

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.A. Nos.294, 310, 311, 312, 313 and 304 of 2018*****Simanchal Sadangi and others
(In W.A. No.294 of 2018)******Rajesh Kumar Aich and others
(In W.A. No.310 of 2018)******Suvajit Mohanty
(In W.A. No.311 of 2018)***

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Appellants***Nihar Ranjan Pradhan and others
(In W.A. No.312 of 2018)******Pratap Keshari Mohapatra
(In W.A. No.313 of 2018)***

Mr. Prafulla Kumar Rath, Advocate

***Sk. Daud and another
(In W.A. No.304 of 2018)***

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Appellants

Mr. Kali Prasanna Mishra, Senior Advocate

-versus-***Chief Security Commissioner, East
Coast Railway, RPF, Bhubaneswar,
Union of India represented through the
General Manager, East Coast Railway,
and others***

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Respondents**Mr. Chandrakanta Pradhan, Senior Panel Counsel,
Government of India-Respondent No.1
(In W.A. Nos.311 and 313 of 2018) ,****Mr. Sanjib Swain, Central Government Counsel for Respondent
No.1 (In W.A. No.312 of 2018) and****Mr. P. S. Nayak, Central Government Counsel for Respondent
Nos.1 to 4 in (W.A. No.294 of 2018)**

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

**ORDER
01.12.2022**

Order No.

Dr. S. Muralidhar, CJ.

10. 1. These writ appeals are directed against a common judgment dated 27th April, 2018 passed by the learned Single Judge in the writ petitions filed by the Appellants praying for a direction to the Opposite Party-East Coast Railway (ECR) to give promotions to the Appellants to the post of Assistant Sub-Inspector (ASI) of the Railway Protection Force (RPF) on the same date that the private Respondents were so promoted with all consequential monetary reliefs.
2. The background to the present writ appeals are that all the Appellants have been serving either as Constables or Head Constables in the RPF. In terms of Rule 72 of the Railway Protection Force Rules (RPF Rules), in order to be considered for promotion to the rank of ASI, a constable had to complete 10 years of service. The case of the present Appellants was that although they had submitted their willingness to participate in the selection process, they were not allowed to do so since, after excluding the period of their training, they did not complete 10 years of continuous service.

3. One Constable - Gadadhar Mohapatra - filed W.P.(C) No.6671 of 2010 in this Court challenging the action of the ECR in not letting him participate in the selection test for promotion to the post of ASI, which had been scheduled to be held on 21st April, 2010. By an interim order dated 13th April 2010, he was allowed to appear in the selection test and it was directed that the result of the test would be subject to further orders to be passed by the Court. The writ petition came to be finally disposed of by a Division Bench of this Court dated 28th October, 2010 accepting the plea of the said Petitioner that his training period should be included for the purposes of the 10 years eligibility period for being considered for promotion.

4. The present Appellants, who were similarly placed, then filed writ petition i.e. W.P.(C) No.2558 of 2011 seeking similar reliefs in terms of the judgment dated 28th October, 2010 passed by this Court in W.P.(C) No.6671 of 2010. The said writ petition was disposed of by a Division Bench of this Court on 12th August, 2011 granting the reliefs in the following terms:

“8. In our considered opinion, petitioners are entitled for relief as has been granted in the aforesaid two writ petitions as the said benefit was denied to them in the earlier examination though some of them are admittedly senior to the petitioners in the earlier two writ petitions. Therefore, we direct the opposite party to conduct examination in accordance with law inviting applications from the eligible persons and after publication of the result, the correct place of seniority must be maintained amongst the persons who will be

found successful vis-à-vis the persons who are selected pursuant to departmental examination held on 28.04.2010.

With the aforesaid observation and direction, this writ petition is disposed of.”

5. It must be noted here that the present Appellants considered themselves to be eligible to be considered for promotion against the vacancies in the post of ASI for the year 2009-10. By the time the above order came to be passed by the Division Bench of this Court on 12th August 2011, there were also vacancies in the post of ASI for the years 2010-11.

6. One date prior to the judgment of this Court i.e. 11th August 2011, a Notification was published announcing the selection test to be conducted for promotion to the post of ASI. Pursuant thereto and pursuant to the judgment of this Court dated 12th August, 2011, the present Appellants sat for the selection test. Although the Appellants passed the test, they were found to have scored lesser marks basing on the merit position of all the candidates who took the test.

7. Before the learned Single Judge an argument was advanced by the Appellants that in the selection made for filling up the vacancies in the post of ASI of the year 2009-10, the last selected candidate had secured 68.8 marks out of 100 whereas all the Appellants who took the subsequent selection test scored 73 marks

and above and definitely, therefore, were in higher merit than the last selected candidate in the selection held for the vacancy year 2009-10. Contending that they should have been considered against the vacancies for 2009-10 and assessed on the same basis as the candidates who had sat for the post for the said year, they claimed that they should be granted promotion as ASI on that basis.

8. The learned Single Judge has in the impugned judgment noted that the Appellants had scored marks less than the last selected candidate in the selection held pursuant to the Notification dated 11th August, 2011. In the said selection, the last selected candidate secured 72.45 under the unreserved category whereas all of the present Appellants had scored less than that. The learned Single Judge did not accept the above plea of the Appellants since the selection held pursuant to the order passed by this Court on 12th August, 2011 was a separate exercise and the merit position in the said selection exercise could not be fixed on the basis of the performance of the last selected candidate in the earlier exam held for the vacancies of 2009-10.

9. It was rightly noted by the learned Single Judge that for the reasons best known to them the present Appellants had not come to the Court at the time when the Petitioner in W.P.(C) No.6671 of 2010 approached it. They became aware of the possibility of being considered for promotion as ASI by including their training period

for the purposes of calculating the 10 years period of eligibility as Constable only after the judgment of this Court dated 28th October, 2010. It was only if they were successful in the subsequent selection test held pursuant to Notification dated 11th August, 2011 that their *inter se* seniority would have to be arranged vis-à-vis the earlier successful candidates in terms of the judgment dated 12th August, 2011.

10. Mr. P. K. Rath, learned counsel appearing for some of the Appellants sought to rely on the judgment of the Supreme Court of India in ***Ganga Vishan Gujrati v. State of Rajasthan, (2019) 16 SCC 28*** to urge that the present Appellants had to be considered, for the purposes of merit in the selection test, on par with those who took the selection test for the vacancies of 2009-10. However, the Court notes that the said judgment dealt with promotions being made under the auspices of a Departmental Promotion Committee (DPC) where promotions were considered in relation to vacancies of a particular year irrespective of the year in which the DPC was being held. That is a very different principle and does not involve holding of selection test for the purposes of promotion. Therefore, the aforementioned decision is of no assistance to the Appellants here.

11. Mr. Kali Prasanna Mishra, learned Senior Counsel appearing for the Appellants in W.A. No.304 of 2018 submitted that the Appellants were unfairly denied the chance of being considered for

promotion on par with the successful Petitioner in W.P.(C) No.6671 of 2010. According to him, therefore, the ECR was obliged to extend the same benefit as was extended to the successful Petitioner in the said writ petition to all the Appellants, who may not have approached the Court at the same time.

12. Here again, the Court is unable to agree with the aforesaid submission. The fact remains that the present Appellants did approach the Court but at a subsequent point in time and in their cases, the Division Bench of this Court passed a separate judgment on 12th August 2011, the operative portion of which has already been extracted hereinbefore. That only required the ECR to hold a separate selection test in which the present Appellants could participate. This Court did not order that the evaluation of the performance of the present Appellants would be on the basis of the last selected candidate of the earlier selection test. In that sense therefore what the ECR has done is to strictly go by the directions issued by the Court in its judgment dated 12th August, 2011. The Court is therefore not able to accept the plea that the present Appellants were unfairly denied the right to be considered for promotion on par with the successful Petitioner in W.P.(C) No.6671 of 2010.

13. Finally, it is submitted by both Mr. Mishra and Mr. Rath that since the Appellants have remained as Constables or Head Constables for many many years now with no promotion

whatsoever having been received by them, a direction should be issued to ECR to consider the possibility of giving them a one-time notional promotion without the Appellants laying any claim either to arrears of pay or to seniority.

14. As far as this plea is concerned, since it is a policy decision that could have to be taken by the ECR, the Court, while declining to interfere with the impugned order of the learned Single Judge, directs that the Respondents-ECR will consider the above plea of the Appellants for being granted notional promotion as ASI, without any claim to seniority vis-à-vis the private Respondents or without any claim to arrears of pay. A decision on this aspect by the ECR be conveyed to the Appellants within a period of three months from today.

15. The appeals are accordingly disposed of. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

M. Panda