

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.2030 of 2018

An application under Section 19 of the State Administrative Tribunal's Act, 1985.

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Buddharam Majhi

....

Petitioner

-versus-

State of Odisha & Others

....

Opposite Parties

For Petitioner : M/s. D.Ray, R.K.Behera &
P.K.Mohanty.

For Opp. Parties : M/s.M.K.Balabantaray,
Standing Counsel.

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:08.12.2022 and Date of Order:16.12.2022

Biraja Prasanna Satapathy, J.

1. The present Writ Petition has been filed challenging the Office Order dated 08.06.2017 passed under Annexure-4 and confirmation of the same vide order dated 28.03.2018 under Annexure-6 and consequential order dated 30.04.2018 passed under Annexure-7. The petitioner in the alternate has prayed for giving relaxation/exemption of extra chances to appear the supplementary examination for passing of the training examination.

2. It is the case of the Petitioner that the Petitioner was initially appointed as a Constable and while working as such, he was promoted to the rank of ASI of Police.

2.1. It is the further case of the Petitioner that while continuing as an ASI of Police, he was found suitable by the Central Selection Board in its meeting held on 22/23.02.2016 for promotion to the rank of S.I of Police. But the Petitioner was directed to undergo the DCSI's course of training for a period of six months as per Home Department letter dated 22.01.2016. Thereafter vide order dated 21.03.2016 under Annexure-3, the Petitioner on his joining to undergo DCSI's course of training in PTC, Angul, was temporarily promoted as S.I. of Police w.e.f. from the date of his joining in the said training. But after completion of the said training in question and as provided under Order-28(2) of the Odisha Police Service (Conditions of Service & Methods of Recruitment of Sub-Inspectors) Order, 2006 (hereinafter referred as 'Order'), when the Petitioner failed to pass the examination at the end of the training course, the order dated 08.06.2017 was issued by the Opposite Party No.2 proposing therein to take action as per the aforesaid Order, published vide Home Department Resolution dated 27.05.2006 under Annexure-1.

Challenging the said order dated 08.06.2017, the Petitioner approached the learned Tribunal in O.A No.1796/2017. Learned Tribunal vide its order dated 03.11.2017, disposed of the said O.A with the following direction:-

“Considering the submission, it may be noted that even though the impugned order has been passed as long as back on 08.06.2017, the applicant has approached the Tribunal directly without exhausting all the available remedies and since in a similar case, the DG & IG of Police has been directed to consider the representation of the applicant, it would not be appropriate to deal with the matter on merit and instead remit the O.A to respondent No.1 to treat the same as representation of the applicant and consider and pass appropriate order on its own merit, following the relevant rule and resolution and dispose of the same, within a period of one month from the date of receipt of a copy of this order.

It is submitted at the bar that no consequential action has yet been taken pursuant to order dtd.08.06.2017 and the applicant is still continuing as S.I. of Police. Therefore, we direct that no consequential action pursuant to impugned order dtd.08.06.2017 be taken so far as it relates to the applicant, and status quo as on date be maintained, till disposal of the representation.”

2.2. On receipt of the order, Opposite Party No.1 after due consideration of the same passed the order dated 28.03.2018 under Annexure-6 by rejecting the claim of the Petitioner and thereby upholding the proposed reversion of the Petitioner to the rank of ASI of Police. Thereafter, vide order dated 30.04.2018, Opposite Party No.3, when reverted the Petitioner to the rank of ASI of Police under Annexure-7, the present Writ Petition was filed by challenging the order under Annexures-4,6, 7 and with other consequential prayers.

2.3. It is the case of the Petitioner that the order of reversion passed against him taking recourse to the provision of Order-28(2) of the Order, is prima facie illegal, as the Petitioner was not given due opportunity to qualify in the examination at the end of the training. The aforesaid 2006 Order is also not applicable, and instead, the provision contained under PMR-681(b) is applicable to his case.

2.4. Mr. Ray, learned counsel for the Petitioner vehemently contended that the Petitioner after undergoing the DCSIs course of training, was given just one chance to appear at the examination and on failing to qualify the same, the order of reversion was initially issued vide order dated 08.06.2017 under Annexure-4. The said action of the Opposite Party No.2, when was challenged before the learned Tribunal, learned Tribunal in its order under Annexure-5 directed the Opposite Party No.1 to take a fresh decision in the matter. But Opposite Party No.1 relying on the provision of Order-28(1)&(2) of the Order rejected the petitioner's claim by not allowing him to take the examination once again and consequential order of reversion was passed vide order dated 28.03.2018 and 30.04.2018 under Annexures-6 & 7.

2.5. It is contended that since as per PMR-681(b), a candidate for the post of S.I, on his promotion after completing the training is allowed to take two chances to clear the examination after failing in his first attempt, the Petitioner should have been allowed another chance to take the examination and without allowing the same, since the order of reversion has been passed, the same is not legally sustainable.

2.6. It is also contended that similar benefit to appear the examination for the 2nd time, was extended in favour of one Basanti Mishra and she was allowed another chance to appear the next examination vide order dated 21.08.2017 of Superintending of Police, Puri under Annexure-13. But similar benefit was not extended, in spite of the order passed by the learned Tribunal under Annexure-5. Making all such submissions, learned counsel for the Petitioner prayed for interference of this Court with the impugned orders under Annexures-4, 6 & 7.

3. Mr. M.K.Balabantaray, learned Standing Counsel for the State on the other hand made his submission basing on the stand taken in the Counter Affidavit.

3.1. It is contended that after being given promotion to the post of S.I of Police, the Petitioner as provided under Order Rule-28(1) & (2) of the Order, he was required to pass the examination in question after completion of the training. Since the Petitioner appeared the supplementary examination held from 07.01.2017 to 19.02.2017 and failed to secure the cut-off mark, his name was reflected in order dated 08.06.2017 under Annexure-4, wherein it was proposed to take action against him in terms of the notification issued on 27.05.2006 under Annexure-1. The Petitioner when challenged the said order before the Tribunal and direction was issued to consider his grievance, Opposite Party No.1 duly considered the claim and decided the matter in accordance with the provision contained under Order-28(1) & (2) of the Orders.

3.2. It is further contended that passing out of the Sub-Inspector Course of Examination is mandatory for upholding the promotion to the rank of Sub-Inspector. Since the Petitioner has failed to pass the said examination in terms of the aforesaid provision contained under Order 28(2), he has been rightly reverted to the post of ASI of Police and no interference is called for by this Court.

4. Mr. Ray, taking into account the stand taken in the counter affidavit made further submission that, after undergoing the training, the Petitioner could not take the entire examination which was held from 02.09.2016 to 9.9.2016 due to his medical problem. The Opposite Parties thereafter conducted the supplementary examination from 07.01.2017 to 19.02.2017 and the Petitioner having failed to qualify in the said examination, he was reverted to the post of ASI. However, it is contended that not only as provided under PMR-681(b), the Petitioner is entitled to get another chance but also in exercise of the power provided under Order-31 of the Order, since similarly situated SI of Police namely Basanti Mishra was allowed to take the second chance vide order under Annexure-13, the Petitioner is entitled to get similar benefit. Therefore, it is contended that the Petitioner be given another chance to appear the examination in question and if he fails to qualify, then the order of reversion passed against him will stand.

5. I have heard Mr. D. Ray, learned counsel for the Petitioner and Mr.M. K. Balabantaray, learned Standing Counsel for the State. On the consent of the learned counsel appearing for both the Parties, the matter was

taken up for final disposal at the stage of admission and disposed of by the present order.

6. This Court after going through the materials available on record finds that the promotion of the Petitioner to the rank of S.I of police is governed under the 2006 Order issued vide Resolution dated 27.05.2006 under Annexure-1. As provided under Order-28(2) of the Orders, at the end of the training course there will be an examination. Those declared to have passed the examination shall be posted to different districts and those who failed in the examination shall be given another chance in the next examination to clear it without having to undergo the training examination. If they fail again, they shall be discharged from his service or reverted to the rank of ASI of Police as the case may be. In the instant case, at the end of the training, the Petitioner though take the 1st examination, but he could not appear in all the papers due to his medical problem. But in the supplementary examination held thereafter, the Petitioner since failed to qualify, action was taken in terms of Order-28(2) of the Orders. Since 2006 Order has been framed in terms of Article-309 of the Constitution of India, the said provision

shall supersede the provision contained under the Police Manual. Therefore, the stand taken by the learned counsel for the Petitioner that the Petitioner should be given two chances to clear the examination as provided under PMR-681(b) is not legal and justified. However, taking into account the benefit extended in favour of S.I., Basanti Mishra in relaxation of the provision of Order 28(2) in exercise of the Power conferred under Order-31, vide order dated 21.08.2017 under Annexure-13, it is the view of this Court that the Government is competent to extend such relaxation in the present case also.

6.1. Since similar relaxation has been extended vide order under Annexure-13, this Court while disposing the Writ Petition directs the Opposite Party No.2 to make a reference in terms of Order-31 seeking relaxation of the provision contained under Order-28(2) to the case of the Petitioner. On such reference being made by Opposite Party No.2, Opposite Party No.1 is directed to take a lawful decision on the same and if it is ultimately held that the Petitioner is entitled to get another chance, he be allowed to take the examination afresh without undergoing the training again. Such a reference should be made by the Opposite Party No.2 within a period of one month from the date of

receipt of this order and on receipt of the reference, Opposite Party No.1 shall take a lawful decision on the same within a further period of one month. However, it is observed that while taking such a decision, the benefit extended in favour of S.I, Basanti Mishra vide order under Annexure-13 shall be taken into consideration.

6. With the aforesaid observations and directions, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 16th of December, 2022/ Subrat (Sr. Steno)