

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 1397 of 2018

*Alok Pradhan and others*

.....

*Petitioners*

*Mr. S.B.Jena, Advocate*

Vs.

*Director General of Police and  
others*

.....

*Opposite parties*

*Mr. S.S. Kanungo, AGA*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**ORDER**

**26.09.2022**

**Order No.**

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This matter is taken up through hybrid mode.

2. Heard Mr. S.B. Jena, learned counsel for the petitioners and Mr. S.S. Kanungo, learned Additional Government Advocate for the State.

3. The petitioners have filed this writ petition seeking direction to the authorities to accept the application of the Petitioners for change of option now opted under Annexure-4 series and to grant all benefits to the petitioner in accordance with law.

4. Mr. S.B. Jena, learned counsel for the Petitioners contended that the Petitioners were appointed as Constables in the year 1997 through regular process of selection in one recruitment test and while working as such because of their hard working and devotion to work, they were promoted to the posts of Asst. Sub-Inspector of Police in the year 2008 and posted to different Wireless Stations under the administrative control of the S.P. Signals, Odisha, Cuttack. On the basis of the recommendations of the 7<sup>th</sup> Pay Commission, the State Govt. in its Finance Department Resolution dated 07.9.2017 revised the pay scales of various posts/services for the State Govt. employees with effect from 1<sup>st</sup> January, 2016. Subsequently, the Finance Department vide its Notification dated 20.9.2017 framed the Odisha Revised Scale of Pay Rules, 2017 incorporating the details of the revised scales and accordingly, the

procedure of pay fixation was outlined. Accordingly, as per the Odisha Revised Scales of Pay Rules, 2017, an option under the proviso to Rule-5 to come over to the revised pay structure was to be exercised by the employees in the Form appended as Second Schedule and the same was to be furnished to the Head Office as required under Rule-6 of the said Rules. As a consequence thereof, the petitioners exercised their option in the Second Schedule to come over to the ORSP Rules, 2017. But after coming over to the ORSP Rules, 2017, the Petitioners realized that they are loser financially. Consequentially, request was made not to come over to the ORSP Rules, 2017. Though the case of the petitioners was recommended by the respective authorities to the Government, but the Government vide order dated 09.07.2019 passed an order stating that the Government in Home Department do not agree to endorse the proposal to Finance Department for consideration with the observation that as per Rule 6 (4) of ORSP Rules, 2017 the option once exercised shall be final and further there is no provision for change of option. Therefore, the Petitioners have approached this Court in the present writ petition.

5. Mr. S.S. Kanungo, learned Additional Government Advocate appearing for the State, referring to the counter affidavit stated that once option has been exercised by the Petitioners, that cannot be changed. Even if such a recommendation has been made by the authority, that has been duly considered by the State and order has been passed not to allow the change of option. Thereby, no illegality or irregularity has been committed by the authority by passing such order.

6. Having heard learned Counsel for the parties and after going through the record, it appears that option was exercised by the Petitioners to come over ORSP Rules, 2017. Accordingly, they came over to the purview of the provisions contained under ORSP Rules, 2017. But after coming over to the same, it appears that the Petitioners have sustained the financial loss. Therefore, request was made that they should be reverted

back to the original scale of pay and as such want to withdraw the option exercised by them. The reason for reverting back to the earlier stage is because of the fact that they have sustained financial loss having come over to the ORSP Rules, 2017, by exercising their option. More so, there is no pay protection granted to such persons. Consequentially, the benefit which they would have got, was not extended to them. Accordingly, request was made to revert back to the original position and the said request was considered by the I.G. of Police (Modernization) and recommendation was made to the Additional D.G. of Police (Communication) vide letter dated 20.02.2018 requesting for disposal of option cases of the employees as per the Government orders. The Additional D.G. of Police Communication also communicated to the I.G. of Police (Modernization) vide order dated 28.04.2018 stating that the Government may please be moved early for consideration of the case of the Petitioners sympathetically and issuance of necessary orders in their favour. Additional D.G. of Police (Modernization) also requested to the Additional Chief Secretary to Government of Odisha in Home Department assigning the reasons as to why the options exercised by the Petitioners should be allowed to be withdrawn and contended that the proposal for change of option of Police personnel of Communications establishment and Signal establishment for fixation of their pay under ORSP Rules, 2017, as they are facing financial loss due to earlier option exercised by them. Therefore, a copy of letter dated 28 04 2018 had been submitted by Addl. D.G. of Police (Communications), Odisha, Cuttack along with its enclosures for favour of information of the Government. It has also been stated that as per instructions laid down in Para-6 (4) of Finance Department SRO No. 414/2017 dated 20.09.2017, the option shall be exercised in writing by the Government servant so as to reach Head of Office within three months of the date of Notification. The option once exercised shall be final. Under the above circumstances, it is requested that orders of Government regarding change of option in

respect of Police personnel of office of the Addl. D.G of Police (Communications), Odisha, Cuttack and S.P., Signals, Cuttack may be communicated to the Headquarter. Thereafter the Government on consideration of the grievance made by the petitioners and request made by the Additional D.G. of Police (Modernization) rejected the claim of the petitioners with an observation that as per Rule 6 (4) of ORSP Rules, 2017, the option once exercised shall be final and further there is no provision for change of option. Consequence thereof, the claim made by the petitioners for change of option has been denied.

7. But while denying such benefit to the petitioners, the opposite parties have lost sight of the fact that as per Rule-16 of ORSP Rules, 2017, there is a provision of relaxation, which prescribes that where the Finance Department is satisfied that the operation of all or any of the provisions of these rules cause/ causes undue hardship in any particular case, they may, in the public interest, by order, dispense with or relax the requirements of all or any such provisions to such extent and subject to such conditions as may be deemed necessary for dealing with the case in a just and equitable manner.

8. In that view of the matter, since the Petitioners have sustained a financial loss, which causes undue hardship, in that case, by invoking Rule-16, the authorities should have extended the benefit to the Petitioners. Non consideration of Rule 16, while passing the order dated 09.07.2019 rejecting the claim of the Petitioners by the Government for change of option cannot sustain in the eye of law. As such, the order dated 09.07.2019 passed by the Under Secretary to Government in Home Department under Annexure-D to the counter affidavit, is hereby quashed. The matter is remitted back to the State Authority to re-consider the case of the petitioners by invoking the power of relaxation as provided under Rule-16 of the ORSP Rules, 2017, in accordance with law. Needless to say that when a power of relaxation is made available

under the Rules, the authority cannot and could not have ignore the same, rather by applying the said relaxation power, the State can pass appropriate order in accordance with law.

9. With the above observation/direction, the writ petition stands disposed of.

*Arun*

**(DR. B.R. SARANGI, J.)**

