

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 314 of 2018

Kailash Chandra Rout

.....

Petitioner

Mr. K.A. Guru, Advocate

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Rath, ASC &

Mr. S. Behera, Advocate (O.P.7)

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

09.09.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. Heard Mr. K.A. Guru, learned Counsel for the petitioner, Mr. S. Rath, learned Additional Standing Counsel for the State and Mr. S. Behera, learned counsel for Opposite Party No.7.

3. The Petitioner has filed this Writ Petition seeking direction to the opposite parties to issue necessary direction to conduct fresh DPC in accordance with the Odisha Lower Excise Service (Method of Recruitment and Conditions of Service) Rules, 2011 and amendment made there under.

4. Mr. K.A. Guru, learned Counsel for the petitioner contended that the petitioner being placed at No.1 in the final gradation list of Excise Constable of Dhenkanal district as on 01.01.2017 under Annexure-1 to the writ petition, he has not been given promotion, whereas the persons whose name finds place at Sl. Nos. 4 to 6, i.e. present opposite parties 5 to 7 have been given promotion.

5. Mr. S. Rath, learned Additional Standing Counsel for the

State contended that the petitioner having not found suitable by the DPC, he has not been given promotion and as such, he is a matriculate. Consequent thereof the benefit of promotion has not been extended to him.

6. Having heard learned counsel for the parties and after going through the record, it appears that as per the Orissa Lower Excise Service (Method of Recruitment and condition of service) Rules, 2011 which has been duly published in the Orissa Gazette No.1390 Dt. 20.06.2011, a Constable after successfully completion of at least 7 years of continuous service shall be eligible for promotion to the rank of ASI of Excise by selection committee under the Chairmanship of Collector and District Magistrate/ Superintendent of Police/ District Welfare Officer and Superintendent of Excise, Member Convener. Odisha Gazette Notification No. 302 Dt. 18.02.2013 clarifies that Provided that not less than 50% of the posts of ASI of Excise shall be filled up by promotion from amongst the eligible Excise Constables who have passed High School Certificate Examination. There are 7 (seven) nos of sanctioned post of ASI of Excise in Dhenkanal district. During process of selection, out of the existing ASIs of Excise, 3 numbers were matriculate and one number was non-matriculate candidate. The DPC has selected 3 numbers of ASIs of Excise among the matriculate constables. As per Excise Constables Gradation list under Annexure-1, admittedly the petitioner's name finds place at Sl. No. 1, who is non-matriculate candidate. But the CCR of the petitioner during the year 2014-15 is "Very Bad, not at all fit for promotion", 2015-16 is "Average", 2016-17 is "Average" Therefore, the DPC considered his case, but did not select him for

promotion to the rank of ASI of Excise as he was found unsuitable as per his poor service records. The persons whose name finds place at Sl. No.2, Sri Nilarr Behera, Excise Constable, who is a non-matriculate candidate he has submitted a written statement not to avail for promotion to the rank of ASI of Excise forever. So far as Sl. No.3- Sri Subash Chandra Mallik, Excise Constable, who is non-matriculate candidate, but he has availed of leave continuously due to severe ill health condition. Hence, the DPC did not consider for promotion to rank of ASI of Excise as he is not able to perform executive duty. Opposite Parties 4 to 6 being matriculate, they were considered for promotion as per Odisha Gazette Notification dated 18-2-2013. Thereby, no illegality or irregularity has been committed by the authority by not granting the benefit as claimed by the petitioner. Consequentially the writ petition merits no consideration and the same stands dismissed.

Arun

(DR. B.R. SARANGI)
JUDGE