

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No.2443 of 2018

Sasmita Sahoo

.... ***Petitioner***
Mr. Manas Pati, Advocate

-versus-

State of Odisha

.... ***Opposite Party***
Mr. N.K. Praharaj, AGA

CORAM:
JUSTICE A.K.MOHAPATRA

ORDER
07.07.2022

Order No.

04. 1. This matter is being taken up through hybrid mode (physical/virtual mode).
2. Heard learned counsel for the Petitioner as well as learned Additional Government Advocate for the State and Mr. P.K. Mohapatra, learned counsel appearing for the Opposite Party No.5. Perused the writ petition and the materials placed on record.
3. Although notice was issued to private Opposite Party No.4 and confirmation of valid service of notice has been received, none appears for the Opposite Party No.4.
4. The present application has been filed by the Petitioner for a direction to the Opposite Parties to quash the modified gradation list at Annexure-12 and to recast the gradation list placing the Petitioner above private Opposite Party Nos.4 and 5 in the final gradation list.
5. Learned counsel for the Petitioner submits that the Petitioner was initially appointed as Petrologist in Class-II of Odisha Mining & Geology Service. Although the name of the Petitioner is notified

vide letter dated 06.07.1998 issued by the Orissa Public Service Commission, the same was notified vide Notification dated 26.10.1999. It is further submitted by learned counsel for the Petitioner that although the Petitioner is senior to the private opposite party nos.4 and 5, while preparing the gradation lists, the Petitioner was placed under the private opposite party nos.4 and 5. Being aggrieved by such action of the Departmental Authority, the Petitioner submitted an objection/representation for carrying out necessary correction and accordingly the provisional gradation list was prepared on 04.02.2005, which was submitted before the Director of Geology, Odisha, Bhubaneswar-O.P. No.2.

6. While the matter stood thus, the final gradation list was notified on 31.03.2005 wherein the Petitioner was placed under the private opposite party Nos.4 and 5, i.e. at Serial No.50 whereas the private opposite parties were placed against Serial Nos.47 and 48. It is further contended by learned counsel for the Petitioner that the Authority without considering the objection submitted by the Petitioner, prepared a final gradation list, therefore the Petitioner filed an appeal before the Director of Geology dated 09.08.2005 (Annexure-6) requesting him to forward her objection/representation to the Government for its due consideration and for carrying out necessary correction in the gradation list. It has also been submitted that a representation dated 5.8.2005 to the Principal Secretary, Steel and Mines Department has been submitted. Again in the year 2005, he wrote a letter to the Director of Geology requesting him to circulate the provisional gradation list among the officers. From the letter under Annexure-7 it is clearly understood that the list prepared under Annexure-5 was not final as it was prepared without

considering the representation of the Petitioner and for correction thereof further information/clarification has been sought for from Opposite Party No.2. It is also observed in the said letter that no objection was received within the stipulated time. Therefore, the final gradation list was prepared on 31.03.2005. Again the Petitioner wrote another letter on 31.12.2005 to the Director of Geology requesting him to furnish a clarification for justification of gradation list which has been rectified on 31.03.2005 to the concerned department for taking necessary action in the matter.

7. It is further contended by learned counsel for the Petitioner that since the Department remained silent in the matter for years, the Petitioner wrote another letter to the Authority on 21.09.2016 requesting it to take action for necessary modification under Group-A and B Officer of the Director of Geology. He has also submitted a representation to the Principal Secretary, Department of Steel and Mines vide letter dated 29.11.2022. However, no action whatsoever has been taken, therefore, reminders have been sent from time to time. Finally on 15.02.2018, a tentative gradation list was prepared by the Department of Steel and Mines. Thereafter, another provisional gradation list has been prepared wherein Opposite Party Nos.4 and 5 who are placed at Serial Nos.9 and 10 above the Petitioner. Finally vide a letter written on 7.8.2019 by the Addl. Secretary to Govt. to the Director of Geology with regard to the final gradation list. It reveals that the Petitioner has been placed against Serial No.11 whereas Private Opposite Parties Nos.4 and 5 were placed at Serial No.9 and 10, i.e. above the Petitioner. It is submitted by learned counsel for the Petitioner that the objection submitted by the Petitioner has not been taken into consideration by the

Authorities while preparing the final gradation list. Although the case of the Petitioner was considered and tentative list was prepared, but the said tentative list has been revised and in the final gradation list the Petitioner has been placed under Opposite Party Nos.4 and 5.

8. In such view of the matter, learned counsel for the Petitioner submits that the final gradation list under Annexure-12 is erroneous and the same is to be reconsidered and modified and a direction may be issued to opposite parties to modify the gradation list after considering the objection of the Petitioner.

9. Mr.P.K. Mohapatra, learned counsel appearing for the Opposite Party Nos. 4 and 5 submits that while preparing the gradation list, the Competent Authority has taken note of all objections and considering the suitability and merit and the seniority of the candidates, a final gradation list has been prepared. Therefore, the Govt.-Opposite Parties have not committed any illegality while placing the opposite party nos.4 and 5 above the Petitioner.

10. Learned counsel for the Petitioner on the other hand submits that final gradation list under Annexure-12 is erroneous and the same is liable to be quashed by this Court and direction may be given to the Opposite Parties to modify the said gradation list.

11. Mr. Mohapatra learned counsel for the Opposite Party Nos.4 and 5 submits that while preparing the gradation list the Competent Authority has taken note of all facts and considering the suitability and merit and the seniority of the candidates the final gradation list has been prepared, therefore, the Govt. has not committed any illegality by placing the Opposite Party Nos.4 and 5 above Petitioner.

12. Learned AGA while supporting the contentions of the counsel for the Private Opposite Party Nos.4 and 5 submits that they have followed the procedure while preparing the final gradation list. He further submits that notice was given to the concerned department to be circulated amongst the employees to file their objection/representation along with a copy of the provisional gradation list. Since no objection was received from the Director of Geology, the Department to which the present Petitioner belongs to, the gradation list has been finalized and the same has been filed at Annexure-12.

13. In such view of the matter, learned counsel appearing for the Opposite Parties submits that the final gradation list challenged by the Petitioner in the present writ petition does not call for any interference by this Court.

14. Having heard learned counsel for the parties and upon considering the facts and circumstances of the present case, this Court is of the considered view that the Petitioner has a right to submit her objection/representation before finalization of the gradation list. It is in fact a well established practice and procedure to invite objection before finalizing the list. Petitioner and other employees, who are to be placed under a Gradation List are required to file their objection before finalization of gradation list. In the present case although the Petitioner had submitted her objection/representation before the Director of Geology, the Director of Geology, as it appears, has not forwarded the said representation to the Govt. before finalization of the Gradation List. Therefore, this Court is of the considered view that the Authorities have not given

an opportunity to the Petitioner and her case has not been considered in its proper perspective.

15. Considering the aforesaid aspect, this Court deems it proper to direct the Opposite Party No.1 to consider the objection of the Petitioner before finalization of the gradation list. Further Opposite Party No.1 is directed to reconsider the entire issue and by providing an opportunity to the Petitioner as well as to the Opposite Party Nos.4 and 5 to file their respective objections and after providing an opportunity of hearing shall take a final decision in the matter. Further it is directed that if the Opposite Party No.1 decides to recast the final gradation list, the same may be done after providing opportunity of hearing to the parties, who are likely to be affected by such decision. Let the Petitioner approach the Opposite Party No.1 with a certified copy of this order within a period of four weeks from today. Opposite Party No.1 shall issue notice to the private Opposite Party Nos.4 and 5 and after hearing all concerned, the Opposite Party No.1 shall pass the final order and shall communicate the same to the parties concerned within a period of two months.

16. With the aforesaid observation, the writ petition stands disposed of.

17. Issue urgent certified copy as per rules.

(A.K. Mohapatra)
Judge