

IN THE HIGH COURT OF ORISSA, AT CUTTACK

WPC(OAC) No.219 of 2016

A. Balkrishna Rao

.... *Petitioner*

Mr. M.K. Khuntia, Adv.

Mr. B. Pattnaik, Adv.

-versus-

State of Odisha and Ors.

.... *Opposite Parties*

Mr. H.K. Panigrahi, ASC

(for SAT (Cuttack))

CORAM:

DR. JUSTICE S.K. PANIGRAHI

Order

No.

15.

ORDER

21.12.2022

1. This matter is taken up through hybrid mode.
2. The present petition has been filed challenging the action of the Opposite Party No.3 i.e., Superintendent of Police, CID, Crime Branch, Odisha in cancelling the order dated 18.09.2014 wherein the Petitioner was allowed to financial upgradation on completion of 10 years of service with effect from 01.01.2013 under RACP scheme on the ground that the said action is illegal, arbitrary and in violation of cardinal principles of natural justice.

I. FACTS OF THE CASE

3. Shorn of unnecessary details, the substratum of matter presented before this Court remain that the Petitioner entered into service as a sepoy and was posted at 3rd Bn., Koraput on 18.08.1995. Subsequently, the Petitioner appeared for the selection test for Handler Constable, and on being selected, he was appointed as a Handler Constable in Detective Dog Squad under CID, Crime Branch, Cuttack vide Office Order No.33/CID-R dated 13.01.2006.
4. While continuing as such, the Petitioner was selected for promotion to the rank of Lance Naik in Oriya Coys of OSAP Battalion on the basis of seniority vide Office Order No. 115/SAP dated 26.04.2008. In compliance with the said order, the Petitioner submitted that since he is continuing under Superintendent of Police, CID, Crime Branch, he will avail the promotional opportunities in CID, Crime Branch on being absorbed in the organization and as per his turn. During the incumbency of the Petitioner in DDS, he was sent for Tracker Dog Training from 02.04.2012 to 08.12.2012 at National Training Centre for Dogs, BSF, Takanpur.
5. Subsequently, the Government issued a resolution dated 06.02.2013 for fixation of pay as per Revised Assured

Career Progression Scheme (RACPS). As per the said resolution, there shall be 3 financial upgradations under the RACP Scheme, counted from the direct entry grade on completion of 10, 20 & 30 years of service in a single cadre in absence of promotion. An employee if completed 10 years of service in entry grade will be considered for 1st upgradation, an employee who has completed 20 years of service and has got one upgradation either by promotion or by RACP will be considered for 2nd upgradation. Similarly, an employee who has completed 30 years of service and has got two upgradations either by RACP or promotion or both will be considered for 3rd upgradation.

6. On 20.01.2014, the Government issued a clarification for guidance in implementing the benefits extended under RACP scheme. In Clause-5 of the said resolution, a clarification was made whether the benefit under RACP scheme shall be given to an employee who forgoes regular promotion in the cadre due to certain problem for certain period but thereafter, gives consent for same. A clarification was issued by the finance department in this regard that the benefit under RACP scheme shall be deferred to the extent of period of debarment from the date of actual entitlement.

7. In the due course, the Screening Committee vide notification dated 06.02.2013 recommended the case of Petitioner for 1st stage of upgradation for promotion with grade pay Rs.2400/-, as he had completed 10 years of service on 18.08.2005. Accordingly, vide order dated 18.09.2014, the pay of the Petitioner was fixed at 1st stage of upgradation for promotion with grade pay Rs.2400/-. However, the Opposite Party No.3 vide order dated 05.12.2015 cancelled the financial upgradation granted to the Petitioner and directed for recovery of overdrawal amount from the pay of the Petitioner. Further, it was also directed that on receipt of written consent for promotion, his case shall be considered under RACP scheme as per clarification dated 20.01.2014.

II. SUBMISSION ON BEHALF OF THE PETITIONER

8. It is submitted by Learned Counsel for the Petitioner that the Petitioner completed 10 years of service on 18.08.2005 and, by that date he had not got any promotion. Since his 1st promotion was stagnated on during the 10 years of service, he is entitled to 1st RACP in accordance with Resolution dated 06.02.2013 even if he has refused his promotion after the date of eligibility. It is profitable to mention that the clarification issued on 20.01.2014 clearly stipulated that if he had refused

promotion before he became eligible for 1stupgradation then he is not entitled to 1st RACP.

9. Furthermore, it is contended by Learned Counsel for the Petitioner that the notification dated 20.01.2014 does not preclude an employee to get RACP if he has refused promotion after eligibility of RACP. The Opposite Party No.3 by misinterpreting the order dated 20.01.2014, has cancelled the RACP without affording opportunity to the Petitioner to have a say in the matter. Hence the principle of natural justice has made a go bye and as such the same is liable to be quashed. Had the Petitioner been given an opportunity of being heard, he would have satisfied the authorities that the financial upgradation made on 18.09.2014 is no way irregular nor does it violate Point No.16 of Finance department resolution dated 06.02.2013 and Point No.5 dated 20.01.2014.

III. SUBMISSION ON BEHALF OF THE OPPOSITE PARTIES

10. Per Contra, it is submitted by the Learned Counsel for the Opposite Parties/State that the Petitioner refused for promotion on 30.05.2006 which is prior to the entitlement that became due on 01.01.2013. Hence, the claim of the disputed financial upgradation by the

Petitioner is hit under the principle of estoppel and the same is liable to be dismissed.

IV. COURT'S ANALYSIS AND REASONINGS

11. For better appreciation of issues under consideration, Para-16 of RACPS Resolution dated 06.02.2013 is extracted hereinunder for convenience:

"If a regular promotion in due course is refused by the employee before becoming entitled to financial upgradation, then there shall be no financial upgradation under RACPS as the employee has not been stagnated due to lack of promotional opportunities. If, however, financial upgradation has been allowed due to stagnation and the employee refuses the subsequent promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the next financial upgradation shall also be deferred to the extent of period of debarment due to such refusal."

12. In the instant case, the Petitioner joined service on 18.08.1995. By virtue of Para-1 enunciated under RACPS, the incumbent shall be entitled to three financial upgradation counted from the direct entry grade on completion of 10, 20 and 30 years of service in a single cadre, in absence of promotion. In the present case, the Petitioner was posted as Sepoy at 3rd Bn., Koraput on 18.08.1995 and joined OSAP 1st Bn.,

Charbatia on 01.09.2003 on transfer. Subsequently, he joined as Handler Constable in DDS, CID, Crime Branch, Cuttack on 01.02.2006. Further, the Petitioner's name was recommended for promotion to the rank of Lance Naik vide Office Order dated 26.04.2008 to which he refused as he wanted to seek promotional avenues in CID, Crime Branch. Therefore, the Petitioner had already completed 10 years of service from direct entry grade, without promotion, before being recommended for promotion to the rank of Lance Naik which, eventually, he refused. The Petitioner completed 10 years of service on 17.08.2005 and he decided to forego the promotion to the rank of Lance Naik on or around 25.07.2008. Hence, the Court is of the view that the Petitioner is entitled to 1st upgradation under the RACPS as he had discharged his duties as Sepoy for a period of 10 years without promotion.

13. It is pertinent to mention that the Petitioner refused promotion to the rank of Lance Naik as he was seeking absorption under CID, Crime Branch and in furtherance of the same, he has also completed the training pertaining to factual knowledge in handling of police dog at National Training Centre for Dogs, BSF, Tekanpur, Gwalior. Moreover, the Petitioner, after his 1st

financial upgradation under RACPS was cancelled, has also submitted his willingness to appear in the written test and practical test to be considered for promotion to the post of Havildar in DDS. He had appeared the written test and practical test held on 28.11.2016 and had also come out successful.

14. The RACPS Resolution acknowledges in its preamble that the Central Government had introduced the MACPS. Therefore, something similar had to be introduced in the State Government. Therefore, the RACPS was being introduced as a Career Advancement Scheme. The purpose of granting of financial upgradations was the absence of a promotional avenue to an employee who has remained over a long period of time in the same cadre. In the case at hand, the Petitioner was stagnated in the post of sepoy without any sort of promotion from 18.08.1995 to 17.08.2005. From a bare perusal of Para-1 of RACPS, it can be ascertained that the Petitioner discharged his duties for the period from 18.08.1995 to 17.08.2005 without getting or refusing any sort of promotion. He was recommended for promotion for the first time while working as DDS Handler on 26.04.2008 to which he eventually refused. Therefore, the Petitioner completed

10 years of service as Sepoy before refusing promotion to the rank of Lance Naik; hence, he is entitled for 1st financial upgradation under RACPS as there is no violation of Clause-5 of Clarification dated 20.01.2014 and Para-16 of Resolution dated 06.02.2013.

15. The Opposite Parties have interpreted Para-16 of Resolution dated 06.02.2013 in isolation; however, the same has to be interpreted in conjunction with Para-1 of the said resolution. The Opposite Parties have interpreted Para-16 in a manner that the Petitioner became entitled to financial upgradation after the implementation of RACPS in 2013 and since, he had refused promotion to the rank of Lance Naik in 2008, he is not entitled to any financial upgradation pursuant to Para-16 of Resolution dated 06.02.2013.

16. Clause-1 of clarification dated 20.01.2014 stipulates that an employee who has completed 10, 20 or 30 years of service prior to 01.01.2013 shall be eligible for RACP benefit with effect from 01.01.2013. It is imperative to understand that the entitlement to financial upgradation under RACPS is dependent on the employee's conduct and discretion while discharging the duties in 10, 20 and 30 years of service. Thus, if an incumbent forgoes promotion before completing the required number of

years in service, then he shall not be entitled to RACPSas he has not been stagnated due to lack of promotional avenues. However, the Opposite Parties interpreted that the Petitioner refused for promotion on 25.07.2008and since, it is prior to the entitlement that became due on 01.01.2013, the Petitioner is estopped vide Para-16 of Resolution dated 06.02.2013.

17.The Petitioner became entitled to 1st financial upgradation under RACPS for his service (in absence of promotion) from 18.08.1995 to 17.08.2005. Accordingly, he became eligible for RACP benefit from 01.01.2013 as the scheme was brought into effect from 01.01.2013. It needs to be understood that the entitlement for financial upgradation is based on the period of service and the manner in which it was discharged. The benefit under the scheme for such entitlement is to be given with effect from 01.01.2013. The scheme cannot be construed in a way to mean that the entitlement accrued on 01.01.2013.

18.In conspectus of the facts narrated hereinabove, this Court is of the view that the order dated 05.12.2015 passed by the Opposite Party No.3 is arbitrary and erroneous and, is hereby set aside. The Petitioner's claim, being devoid of any infirmity, is accordingly allowed.

19. In the final evaluation, the Writ Petition is allowed.

There shall be no order as to costs.

(*Dr. S.K. Panigrahi*)
Judge

B.Jhankar

