their rank is lower than Sergeants as per the Act and Rules governing the field. This will be like the final nail in the coffin in terms of their promotional prospects are concerned. The learned Tribunal, therefore, has rightly decided the issue and the same may not be interfered with in exercise of writ of

certiorari which is reserved for invoking in compelling facts and circumstances.

24. While countering the argument of the petitioner he contended in plain terms that while dealing with a Writ of Certiorari under Article 226 of the Constitution of India, the jurisdiction of the Court is circumscribed. In **Syed Yakoob v. K.S. Radhakrishnan and others**⁹ it was held:

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued wherein exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.”

25. He sharpened his argument underlining the fact that the Orissa Special Arms Police (Method of Recruitment and Conditions of Service) Rules, 2013 are not applicable to the facts and circumstances of the present case. According to him, the 2013 Rules

⁹AIR 1964 SC 477

under Rule 1 (ii) mentions that these shall come into force on the date of publication in the Orissa Gazette, i.e., 07.08.2013. It cannot have retrospective operation as the Rules do not provide for such retrospectivity.

26.He further emphasised that the cause of action for filing O.A. No.1530 (C) of 2014 arose for the first time in the year 2008 when the list combining two separate cadres was published for the first time. Had there been no combined cadre list, it is contended, it would not have occasioned for the O.P. No.3/RI Group to raise any grievance. It was from 2008 onwards Sri Lingaraj Mishra and Sri Binod Kumar Das have kept filing representations ventilating grievance regarding the *inter se* seniority dispute. It was only after the rejection order against that representation in March, 2014 by the authority relying on Rule 17(ii) of the OSAP Rules, 2000, that O.P. No.3 and some other similarly placed candidates took a less travelled path by approaching the Tribunal. Since the order of rejection relied on the OSAP Rules, 2000, the applicant before the learned Tribunal had no other option but to challenge the said Rules. Since the Government itself had relied on the Rule-2000 while rejecting the representation in the year 2014, the contention of the writ petitioners regarding non-disclosure of 2013 Rules may not be of tremendous consequence as 2013 Rules are in no way concerned with the dispute being adjudicated before the learned

Tribunal. The issue of non-disclosure of 2013 Rules is being used as a smokescreen to wriggle out of the core issue which is regarding placing of original seniors as per the OSAP Act, 1946 as juniors in the subsequent gradation list. The entire exercise has supplanted drudgery into the system of promotion and defied a statutory mandate in a casual manner.

27. Assailing the contention of the petitioner he contended that even if the 2013 Rules are made applicable, the petitioner would still be junior to O.P. No.3/ Lingaraj Mishra and Binod Kumar Dash. In fact, Rule 8 of the Odisha Armed Police Services (Method of Recruitment and Conditions of Service) Rules, 2013 prescribes the procedure of selection by the Departmental Promotion Committee. For the sake of clarity and convenience, Rule 8 has been extracted hereunder:

“8. Procedure of selection by the Committee-(1) *The Committee shall ordinarily meet at least once in each year preferably in the month of January to prepare a list of officers, as are held by them, suitable for promotion to the next higher grade taking into account the existing and anticipated vacancies for the year.*

(2) *The Committee while considering the cases for promotion of suitable officers, shall follow the provisions of:-*

(a) *The Odisha Civil Services (Zone of Consideration for Promotion) Rules, 1988;*

(b) *The Odisha Civil Services (Criteria for Promotion) Rules, 1992; and*

(c) *The Odisha Civil Services (Criteria for Selection for Appointment including Promotion) Rules, 2003:*

Provided that in case of promotion to Group 'A' (Junior Branch) Grade, the Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder shall also be followed."

Rule 3 of the Odisha Civil Services (Criteria for Promotion) Rules, 1992 provides as follows:

"3. Notwithstanding anything contained in the Recruitment Rules:-

(a) All promotions to the posts or grades of different Services/Civil posts under the State Government shall be made by selection;

(b) Selection for such promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority and the names of persons included in the Select list shall be arranged in order of seniority in the feeder service or grade:

Provided that any junior officer of exceptional merit and suitability may be assigned a place higher than his seniors and in such cases the assignment of higher position to the junior officer shall be limited to the same batch or year of allotment except where an officer of the earlier batch or year of allotment is found unsuitable for promotion:

Provided further that where promotion is made from different services or posts and no common seniority among such officers exists, their names in the Select List shall be arranged on the basis of their merit adjudged during selection....."

28. A conjoint reading of the two Rules extracted hereinabove along with Section 4 of the Orissa Military Police Act, 1946 would make it amply clear that the writ petitioner, who was appointed as a 'Jemadar' on 03.09.1990, can never go above a 'Sergeant' who was appointed on 05.09.1985, if the promotion Rules are applied *stricto sensu*. He further stressed that if the interpretation as advanced by the petitioner is accepted, then Rule 3 of the Odisha Civil Services

(Criteria for Promotion) Rules, 1992 and its proviso would be redundant and the substantive provision in the 1946 Act would be violated. The O.P. No.3/RI group will have demoralising effect of huge magnitude on their career, if this Court interferes with the order of learned Tribunal.

29.Mr. Mohanty further tried to convince us that once the provision of Rule-17(ii) of OSAP Rules, 2000 is specifically declared ultra vires and quashed, the same is done away with from the Rules for all practical purposes and the same does not survive in the Rules to be quashed again and again on all subsequent occasions. More importantly, the legal framework still governing the field is Orissa Military Police Act 1946. Under Section-4, particularly, with the specific words used “in order of precedence”, it cannot be feeble and lose its effect irrespective of equalization of Scale of Pay under ORSP Rules.

30.He further added that when both OSAP Rules, 2000 and OAPS Rules 2013 are Recruitment Rules framed under Proviso to Article-309 of the Constitution, the Recruitment Rules cannot supersede anything prescribed under the Orissa Military Police Act, 1946. The OCS (Criteria for Promotion) Rules, 1992 are also rules framed under proviso to Article-309 of the Constitution. Since Rule 3 of the OCS (Criteria for Promotion) Rules, 1992 begins with a “Non-Obstante” clause and is specifically stated to have an overriding

effect over anything contained in the Recruitment Rules, the prescription under Rule 3(b)(2) will have superseding application over any provision of OAPS Rules including Rule 17 (ii).

In fact, Rule 11 of the OSAP Rules, 2000 has specified mandatory compliance of OCS (Criteria for Promotion) Rules 1992 and the same prescribes at Rule 3(b) "*Merit-cum-Suitability with due Regard to seniority*" the said criteria mandates "*Comparative Merit*" on all aspects among the persons eligible as the sole criteria for promotion. The State has produced the DPC file of Selection to the post of Asst. Commandant but has fairly submitted that the Comparative Merit of Candidates has never been measured/adjudged.

31. He further submitted that Rule 2013 came into force only on 07.08.2013 and the dispute regarding the *inter se* seniority in the present case arose much prior to that, i.e., in the year 2008-09. Therefore, the 2013 Rules could not have possibly been applied to the facts of the present case. Even if the 2013 Rules are applied, the writ petitioner cannot be made senior to the respective Opposite Parties in view of the submissions made hereinabove.

32. He contended that on perusal of the minutes of DPC held on 10.07.2008 which led to issuance of Promotion Notification dated 07.08.2008, it became crystal clear that there is no whisper about "Adjudging" comparative merit and placement given on the basis of

merit. Moreover, on perusal of the minutes of DPC, it became very much clear that DPC did not also refer to any “*combined Gradation list of Subedar and RI*” prepared in terms of the Rules and, hence, there is an anomaly in terms of *inter se* seniority and improper placement in the combined merit list.

33. He further added that on a combined reading of Rule-5(iv) & (iii) with the judgment delivered by this Court on 22.08.2007 in W.P.(C) No.8650 of 2003, which was challenged before the Hon’ble Apex Court in Civil Appeal filed by one Naba Kishore Dash (petitioner of W.P.(C) No.12484 of 2003), the issue for determination and cause of action involved in the said Writ Petition No.8650 of 2003 and Civil Appeal is completely unrelated to the present issue except regarding fixation at the ratio of 2:1 among Subedar and Reserve Inspector for promotion to Asst. Commandant which has been prescribed in the law.

34. It is emphatically stated herein that Rule-16 of OSAP Rules, 2000 prescribes for preparation of Gradation List by the “Appointing Authority” and in the instant case, the Home Department, Government of Orissa is the “Appointing Authority” for both the category of posts of “**Subedar**” and “**Reserve Inspector**”. The Rule does not prescribe for any “combined Gradation List” of “Subedar and Reserve Inspector”. The DPC minutes dated 10.07.2008 as obtained under the RTI Act does not refer to any such combined seniority list in the impugned Notification of promotion dated 07.08.2008. Hence, in the absence of

any such combined seniority list in existence to the knowledge of DPC, the mention/reference made in the Promotion Notification dated 07.08.2008 is unauthorized and baseless.

35. He submits that the delay in issuance of Notification for promotion in favour of Opposite Party No.3 and other similarly situated persons vis-a-vis the present petitioners to the feeder cadre has not been explained satisfactorily by the Opposite Party Nos.1 and 2. The stand taken by the Government at Para-3 of the Counter Affidavit filed in O.A. No.1530(C)/2014 is merely an eye wash bereft of any supporting document or material to prove that there was no vacancy available in the rank of R.I. at that point in time when the Petitioners were considered for Subedars. In the month of July, 2002 the DPC was held on 05.07.2002 and 10 Sergeants were found suitable for promotion. It cannot be accepted that all 10 vacancies in the post of R.I. became available only after September 2002, i.e., in between 1st of September to 31st of November' 2002 so as to facilitate the Government in Home Department to issue Promotion Notification in respect of 10 number of R.Is. only on 12.12.2002. If the posts were not available in the rank of R.I., the DPC could not have been held together. Hence, the issuance of Promotion Notification with respect to R.Is around 4 months after the Promotion Notification of Subedars is unexplained and creates a fortuitous circumstances.

36. Mr. Gautam Misra, learned Senior Advocate appearing for some of the intervenors has accepted the argument advanced by Mr. Asok Mohanty, learned Senior Advocate appearing for Opposite Party No.3.

37. In the present Writ Petition, the petitioner has challenged the order dated 26.10.2017 in O.A. No.1530(C) of 2014 whereas there is no challenge to the order dated 08.05.2017 passed in O.A. No.941 of 2014 and a batch of O.As. wherein Rule 17(ii) of Orissa Special Arms Police (Method of Recruitment and Condition of Service) Rules, 2000 was struck down. Thus, without a challenge to the common order in O.A. No.941 of 2014 wherein Rule 17(ii) has been struck down, the present set of writ petitions are lopsided and deserve to be dismissed.

Submissions by Opposite Party Nos.1 and 2

38. Mr. J. P. Patnaik, learned Additional Government Advocate appearing for the State submitted that the contention raised regarding no challenge made by Opposite Party No.3 to the promotional order dated 07.08.2008 is misconceived. Since both writ petitioner and Opposite Party No.3 belonging to two different categories of post, i.e., Subedar and Reserve Inspector respectively and they were considered suitable for promotion in the DPC held on 10.07.2008 and were promoted by a single notification of Government dated 07.08.2008 and the consequential single order issued by the State Police Headquarters dated 16.08.2008, the

Opposite Party No.3 could not have challenged his own promotion to the rank of Asst. Commandant.

39. Mr. Patnaik further submitted that there was no vacancy available in the rank of R.I. at that point in time when the Petitioners were considered for Subedars. When the vacancies for the R.Is were made available, they were promoted only on 12.12.2002. There was no intentional delay on the part of the Government to delay the promotion of the Opposite Party No.3 and other similarly placed candidates to Reserve Inspector.

40. With the introduction of OAPS (Method of Recruitment and Conditions of Service) Rules, 2013 notified vide Home Department Notification No. 27502-Home-SPS-Rule-0001/2013-H., OSAP (Method of Recruitment and Conditions of Service) Rules, 2000 was repealed. Since OSAP (Method of Recruitment and Conditions of Service) Rules, 2000 was repealed with effect from 07.08.2013 and, hence, it was not considered necessary to modify or amend the repealed Rule. However, the order of the learned Odisha Administrative Tribunal dated 26.10.2017 passed in O.A. No.1530(C) of 2014 and O.A. No.1536 (C) of 2014 have been implemented.

41. He contended that the Opposite Party No.3 was allegedly improperly assigned the placement in the promotion orders and accordingly represented for its correction/redraw and also challenged the order of rejection with prayer for appropriate assignment of placement in the

promotion Notification vide O.A. No.1530(C) of 2014. It is contended that the OSAP (Method of Recruitment and Conditions of Service) Rules, 2000 notified vide Home Department Notification No.55392-SAP-I-3/99-SPS dated 22.09.2000 was published in the Orissa Gazette Extraordinary No.1607 dated 03.09.2001. With the introduction of OAPS (Method of Recruitment and Conditions of Service) Rules, 2013, notified vide Home Department Notification No.27502-Home-SPS-Rule-0001/2013-H dated 27.07.2013, OSAP (Method of Recruitment and Conditions of Service) Rules, 2000 was repealed. Since, OSAP (Method of Recruitment and Conditions of Service) Rules, 2000 was repealed w.e.f. 07.08.2013, it was not considered necessary to modify/amend the repealed Rule. However, the order of learned O.A.T. dated 26.10.2017 passed in O.A. No.1530(C) of 2014 and O.A. No.1536(C) of 2014 have been implemented.

- 42.** Accordingly, the promotion which was made pursuant to OSAP Rules, 2000 was not challenged by anybody. However, one Shri Naba Kishore Das (Commdt. Retd.) had filed SLP (Civil) No.497/2008 before the Hon'ble Supreme Court of India against the fixation of ratio as 2:1 in promotion to the rank of Asst. Commandant. The said SLP has been dismissed as infructuous by the Apex Court.

Consideration:

43. Heard the parties at length. The petitioner has filed the present Writ Petition challenging the order dated 26.10.2017 in O.A. No.1530 (C) of 2014 with a prayer to quash the same *inter alia* on the ground that the same has been passed behind the back of the petitioner without effecting proper service. In fact, the petitioner was made Opposite Party No.4 in the said Original Application. As per the records, the notice was issued and the same was properly effected, however, he chose not to appear. This automatically devitalises his plea on this count.

44. As per records, the Opposite Party No.3 who is the contesting respondent herein was appointed as Sergeant on 05.09.1985 as per the provisions prescribed under the Odisha Special Armed Police Act, 1946. He was promoted to the rank of Reserve Inspector on 12.12.2002 and, later, to the rank of Assistant Commandant vide Notification dated 16.08.2008. The Petitioner (Respondent No.4 before the Tribunal) was appointed as Jamadar on 03.09.1990, which clearly reflects that the Opposite Party No.3 was both appointed earlier to the Writ Petitioner and also higher in rank as per Section 4(1) of the Orissa Military Police Act, 1946.

45. In fact, Section 4 of the Orissa Military Police Act, 1946 provides that Sergeants would be senior to Jemadars in the classes. It may be seen that the petitioner and some similarly placed candidates were promoted earlier by order dated 27.08.2002, though the Opposite Party

No.3 was appointed much before the petitioner and at a higher rank. The Opposite Party Nos.1 and 2, without assigning any plausible reasons for such delay, promoted the Opposite Party No.3 only on 12.12.2002 which is about four months later than the Petitioner's promotion, thereby, leading to an artificial and deliberate discrimination amongst them. The explanation for such artificial delay was offered by the Opposite Party Nos.1 and 2 are quite casual and unconvincing. The Opposite Party Nos.1 and 2 failed to adduce any documentary evidence to substantiate their plea that due to absence of promotional post in the rank of Reserve Inspector till their actual promotion on 12.12.2002, promotion couldn't be made from the rank of Sergeant, while no such constraints existed with respect to availability of promotional posts of "Subedar/Subedar Major" from the posts of "Deputy Subedar/Jamadar". There was no cogent explanation/reason/ground to delay the promotion of the Opposite Party No.3 by four months in order to put him behind the Petitioner in the order of seniority in the feeder cadre especially when the DPC was held on the same day.

- 46.** The Departmental Promotion Committee was held on 10.07.2008 for considering the promotion from the post of Reserve Inspector/Subedar to Asst. Commandant in the O.S.A.P. cadre for the year- 2008 as per the OSAP (Method of Recruitment and Conditions of Service) Rules, 2000. The entire exercise of promotion was based on the Rules of 2000

and Rules of 2013 is of little relevance in the present controversy. The exercise of promotion was based on the Rules of 2000, which was the subject matter of challenge before the learned Tribunal.

47. The petitioner and Opposite Party No.3 were promoted to the rank of Asst. Commandant on 07.09.2008 which is in accordance with the Home Department's Notification No.36581 dated 07.08.2008 through a combined gradation list. It is an undisputed fact that the mode and the channel of promotion of the Opposite Party No.3 and the petitioner are different. It is also an admitted fact that no common gradation list is prepared for the Sergeant/Reserve Inspector and Subedar/Jamadar (Deputy Subedar) in OSAP Battalion though Common Gradation list is maintained after promotion to the rank of Asst. Commandant. The level playing field like the comparative merit of both the feeder cadre, it appears, is missing in the present case. This makes it apparent that one group (i.e., the Jamadar/Subedar group) is stealing a march in the combined seniority list at the cost of the other group (i.e., Sergeant/Reserve Inspectors group) although the second group had put in more number of years in service. Further, their rank in initial appointment was also higher in status than the first group.

48. The Petitioner's primary contention and allegation against the Opposite Party No.3 is that he did not challenge the Petitioner's promotion from Jamadar to the feeder cadre of Subedar, but made a belated challenge at the time of their promotion to the post of the Asst.

Commandant and preparation of *inter se* seniority in the common cadre. We find that the Opposite Party No.3 and similarly placed candidates had no occasion to challenge the promotion of the petitioner to the rank of Subedar on 25.08.2002 and promotion to the rank of Asst Commandant on 07.08.2008 as there was no common gradation list at the earlier stages of promotion. Since the combined gradation list prepared for the common cadre of Assistant Commandant which gave rise to such anomaly and a cause for concern for the Opposite Party No.3. Then he challenged the same before the Tribunal and not prior to that.

49. The representation of Opposite Party No.3 claiming seniority over the petitioner herein was rejected by the Home Department by placing reliance on Rule 5(iv) and Rule 17(ii) of the O.S.A.P. Rules 2000, which is erroneous. This caused the Opposite Party No.3 to approach the learned Orissa Administrative Tribunal and the provision of Rule 17(ii) of the O.S.A.P. Rules, 2000 was rightly declared unconstitutional and irrational vide order dated 08.05.2017 in O.A.No.941/2014. The said order remained unchallenged and was, in fact, implemented by the State. We do not find any error in the finding returned by the learned Tribunal in this aspect.

50. It is an uncontroverted fact that a previous order of the learned Tribunal dated 08.05.2017 in O.A. No.941 of 2014 striking down the self-same Rule-17(ii) of Odisha Armed Police Service (Method of

Recruitment) Rules, 2000 was never challenged for over two years and has since attained finality. This stand is further substantiated by the fact that the said order was duly implemented by Opposite Party Nos.1 and 2 while preparing the gradation list dated 27.09.2019. Hence, the impugned order of the learned Tribunal reiterating its order dated 08.05.2017 in O.A. No.941 of 2014 regarding the recasting of seniority on the basis of the length of service is in conformity with law and merits no interference by this Court.

51. The contentions raised by the Petitioners pertaining to the applicability of Odisha Armed Police Service (Method of Recruitment and Conditions of Service) Rules, 2013 is also misconceived. This is nothing but an attempt to unsettle the settled position in so far as the seniority is concerned. At the entry level itself, Mr. Lingaraj Mishra and Binod Kumar Dash were appointed to a higher rank – **Sergeant** (keeping in mind Section 4 of the Orissa Military Police Act, 1946). As opposed to that, the respective writ petitioners were appointed to the posts of Jemadars which is a rank below the Opposite Party No.3 almost five years thereafter (i.e., in 1990). Accordingly, this Court is of the considered view that the learned Tribunal was right in deciding the issue against the writ petitioners and the same does not warrant any kind of interference by way of a writ of Certiorari.

52. Since the Order of rejection by the Opposite Party Nos.1 and 2 squarely relied on OSAP Rules, 2000, the Opposite Party No.3 had no other option but to challenge the said Rules. In fact, the Government had also relied on the Rules of the year 2000 while rejecting the representation in the year 2014. Hence, we find no merit in the contention of the Writ Petitioner regarding the non-disclosure of 2013 Rules and the same is of no consequence. We are of the opinion that the OAPS Rules, 2013 are in no way concerned with the present dispute.

53. It is reiterated that the Orissa Military Police Act, 1946 still governs the field even today, wherein the categorisation of the post prescribed under Section-4, particularly with specific the words used i.e., “*in order of preference*” cannot lose its effect irrespective of equalisation of scale of pay under ORSP Rules.

54. The OSAP Rules, 2000 and OAPS Rules, 2013 are recruitment Rules which cannot supersede anything prescribed under the Orissa Military Police Act, 1946. The Rules of 2000 and OCS Rules of 1992 are Rules framed under Article 309 of the Constitution of India. Rule 3 of the O.C.S. (Criteria for Promotion) Rules, 1992 begins with a “Non-obstante” clause and is specifically stated to have overriding effect over anything contained in the Recruitment Rules. The prescription under Rule 3 (b) (2) provision will thus have

superseding application over any provision of OAPS Rules including Rule 17. When Rule 11 of the OSAP Rules, 2000 specifies mandatory compliance of O.C.S. (Criteria for Promotion) Rules, 1992 and the same prescribes at Rule 3(b) “Merit-cum-suitability with due regard to seniority”, the said criteria mandates a “comparative merit “on all aspects among the candidates eligible for promotion. Furthermore, the State has submitted the DPC file of Selection before this Court and has fairly submitted that the comparative merit of the candidates has not been assessed. Rule 3(b)(2) clearly articulates that if there is no common seniority and the promotion is made from different sources or posts their names should be arranged on the basis of merit adjudged during selection. Unfortunately, the same has not been done in the present case. The Apex Court has succinctly echoed similar sentiments in ***Union of India vs. Lt. Gen. Rajendra Singh Kadyan***¹⁰. On bare perusal of the minutes of the DPC held on 10.07.2008 which led to the issuance of promotion notification dated 7.08.2008, it is very clear that there is no whisper about adjudging of comparative merit and the said DPC did not refer to any Combined Gradation List of Subedar and RI prepared in terms of Rules and, accordingly, placement was made.

¹⁰AIR 2000 SC 2513

55. With respect to exercise of powers of this Hon'ble Court, reliance can be placed on the judgment of the Hon'ble Supreme Court in **B.K. Muniraju v. State of Karnataka**,¹¹, the relevant portion stands extracted below:

"22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

23. It is useful to refer to the decision of this Court in *Surya Dev Rai v. Ram Chander Rai*⁵ wherein, in para 38, it was held as under: (SCC p. 695)

"38. (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction—by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction—by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

24. It is clear that whether it is a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. It is

¹¹(2008) 4 SCC 451

also clear that the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.”

56. It is also apposite to refer to the following observations made by the

Hon’ble Supreme Court in **Prakash Ratan Sinha v. State of Bihar**¹²:

12. *The argument of the learned counsel for the appellant, basically is that, the administrative decision taken by the respondents is unfair, unreasonable and in breach of the principles of natural justice. The administrative decision taken by the respondents is within the realm of public law and therefore, the decision ought to have been taken in a fair and reasonable manner. This was more necessary because the action cancelling the promotion of the appellant had civil consequences in the sense that it not only puts an end to the right of the appellant and also his further career prospects. Therefore, the respondents are under an obligation to take all decisions in a fair and lawful manner by adhering to the rules of natural justice.*

13. *The law in this regard has been settled by several decisions of this Court. The principle that emerges from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made.*

14. *Corollary principles emanating from these cases are as to what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case and that it is only where there is nothing in the statute to actually prohibit the giving of an opportunity of being heard and on the other hand, the nature of the statutory duty imposed on the decision maker itself implies an obligation to hear before deciding. These cases have also observed, whenever an action of public body results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person.*

¹²(2009) 14 SCC 690, at pg. 693

15. *This Court in Canara Bank case² has stated that: (SCC p. 570, para 15)*

“15. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue.”

Even an administrative order, which involves civil consequence, must be consistent with the rules of natural justice.

57. Judicial review is permissible only to the extent of finding whether there is any illegality or arbitrariness in the decision-making process and not the decision as such. In that view of the matter, I think there is no justification for this Court to interfere with the impugned order dated 26.10.2017 passed by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1530(C) of 2014 and O.A. No.1536 (C) of 2014. Accordingly, all the Writ Petitions are dismissed without cost.

58. Before parting with the case, I hasten to observe that considering the degree of sensitivity attached to the posts and each of the Officer's feeling that he fails to get the best deal by the Government or the members of the force are being deprived of being led by the best men will certainly weaken the esteem and morale of the force. Therefore, the standards to be adopted and applied should be of the highest order so as to avoid such an impression within the force.

.....
(S. K. Panigrahi, J.)

Orissa High Court, Cuttack
The 25th June, 2021/AKK/LNB/AKP

