



IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.13391 of 2023

Bibhuti Bhusan Moharana and others ***Petitioners***

*Mr. Bhabani Shankar Tripathy-1, Advocate
along with Mr. Atul Tripathy, Advocate*

Mr. Manmay Kumar Dash, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

Mr. Pitambar Acharya, Advocate General along with

Mr. Arnav Behera, Addl. Standing Counsel and

Mr. Sailaza Nandan Das, Addl. Standing Counsel for P.Nos.1 to 3

Mr. Manoj Kumar Mishra, Sr. Advocate along with

Mr. Tanmay Mishra, Advocate for O.P. Nos.4,6,7 & 11

Mr. Sameer Kumar Das, Advocate for O.P. Nos.9,12,13,18 & 19

Mr. Biswabihari Mohanty, Advocate for O.P. No.8

Ms. Pami Rath, Senior Advocate along with

Ms. Sucheta Gumansingh, Advocate for O.P. No.15

CORAM:

HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

Order No.

08.

ORDER

11.09.2024.

**W.P.(C) No.13391 of 2023 & I.A. Nos.2243, 2577,
10603, 10754 and 1635 of 2024**

This matter is taken up through Hybrid Mode.

2. Challenging the Gradation list of Deputy Commandant in the Rank of OAPS (SB) Officer dated 30.12.2022 under Annexure-10, publication of final Gradation list of Assistant Commandant in Odisha Special Arms Police Cadre dated 10.07.2018 under Annexure-6 and final Gradation list of OAPS (SB) Officers i.e. Deputy Commandant dated 29.01.2024 under Annexure-17, the petitioners have filed this writ petition seeking a direction to the opposite party nos.1 to 3 to recast/modify the placement of the petitioners above the opposite party nos.4 to 22.



3. Sri Bhabani Sankar Tripathy-1, learned counsel for the petitioners submitted that while granting promotion to the rank of Assistant Commandant in Odisha Special Arms Police Cadre (“OAPS Cadre” in short), the petitioners have been shown above the opposite party nos.4 to 22 as per *inter-se* seniority in the combined Gradation list in the year 2009 relying on Rule 3 of the Odisha Special Armed Police (Method of Recruitment & Conditions of Service) Rules, 2000 (for short “the OSAP Rules, 2000). It is further submitted that in “Group-B”, there are two categories of posts, namely, Subedar/Subedar Major and Reserve Inspector. Rule 5 of the said Rules, which deals with the ‘Method of Requirement’, specifies that the promotion to the Rank of Assistant Commandant shall be made from these two categories maintaining ratio of 2:1. In the said Rules, Rule 17 prescribed determination of *inter-se* seniority in the Rank of Assistant Commandant on the basis of length of service in the Rank of Subedar/Subedar Major and Reserve Inspector.

3.1. The aforesaid OSAP Rules, 2000 has been repealed and in its place the Odisha Arms Police Services (Method of Requirement conditions of Service) Rules, 2013 has been promulgated with effect from 07.08.2013.

3.2. A final Gradation list of the Assistant Commandant in (OAPS Cadre) was published on 23.07.2018 (Annexure-6), wherein the petitioners have not been placed correctly. Another final Gradation list of OAPS (SB) Officers Deputy Commandant has been published on 30.12.2022 (Annexure-10), wherein the positions of the present petitioners were shown below the opposite party



nos.4 to 22. Further Final Gradation List of OAPS (SB) Officers, *i.e.*, Deputy Commandants as on 16.10.2023 has been published *vide* Office Memorandum dated 29.01.2024 (Annexure-17). In the said Gradation list also the petitioners have not placed at appropriate place in spite of objections raised before the Competent Authority right from the date of publication of final Gradation List on 23.07.2018 *vide* Annexure-6.

3.3. It is submitted that since the final Gradation List as referred to above have not been appropriately drawn up, the petitioners deprived of being considered for promotion to the Rank of Commandants. Referring to the Odisha Special Armed Police (Method of Requirement and Conditions of Service) Rules, 1988, Sri Bhabani Sankar Tripathy-1, learned counsel appearing for the petitioners submitted that in “Group-A”, there are three categories of posts. Since the seniority of the petitioners in the Gradation lists of Assistant Commandant and Deputy Commandant have not yet been modified/ rectified, the petitioners are deprived of being considered for the promotional to the Post of Commandant.

4. This Court considering the grievance of the petitioners passed the following orders on 09.02.2024:

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4. *Considering such submissions, he is granted two weeks’ time to file is objection.*

5. *List this matter on 20th of February, 2024.*

6. *As an interim measure, it is directed that any decision taken in the meantime, shall be subject to the final outcome of the present writ application.***”*



4.1. However, the aforesaid order has been modified, while considering I.A. No.2243 of 2024 vide order dated 15.02.2024, which is to the following effect:

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2. *This interlocutory application has been filed with a prayer to direct the Opposite Parties not to proceed in the process of DPC pursuant to nomination letter dated 07.02.2024.*

3. *Mr. B.S. Tripathy, learned counsel for the Petitioners submitted that during pendency of the present writ petition, nominations have been sent on 07.02.2024 for promotion to the Post from Dy. Commandant.*

4. *Copies of the interlocutory application have been already served on the learned counsel for the private Opposite Parties.*

5. *Learned counsels appearing for the private opposite parties want to file their objection to the aforesaid interlocutory application.*

6. *Accordingly, the objection be filed within three days.*

7. *List this case on 20th February 2024 as fixed earlier.*

8. *As an interim measure, it is directed that in the event DPC is convened, no final decisions be taken till the next date. ****”*

4.2. However, this Court has passed following further orders on 27.08.2024 after taking note of aforesaid orders:

“***7. *It is submitted at the Bar that though liberty was granted to the opposite parties-State to convene DPC, no DPC has yet been convened, which fact has been affirmed by Ms. Saswata Patnaik, learned Additional Government Advocate.*

8. *Mr. Bhabani Sankar Tripathy-I, learned counsel appearing for the petitioner vehemently opposed for vacation of interim order already granted, in as much as in the event of promotions are granted, the present petitioners would highly be prejudiced.*

9. *Considering the arguments by the learned counsel for the parties, interest of justice shall be best served if the opposite*



*parties-State shall comply with the order dated 15.02.2024 within a period of 15 days hence. However, it is made clear that results of such DPC may not be published till the next date.***”*

5. Sri Bhabani Sankar Tripathy-1, learned counsel for the petitioners insisted for final hearing of the matter instead of modifying the interim orders passed by this Court and submitted that serious prejudice would ensue, if the results of the DPC is directed to be published, as the petitioners are seniors to the opposite party nos.4 to 22.

6. Sri Pitambar Acharaya, learned Advocate General assisted by Sri Arnav Behera and Sri Sailaza Nandan Das, learned Additional Standing Counsel appearing for the State-opposite party nos.1 to 3 submitted that there are nine numbers of vacancies in the post of Commandants. This being the highest post in “Group-A” under OAPS cadre, which required to be filled up at the earliest, as their services are mostly required in the Naxal infected areas of this State. By not able to fill up the said posts immediately, the functioning of administration of the State gets seriously prejudiced as the State is deprived of valuable services of such highly placed personnel.

6.1. He further submitted that the petitioners have only challenged the Gradation lists in the present writ petition. Merely claiming seniority shall not entitle them to claim promotion to the rank of Commandant. However, it is the Merit-cum-Seniority, which is required to be considered along with all other eligible Deputy Commandants.



6.2. He has also submitted that pursuant to order dated 27.08.2024 of this Court, the Departmental Promotion Committee (DPC) has been convened and the results have been put on hold. At this juncture, he stated that this matter being urgent and the main petition is required to be taken up for final disposal, granting liberty to the State to fill up the aforesaid nine vacant posts in the Rank of Commandant, would no way prejudice the claim of the petitioners, rather by not allowing to utilize the valuable services of such personnel in the higher ranks the State is put to inconvenience.

7. Mr. Manoj Kumar Mishra, learned Senior Advocate along with Mr. Tanmay Mishra, learned counsel appearing for the opposite party nos.4, 6, 7, 9 and 11 submitted that by not directing to publish the result of DPC, thereby restraining the State not to fill up the highest rank in "Group-A", *i.e.*, the Rank of Commandant, as this State would not be in a position to utilize this services of not only the petitioners but also the opposite party nos.4 to 22. If the promotion to the Rank of Commandant is delayed, some of the opposite parties may not get a chance to serve in the rank of Commandant as they would retire during the pendency of dispute for no fault of theirs.

7.1. It is submitted that by directing to fill up the vacant nine posts in the Rank of Commandant would enable the State to consider the promotions of Assistant Commandant, who are waiting for their turn to be considered for promotion to the Rank of Deputy Commandant. If this Court does not modify the earlier interim orders suitably, the entire chain of promotions in three categories of "Group-A" posts shall be locked up.



7.2. He further submitted that in the event, ultimately the writ petition is dismissed then career of the opposite parties would have adversely affected. Therefore, irreparable damage would cause if they are found to be eligible for promotion to the Rank of Commandant in the DPC held in August, 2024.

8. Ms. Pami Rath, learned Senior Advocate being assisted by Ms. Sucheta Gumansingh, learned counsel appearing for the opposite party no.15 submitted that non-publication of result of the DPC, which is stated to have convened in the month of August, 2024 pursuant to this Court's order would cause not only prejudice to the opposite parties but also inconvenience to this State as suitable and eligible personnel in the rank of Deputy Commandants for promotion to the Rank of Commandant would not get the chance to serve the State.

9. Sri Sameer Kumar Das, learned counsel appearing for opposite party nos. 9, 12, 13, 18 & 19 submitted that he has already filed Counter affidavit elaborately opposing the claim of the petitioners. He has brought to the notice of this Court to the resolution dated 09.09.2021 *vide* Annexure-9, wherein the General Administration and Public Grievances Department has brought out procedure for fixation of *inter-se* seniority which *inter alia* provided as follows:

“*****

4. *The inter-se-seniority of the employees appointed under Rehabilitation Assistant Rules in a calendar year shall fixed below the persons recruited and appointed in that grade or cadre in that particular year.*

5. *In case of merger of two or more cadres, where the inter-se seniority is required to be fixed among the persons appointed out of two or more select lists prepared in a particular calendar*



*year, the appointed out of the select list prepared earlier shall be placed en-block senior to the persons appointed out of the select list prepared subsequently and so on.******

9.1. In view of such unambiguous procedure with respect to merger of cadres *vis-à-vis* seniority, the Gradation list prepared by the appropriate authority needs no interference. He has submitted that the entries into service of petitioners as well as the opposite parties are made from two different sources, namely, Subedear/Subdear Major and Reserve Inspector. Therefore, the date of publication of the merit list in the selection of the Central Selection Board is the criteria for determination for their *inter-se* seniority. The opposite parties were selected and appointed as Sergeants pursuant to the merit list of the Central Selection Board held on 04.01.1994/05.01.1994. On the contrary, the merit list of the writ petitioners were published in the Central Selection Board dated 22.01.1994. Therefore, these opposite parties are senior to the petitioners.

9.2. He would urge that the writ petitioners being appointed later to the opposite party Nos.4 to 22, they are en-block juniors to these opposite parties. He, therefore, submitted that till the final disposal of this writ petition, the entire chain of promotion not only in the rank of Commandant (Group-A) but also in the rank of Deputy Commandant as consequential to their promotion to the rank of Commandant need not be stalled, as the DPC has already been convened by virtue of orders of this Court.

10. Sri Biswa Bihari Mohanty, learned counsel appearing for the opposite party No.8 submitted that the writ petition is itself being



defective is liable to be dismissed *in limine*. He emphasised on prayer No.(ii) of the writ petition, which reads as follows:

“ii. Issue Rule NISI calling upon the Opposite Parties to show cause as to why the impugned gradation list dated 30.12.2022 at Annexure-10, gradation list dated 10.07.2018 at Annexure-6 and gradation list dated 29.01.2024 at Annexure-17 shall not be declared as illegal with respect to petitioners and private opposite parties being contrary to law and as to why the same shall not be re-casted/modified placing the petitioners above the private opposite parties.”

10.1. He submitted that the Gradation list under Annexure-6, which is sought to be recasted/modified in the present writ petition, is also subject matter of challenge in WPC (OAC) No.3649 of 2017, which is pending before this Court as on date. Simultaneous proceedings could not have been pursued on the self-same cause by way of using recourse of the writ petition, which deserves to be considered as abuse of process of law.

10.2. He submitted that the addition to challenge to the Gradation list prepared in connection with the Assistant Commandants, the petitioners have also challenged the Gradation list of the Deputy Commandant in the present writ petition. Therefore, the balance of convince leans in favour of the opposite parties and against grant of stay of promotion to the Rank of Commandant. Reiterating the stand taken earlier by other counsel referring to Rules, 2013, it is submitted that the promotion to the Rank of Assistant Commandant was considered by way of merger of two categories *i.e.* Subedar/Subedar Major and Reserve Inspector.



10.3. He submitted that Rule 8 of the OSAP Rules, 2000 and Rule 8 of Rules, 2013 deal with the procedure of selection by the Committee, *i.e.*, the Departmental Promotion Committee (DPC) constituted under Rule 7. In the said Rule 8, it is mentioned that while considering the cases for promotion of suitable Officers, the Committee is required to follow the provisions of (a) The Odisha Civil Services (Zone of Consideration for Promotion) Rules, 1988, (b) The Odisha Civil Service (Criteria for Promotion) Rules, 1992 (c) The Odisha Civil Services (Criteria for Selection for Appointment including Promotion) Rules, 2003.

10.4. Sri Biswa Bihari Mohanty submitted that Rule 3 of the Odisha Civil Services (Criteria for Promotion) Rules, 1992 deals with criteria for promotion, which prescribes as follows:-

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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.

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 at higher rank.

(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 the Selection Board, as the case may be, shall scrutinise preceding five years available Confidential Character Rolls 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.]

Note 1.— The expression other documents means papers of whatsoever nature having bearing on the performance and conduct of eligible officers like C. B. I. or Vigilance reports, papers relating to departmental action and other confidential reports having nexus with an officer's performances which might have been prepared after giving an opportunity to an officer of being heard and not reflected in his C. C. R's. or service records.

*Note II.— The expression “preceding five Years” means the Five years preceding the year in which the Selection Committee, Departmental Promotion Committee or Selection Board as the case may be, sits, but where the said committee sits for more than once such five years shall be reckoned from the date of its first meeting. ***”*



10.5. Referring to the said provision, it is emphatically submitted that it is not the seniority which is primary consideration; rather it is the merit and suitability for consideration of promotion to the Rank of Commandant. The DPC is required to consider the merit and suitability first and then seniority shall Further the names of persons included in the select list would be arranged in order of seniority in the feeder service or grade. Stemming on second proviso to the aforesaid Rules, Mr. Biswa Bihari Mohanty submitted that where the promotion is made from different services of posts and no common seniority among such officers exists their names in the selected list shall be arranged on the basis of their merit adjudged during selection. Taking into consideration the modalities prescribes under Rule 8 of the Rules, 2013, the DPC is required to follow the method scrupulously.

10.6. It is further submitted that the petitioners have filed an Interlocutory Application bearing I.A. No.2243 of 2024, wherein they have enclosed letter dated 07.02.2024 issued by the Additional D.G. of Police Headquarters Odisha, Cuttack and marked as Annexure-18. In the said letter, a list of Deputy Commandants for promotion to the Rank of Commandant for the year 2024 has been enclosed. The said list clearly depicts the names of the petitioners being included for consideration of promotion to the Rank of Commandant. He submitted that as learned Advocate General has already made statement before this Court that nine posts in the Rank of Commandant are lying vacant which requires filling up of said posts immediately to meet exigency of service. Therefore, in compliance of requirement in terms of Odisha Civil Services (Zone



of Consideration) Rules, 1988 read with Odisha Civil Services (Criteria for Promotion) Rules, 1992, twenty-seven names are suggested. He submitted that the petitioners are well aware of the fact that they have been found eligible on merit as well as suitability and their names are placed along with other personnel of the Rank of Deputy Commandant in the list enclosed to letter dated 07.02.2024 (Annexure-18). Therefore, he submitted that the petitioners should not have any grievance for publication of results of the DPC, which is stated to have been held in the month of August, 2024 pursuant to order of this Court on 27.08.2024.

11. Heard Mr. Bhabani Shankar Tripathy-1, learned Advocate along with Mr. Atul Tripathy, learned counsel and Mr. Manmay Kumar Dash, learned counsel appearing for the petitioner; Mr. Pitambar Acharya, learned Advocate General assisted by Mr. Arnav Behera, learned Additional Standing Counsel appearing for the State; Mr. Manoj Kumar Mishra, learned Senior Advocate assisted by Mr. Tanmay Mishra, learned counsel appearing for opposite party nos.4,6,7 & 11; Ms. Pami Rath, learned Senior Advocate assisted by Ms. Sucheta Gumansingh, learned counsel appearing for opposite party no.15; Mr. Sameer Kumar Das, learned counsel appearing for Opposite party nos.9,12,13,18 & 19 and Mr. Biswabihari Mohanty, learned counsel appearing for opposite party no.8.

12. Having considered rival contentions and submissions made by the respective parties, this Court on perusal of Rule 8 of the OSAP Rules, 2013 finds that the Departmental Promotional Committee (DPC) is required to be apprised of the Rules, 1988,



Rules, 1992 and the Rules, 2013. There is no dispute that the DPC was convened in the month of August, 2024.

13. On consideration of the submission made by the learned Advocate General and other counsel for respective parties, this Court feels it expedient that since there is exigency of public service and the post of Commandant, being highest in the Group-A as per Rules, 2000, is required to be filled immediately to avail the benefit of effective services of personnel in important disciplined service. It is common knowledge that certain parts of Odisha is Naxal infected, which requires constant vigil and supervision of the highest Rank Officer. As many as nine posts could not be filled up which are left vacant because of interim orders passed by this Court considering the challenge made by the petitioners with regard to improper placement in the seniority list/ Gradation list.

14. This Court appreciates the arguments advanced by the learned counsel for the opposite parties that while considering the promotion to the Rank of Commandant, the Rules, 1988, Rules 1992 and Rules, 2013 are required to be followed. This Court has the occasion to look into Rule 3 of the Odisha Civil Service (Criteria for Promotions) Rules, 1992, whereby the selection for promotion to the Rank of Commandant is required to be made on the basis of merit and suitability with due regard of seniority. Therefore, *prima facie* this Court is of the view that the consideration of seniority of petitioners would not be the sole criteria for promotion to the rank of Commandant. This apart, the petitioners have brought to the notice of this Court by enclosing letter in Annexure-18 to show that their names are also taken into



account for the purpose of consideration to the post of Commandant.

15. In such view of the matter, the seniority in the Gradation list being not the primary concern for the purpose of promotion to the Rank of Commandant challenging to the Gradation list in the Rank of Assistant Commandant as well as the Deputy Commandant, would not weigh in the mind of this Court as the sole criterion for promotion in question.

16. This Court is apprised of by Sri Biswa Bihari Mohanty, learned counsel for the opposite party No.8 that the petitioners have brought to the notice of this Court by way of letter dated 07.02.2024 at Annexure-18 enclosed to I.A. No.2243 of 2024 that their names find place in the list of Deputy Commandants for promotion to the Rank of Commandant in the year 2024. As per the relevant rules as discussed above for filling up nine posts, twenty-seven personnel in the rank of Deputy Commandant have been considered on merit and suitability. Since the names of the petitioners finds place in the said list and their cases have been placed before the DPC which was convened in the month of August, 2024, publishing the result and filling up the posts of Commandant would not in any manner prejudice none of the parties.

17. However, considering the challenge as to seniority position as assailed by the petitioners in the writ petition bearing WPC(OAC) No.3649 of 2017 is pending, which relates to Gradation list in the Rank of Assistant Commandant. The writ petition, being WPC (OAC) No.3649 of 2017, which relates to the Gradation list of the Rank of Assistant Commandant, this Court



feels that the outcome of said case would have bearing on the present matter which relates in addition to modification of seniority in the rank Assistant Commandant, prayer is also made to rectify the seniority in the rank of Deputy Commandant. Since WPC (OAC) No.3649 of 2017 being filed earlier in point of time, the present matter can be taken up after disposal of said case or analogously. This Court finds force in the submissions of Sri Biswa Bihari Mohanty, learned counsel appearing for the opposite party No.8 that in the event, WPC(OAC) No.3649 of 2017 is allowed in favour of the petitioners, then their seniority would have to be adjusted in the rank of Deputy Commandant accordingly.

18. Sri Sameer Kumar Das, learned counsel appearing for the opposite party nos.9,12,13,18 & 19 submitted that in addition to the aforesaid writ petition, other writ petitions having connection to the present writ petition are also pending before this Court which find mentioned in Office Memorandum dated 30.12.2022 (Annexure-10), *i.e.*, W.P.(C) No.6844/2018, W.P.(C) No.19023/2019, W.P.(C) No. 13517/2019, W.P.(C) No.7085/2020, W.P.(C) No.1011/2020 W.P.(C) No.5222/2020 and W.P.(C) No.1550/2020. He is submitted that these writ petitions are also required to be heard analogously.

19. This Court is of the considered view that stalling the entire process of promotion to the Rank of Commandant shall be prejudicial to the public interest and national interest and would inure to benefit of none. Therefore, it is deemed appropriate to modify earlier interim orders. Since the DPC has already been convened in the month of August, 2024 and outcome of said DPC has not been published, it is directed that the DPC may publish the



result and the opposite party Nos.1 to 3 may take steps to fill up the nine vacant posts in the Rank of Commandant as stated by the learned Advocate General. This Court also appreciates the statement of the learned Advocate General that the promotions so given to the personnel in the Rank of Commandant shall be subject to result of the writ petitions, which are pending before this Court.

20. As the bar requested for listing all the matters for analogous hearing, this Court finds that it is assigned with the subject matter as follows:

*“1. Writ Petitions regarding Service, Pension Arrear Salary, Gratuity, Provident Fund, Medical Reimbursement & other Terminal Benefits of the employees relating to Departments/Organisations other than Educational Institutions (except against Orders of SAT & CAT) from the year 2021 to 2023.***”*

21. The Registry is instructed to place this record before the Hon’ble Chief Justice on the administration side for obtaining approval for placing the matters before appropriate Bench.

(M.S. Raman)
Judge

Suchitra