

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.26046 of 2022

Trilochan Naik

... Petitioner

Ms. Subhashree Mohanty, Advocate

-versus-

State of Odisha and others

... Opposite Parties

Mr. B.Pr. Tripathy, A.G.A.

W.P.(C) No.26047 of 2022

Krushna Chandra Bagh

... Petitioner

Ms. Subhashree Mohanty, Advocate

-versus-

State of Odisha and others

... Opposite Parties

Mr. B.Pr. Tripathy, A.G.A.

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 29.11.2022 | Date of Judgment: 07.12.2022

A.K. Mohapatra, J. :

Since the issue involved in both the matters are identical, both are taken up together for hearing and disposal by the following common order and for the sake of convenience and

brevity the facts pleaded in W.P.(C) No.26046 of 2022 is discussed herein below.

2. Heard learned counsel for the petitioner and learned counsel for the State. Perused the record as well as documents annexed to the writ petition.

3. The present writ petition has been filed by the petitioner with a prayer to quash the impugned rejection order under Annexure-7 dated 25.08.2022 and further prays for a direction to give promotion to the rank of Lance Naik/Havildar at the earliest as the candidates who are there in the same select list have already been given promotion in the meantime.

4. The factual background of the present case in a narrow compass is that the petitioners on being duly selected were appointed as constables w.e.f. 22.12.2006 in the district of Rayagada as S.C. candidates. Thereafter, they continued to discharge their duties sincerely and to the best of their ability. After working as constable for substantial period, they were eligible for promotion to the post of Lance Naik from the post of constable and accordingly, they were considered by the selection committee. The selection committee after due deliberation prepared a select list in their meeting held on 13.12.2020, which was presided over by Superintendent of Police, Rayagada and the

said select list has been filed as Annexure-3. The name of the petitioners finds place at Sl. Nos.1 and 4, out of a total 12 candidates, who were short listed for promotion to the post of Lance Naik. Out of the total 12 candidates, who were short listed, four candidates finally selected for promotion including the present petitioners, whose names appear on top of the select list. However, some candidates were given appointment from the said list ignoring the case of the present petitioners for the post of Lance Naik, which compelled the petitioners to approach this Court by filing the present writ petition bearing W.P.(C) No.39414 of 2021 and the same was disposed of on 21.12.2021 by directing the petitioners to approach the authority by filing a representation and in the event such representation is filed, the same shall be considered within a period of three months. Pursuant to the said direction of this Court, the petitioners filed their representations before the D.G. of Police, Odisha to consider the case of the petitioners for promotion. The representations of the petitioners were disposed of with the observation that the post of Lance Naik has been abolished by creating equal number of posts of Havildar vide Home Department Order No.25722/D&A date 23.07.2021 which was reiterated by the State Police Headquarters letter dated 21.08.2021. Finally, the representation

of the petitioner was rejected by holding that since post of Lance Naik has been abolished the prayer of the petitioners in the said representation for promotion could not have been considered by the Director General of Police, Odisha. Being aggrieved by the rejection of such representation, the present writ petition has been filed by the petitioners wherein the petitioners have sought for a direction to the opposite parties to give promotion to the petitioners against the vacant post of Havildar.

5. It is contended by learned counsel for the petitioners that in view of the decision of the Government of Odisha vide Home Department Order No.25722/D&A date 23.07.2021, 355 posts of Lance Naik in Level-5 have been abolished from the District Police and BPSPA cadre by creation of equal number of posts of Havildar in Level-7 of the Pay Matrix under ORSP Rules, 2017. Such decision has been taken with the concurrence of the Finance Department. Therefore, learned counsel for the petitioner submits that the post of Lance Naik is equal to the post of Havildar and the persons who were given promotion are from the very same select list. In such view of the matter, learned counsel for the petitioner submits that since the merit list is valid till the same is exhausted or the next board is convened, the case of the

petitioners should have been considered and the petitioners should have been given promotion to the post of Havildar, which is equivalent to the post of Lance Naik.

6. Per contra, learned Additional Government Advocate for the State-Opposite Parties submits that the selection for promotion from the post of Constable to Lance Naik was conducted pursuant to Police Order No.266/81. He further contended that the Home Department, Government of Odisha vide Order No.25722/D&A dated 23.07.2021 took a decision to abolish the 355 posts of Lance Naik in Level-5 from the District Police service in lieu of creation of equal number of posts of Havildar in Level-7 of the Pay Matrix under ORSP Rules, 2017.

7. A counter affidavit has been filed on behalf of the Opposite Parties in W.P.(C) No.26047 of 2022. Learned counsel for the State also adopts the same counter affidavit in W.P.(C) No.26046 of 2022 as both the matters are identical and involve the very same select list. In the counter affidavit filed by the State, it has been stated that the Superintendent of Police, Rayagada invited applications from willing constables of Rayagada district for selection and promotion to the rank of Lance Naik in respect of two UR category and one SC category posts. The selection

committee prepared a select list consisting of four constable posts on the basis of their seniority. As discussed in the counter affidavit, the name of petitioner in W.P.(C) No.26046 of 2022, namely, Trilochan Nayk is at Sl. No.1 and the name of petitioner in W.P.(C) No.26047 of 2022, namely, Krushna Chandra Bagh finds place at Sl. No.4 both under the SC category. It has also been stated that two UR category candidates were recommended for promotion on the basis of the existing vacancy whereas name of SC candidates were kept in the waiting list. Further, it has been categorically stated in the counter affidavit that the select list drawn up by the committee shall remain valid till it is exhausted or reviewed in the next board. While this was the position, the State Police Head quarters issued a directive to all Superintendents of Police henceforth no promotion to the rank of Lance Naik to be undertaken in the districts. The said decision was taken as 355 posts of Lance Naik were abolished and similar number of posts of Havildar were created.

8. In the counter affidavit, the Opposite Parties although have admitted about the direction by this court in W.P.(C) No.40227 of 2021 to consider the representation of the petitioners, it is stated that the same was considered and rejected

on the ground that the posts of Lance Naik have already been abolished and there is no provision for allowing promotion from the post of constables to the rank of Havildar. Further it has also been stated that vide State Police Department Letter No.226/281 promotion can only be given from Constables to Naik and Naik to Havildar. It is further stated that for promotion from Naik to Havildar, five criterias' are required to be fulfilled. In the very same paragraph, it has also been stated that for promotion from Lance Naik to Havildar, a person is required to have certificate of DIC (Drill Instructor Course). Therefore, it is stated in the counter affidavit that the petitioner, who has been selected for the post of Lance Naik is required to possess the DIC certificate to get promotion to the post of Havildar. Further, in the counter affidavit, the Opposite Parties have neither denied nor dispute the fact that the petitioner was found eligible and accordingly, his name was placed in the select list for promotion to the rank of Lance Naik. However, for promotion to the rank of Havildar, the petitioner needs to have DIC Certificate and accordingly, it has been stated in the counter affidavit that the I.G. of Police(Personnel), Odisha, Cuttack vide letter No.33787 dated 16.09.2021 instructed all the districts Superintendent of Police and other police functionaries stating therein that the post of

Lance Naik has been abolished in lieu of creation of equal number of posts in the rank of Havildar. It has also been stated in the said counter affidavit that awaiting further instruction from the Headquarters, no promotion to the rank of Lance Naik or Havildar shall be undertaken in the district.

9. It is submitted by learned counsel for the petitioners in both the writ petitions that the petitioners who were discharging their duties as constables were duly selected for promotion to the posts of Lance Naik. Accordingly, the petitioner, namely, Trilochan Naik was at the first place of the select list and the petitioner, namely, Krushna Chandra Bagh was at the 4th place in the select list. Both the petitioners belong to SC category. However, for reasons best known to the authorities, two UR category candidates at Sl. Nos.2 and 3 of the select list have been given promotion ignoring the just claim of the petitioners.

10. It is further contended by learned counsel for the petitioners that 355 posts of Lance Naik were abolished and in lieu thereof equal number of posts Havildar were created. Such development took place much after the vacancies occurred and the selection test was conducted. The authorities, it is alleged by the petitioners, have acted in arbitrary and illegal manner

inasmuch as two persons from the select list were given appointment ignoring the claim of the petitioner. When the petitioners approached the authorities claiming promotion to the post of Lance Naik, they were denied such promotion by the authorities by saying that the posts have been abolished.

In the context of DIC training, it is submitted by learned counsel for the petitioner that after abolition of post of Lance Naik, such posts have merged with the post of Havildar and he further contends that a person can only be sent for DIC course once he has been given promotion to the rank of Havildar. It is further contended that the persons, who are given promotion and were with the petitioners in the same select list did not have DIC training. However, they were given promotion to the posts of Lance Naik and later on they were re-designated as Havildar without passing DIC training. Even till date they have not undergone DIC training. Therefore, the authorities have acted in a discriminatory and arbitrary manner while giving promotion from out of the same select list.

11. On perusal of the record, it appears that though the select list was prepared, the petitioners were kept in the waiting list and were not given promotion, although other constables in the same

list were given promotion to the rank of Lance Naik. On further perusal, it appears that 355 posts of Lance Naik were abolished by creating equal number of posts of Havildar. Therefore, for all practical purpose, the cadre remains and it is only the posts which were re-designated. The counter affidavit is silent about the persons, who were appointed as Lance Naik and what is their present designation. Since the posts of Lance Naik were abolished by creating posts of Havildar, this Court believes that the persons, who were appointed as Lance Naik must have been redesignated as Havildar after abolition of posts of Lance Naik.

12. Mr. B.Pr. Tripathy, learned Additional Government Advocate submits that to get promotion to the post of Havildar, the petitioner must have DIC Certificate. DIC Certificate is issued to the candidates, who have undergone the training of Drill Instructor Course (DIC). He further contends that a DIC Certificate is mandatory in view of Police Order No.266/81. Therefore, Mr. Tripathy submits that since the petitioners do not fulfill the criteria for promotion to the posts of Havildar, their cases were not considered by the Opposite Parties for promotion.

13. A close scrutiny of Police Order No.266/81 reveals that under the category(C) for promotion from Naik to Havildar five

critarias have been laid down. The most important criteria is that the candidate must have passed the DIC and further a close scrutiny of the very same clause would reveal that Naik or if the Naik is not available, Lance Naik is eligible for promotion to the rank of Havildar. Therefore, this Court is of the considered view that there is no bar for considering the case of the petitioners for promotion to the rank of Havildar subject to the petitioners fulfilling the eligibility criteria. In the present case, the petitioners require the DIC certificate to be eligible for promotion to the post of Havildar. It is understood that such a course is imparted by the Police Department, therefore, there is no difficulty in providing such training to the petitioners to consider their cases for promotion, if the petitioners are otherwise eligible and suitable to be promoted to the rank of Havildar.

14. Additionally, the conduct of the Opposite Parties in the present case, is viewed seriously by this Court. Although the petitioners were selected for promotion to the rank of Havildar along with two others especially the petitioners, namely, Trilochan Naik, who was at the top of the merit list, the authorities have acted in an arbitrary manner by giving promotion to two UR category candidates while ignoring the case of the

present petitioner. Such conduct on part of the Opposite Parties clearly violates the principle laid down in Articles 14 and 16 of the Constitution of India.

15. This Court also perused the letter of I.G. (Personnel), Odisha, Cuttack dated 16.09.2021, which has been issued to all the Superintendents of Police and other police functionaries of the State. The said letter discloses that the rank of Lance Naik has been used as an alternative to a Havildar by using the word 'or'. In view of the Police Order No.266/81 as well as Letter dated 16.09.2021, this Court has no hesitation to come to a conclusion that the Lance Naik and Havildar are in the same rank and further to be appointed as Havildar, a person is required to undergo DIC training course.

16. In view of the aforesaid analysis and further considering the submissions made by learned counsel for the respective parties, this Court has no hesitation to hold that the petitioner is eligible to be promoted to the rank of Havildar subject to petitioner acquiring the DIC certificate since the DIC training is basically in house training of the Police Department and as such, the same could be imparted to the petitioners to remove any deficiency in giving promotion to the petitioners to the rank of

Havildar. Further taking into consideration, the fact that the petitioners were selected and their names finds place in the select list which shall remain valid till the list is exhausted or varied by next board, the petitioners deserves to be promoted to the next higher posts subject to availability of vacancy. Accordingly, the impugned order of rejection dated 25.08.2022 under Annexure-7 is hereby quashed, the Opposite Party No.3 is directed to consider the case of the petitioners for promotion to the rank of Havildar and in the process, if it is found that the petitioners do not have DIC certificate, then necessary arrangements be made for the petitioners to undergo such training immediately.

17. With the aforesaid direction/observation, both the writ petitions are allowed. However, there shall be no order as to cost.

(A.K. Mohapatra)
Judge