

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.561 of 2022

Basanta Manjari Baskey ***Petitioner***

Mr. Aditya N. Das, Advocate
-versus-

State of Odisha and another ***Opposite Parties***

Mr. Y.S.P. Babu, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
15.03.2022

Order No.

02.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. Heard learned counsel for the Petitioner as well as learned counsel for the State. Perused the record as well as other relevant documents on record.

3. The present writ petition has been filed by the petitioner with the following prayer:-

“i) Admit and allow the present writ petition:

ii) Hold/Direct/Order that the impugned order of reversion as mentioned in Para-5 of the office order No.29725/Pers-I dt.16.08.2021 as at Annexure-6 and order of reversion under Annexure-8 was/is bad, illegal and not sustainable in the eye of law and thereby quash the same so far as the petitioner is concerned and thereby direct the Opposite Parties to

restore the petitioner in the post of Havildar from the date of reversion and allow to discharge as duty promoted Havildar forthwith with all consequential service and financial benefits;

iii) Direct/Order the Opposite Parties to absorb the petitioner in the present police district i.e. in the Puri District of Police, in terms of the office order No.29725/Pers-I dt.16.8.2021 read with Police Circular Order No.342/2013 and thereby allow the petitioner to continue in his present post and place for all purpose.

iv) Hold/order/direct that the impugned order dt.30.12.2021 was/is bad, illegal and nonest in the eye of law and thereby quashed the same;

v) And pass any other order(s) direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

4. The factual backdrop of the case as held in the writ petition is that pursuant to the advertisement published in the year 2001-02, the petitioner submitted his application for the post of Constable. After she was selected by following due procedure, she/he was given appointment as Constable in Bhadrak district and accordingly the petitioner joined in service in the office of the Superintendent of Police, Bhadrak on 25.01.2002. While she was continuing, she/he was sent for training at P.T.C., Anugul and successfully completed her training and she again joined in her/his post.

5. While working, the petitioner after being selected by the Selection Board given promotion to the post of Lance Naik vide order dated 01.03.2011. Thereafter, the petitioner again considered

for promotion to the post of Havildar by order dated 07.11.2012. Since then she/he is discharging her duty as Havildar.

6. It is submitted by learned counsel for the petitioner that while the matter stood thus, the D.G.-cum-I.G. of Police, Odisha, Police Headquarter, Cuttack-Opposite Party No.2 in the year 2021, Police Selection Board met on 26.10.2021 to look into the irregular promotion of Constable to the rank of APR Havildar/ C.I. Havildar/ Band Havildar beyond their parent cadre and found the Havildars have got promotion irregularly beyond their cadre and found that some persons have been irregularly promoted including the present petitioner. Accordingly, a decision was taken to revert the present petitioner to the post of Constable with immediate effect by order dated 26.10.2021 by the RSI, Jagatsinghpur. He further submits that the petitioner was appointed after she/he was selected by following due procedure and further she was given promotion on being selected by the selection board duly constituted by the authority. However, the authorities have taken action against the petitioner and the petitioner has been reverted without providing any opportunity to show-cause/hearing in the matter. Accordingly, learned counsel for the petitioner submits that the impugned order of reversion is unsustainable in the eye of law since the same has been passed without following natural justice.

5. Learned counsel for the State, on the other hand, submits that the police board which met on 26.10.2021 reviewed the cases for promotion and found that some Constables have been irregularly promoted to the post of Havildar. Accordingly, the decision was taken by the Board to revert those Havildars to the post of Constable, which includes the present petitioner also. He further submits that the promotion earlier given irregularly by flouting the provision of rules

i.e. Odisha Police Service (Method of Recruitment and Condition of Service of Constables) Order, 2006.

6. In such view of the matter, learned counsel for the State submits that the impugned order does not warrant interference by this Court at this stage.

7. Having heard learned counsel for the parties, this Court is of the considered view that no doubt, it is open for the parties to review their decision to find out as to whether the promotion given was regular or not, however, while giving effect to decision taken by the authorities should have given an opportunity to show-cause/ hearing to the Petitioner to present his/her case before passing any order, which would adversely affect to the petitioner. Therefore, the order dated 26.10.2021 under Annexure-8, which has been passed by the Superintendent of Police, Jagatsinghpur is unsustainable in the eye of law inasmuch as the same has been passed by flouting the provision of law and without providing any opportunity to the petitioner to show-cause. Further the action of the Opposite Parties are bad in view of the fact that the petitioners were appointed by following valid selection procedure. Therefore, the Opposite Parties were duty bound to provide an opportunity before reverting the petitioner to the post of Constable.

8. Considering the submissions and the facts and circumstances of the present case, this Court is of the considered view that the order dated 26.10.2021 under Annexures-6, 8 and 9 is unsustainable in law and the same is liable to be set aside. However, it is open for the opposite parties to proceed further in the matter only after providing an opportunity to show-cause to the petitioner and similarly situated persons in other words, they can proceed further from the stage of the decision taken by order dated 26.10.2021 only after complying the

principle of natural justice and by giving opportunity to show-cause to the petitioner and the similarly situated persons.

9. With the aforesaid direction, the writ petition stands disposed of.

10. Urgent certified copy of this order be granted on proper application.

(A.K. Mohapatra)
Judge

Jagabandhu

