

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) Nos.1554 of 2016,959 of 2016 & 4217 of 2015

In the matter of an application under Section 19
of the Administrative Tribunals' Act, 1985.

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Jagannath Sethi & Others

Petitioners

-versus-

State of Odisha & Others

Opposite Parties

For Petitioner :M/s. Saswati Mohapatra, Advocate

For Opp. Parties :Mr. B. Panigrahi
Additional Standing Counsel

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 18.10.2022 and Date of Order: 03.11.2022

Biraja Prasanna Satapathy, J.

1. Heard Ms. Saswati Mohapatra, learned counsel appearing for the petitioners and Mr. B. Panigrahi, learned Additional Standing Counsel appearing for the State-Opp. Parties.

2. Since common question has been raised in all these writ petitions, all the matters were heard analogously and disposed of by the present common order.

3. The present writ petitions have been filed challenging the order dated 05.11.2015 passed by the Government-Opp. Party No.1 under Annexure-11 in W.P.C(OAC) Nos.1554,959 of 2016 and W.P.C(OAC) No.4217 of 2015.

4. It is submitted that in view of issuance of the impugned communication under Annexure-11, the petitioners in all these writ petitions were deprived from getting the benefit of RACP in terms of the Resolution issued by the Finance Department on 06.02.2013. Learned counsel for the petitioners submitted that the petitioners were appointed in the Special Branch of the Office of the D.I.G of Police, C.I.D. It is submitted that pursuant to the instruction issued under Annexure-1, various posts were created for the Office of Special Branch, C.I.D vide letter dated 17.12.1964 under Annexure-2. Learned counsel for the petitioner submitted that Special Branch, C.I.D is not coming under the definition of Heads of Department and instead, Special Branch is a District Cadre Office. It is accordingly submitted that taking into account such status of the employees working in the Special Branch, a Gradation list was published under Annexure-3. It

is also submitted that though initially DIG, CID, Intelligence was the administrative authority of the staffs appointed in the Special Branch, but subsequently, the administrative control came under Director Intelligence, Odisha, Bhubaneswar. It is also submitted that as per the provision contained in the ORSP Rules, 1981, post of Grade-III Assistant was re-designated as Senior Clerk. It is further submitted that since Special Branch enjoys special status, on issuance of the Finance Department Resolution dated 06.02.2013 with regard to sanction of the benefit of RACP, the concerned authority i.e. S.P, Security Wing and the Director, Intelligence, Odisha vide letter under Annexure-7 dated 19.02.2014 sought for clarification from the I.G of Police (Personnel) with regard to extension of the benefit of RACP in favour of the ministerial staffs working in the said Special Branch. It is also submitted that subsequently vide letter under Annexures-8, 9 & 10, clarifications were sought for with regard to extension of the benefit of RACP in favour of the employees working in the Special Branch on completion of 10,20 & 30 years of service.

5. Learned counsel for the petitioner submitted that without considering the clarification as desired by the concerned authority of the Special Branch, Government-Opp. Party No.1 issued the impugned communication on

05.11.2015 under Annexure-11 by holding therein that the Junior Assistants working against the sanctioned post in the special branch belong to Head of the Department Cadre and the Senior Clerks working in the said branch are ex-cadre employees. In the said impugned communication, it was also indicated that Senior Clerks recruited directly in the Special Branch, shall be treated as ex-cadre employee and the said persons shall be allowed the benefit of RACP in the light of ex-cadre post as per Para 10 of the Finance Department Resolution dated 06.02.2013. It was also indicated in the said letter that the benefits under RACP shall be allowed as per the promotional post with regard to the HOD Cadre. Learned counsel for the petitioner submitted that since Special Branch is a district cadre Office, opp. Party no.1 illegally and arbitrarily held the employee working in the said Branch as belonging to HOD Cadre and by treating the Senior Clerks as ex-cadre employees. It is submitted that due to such illegality committed by Opp. Party No.1 in issuing the impugned communication dated 05.11.2015, the petitioners are deprived from getting the benefit of RACP on completion of the required 10,20 & 30 years of continuous service in a particular grade.

6. Learned counsel for the petitioners further submitted that taking into account the ambiguity and the action

proposed to be taken basing on the impugned communication dated 05.11.2015, learned Tribunal while issuing notice of the matter, passed an interim order by restraining the Opp. Parties from taking any coercive action against the petitioners basing on Annexure-11. It is submitted that though the petitioners belong to District Cadre, but Opp. Party no.1 by taking them as employees coming under Heads of Department cadre, not only issued the impugned communication under Annexure-11, but also because of the same, the petitioners were denied the benefit of RACP in terms of Finance Department Resolution dated 06.02.2013. Accordingly, learned counsel appearing for the petitioners prayed for interference of this Court on Annexure-11 dated 05.11.2015.

7. Mr. B. Panigrahi, learned Additional Standing Counsel appearing for the State-Opp. Parties, on the other hand, made his submission basing on the stand taken in the counter affidavit. It is submitted that basing on the communication issued under Annexure-A to the counter, appointment to the ministerial cadre of the special branch was made by the D.I.G of Police, C.I.D (now, Director, Intelligence). It is also submitted that subsequently basing on the letter issued on 17.12.1964 under Annexure-B, posts like Senior Assistant, Grade-I , Grade-II & Grade-III Assistants were created for the

Special Branch. It is also submitted that in terms of the letter issued under Annexure-C, the Special Branch enjoys status of the Office of the D.I.G of Police, C.I.D. It is also submitted that vide communication issued on 21.11.1981 under Annexures-D & E state Special Branch was treated as a District Cadre Office.

8. It is also submitted that as per the ORSP Rules, 1981 the post of Grade -III Assistant was re-designated as Senior Clerk and as per Annexure-F, 50% vacancy in the rank of Grade-III Assistants/Sr. Clerks were to be filled up by Departmental Promotion and remaining 50% by direct recruitment. It is also submitted that the petitioners in these writ petitions were originally appointed as Jr. Grade Typist/Jr. Grade Diarist and promoted to the post of Senior Clerk and Senior Assistant in the Special Branch, basing on the communication issued under Annexure-G to the counter.

9. Learned counsel for the State-Opp. Parties further submitted that vide communication issued under Annexure-H to the counter, 12 posts of Jr. Assistant were created in the Special Branch and after such creation of the post of Jr. Assistant, the Senior Clerk posts in Special Branch became the promotional post of Jr. Assistant and the said clarification was also issued by the State Police Headquarter vide letter

dated 25.08.1993 under Annexure-J. It is submitted that pursuant to the Finance Department Resolution issued on 06.02.2013 under Annexure-K and subsequent clarifications issued on 17.01.2015 under Annexure-L, it was clarified that in course of regular promotion, the services rendered in the previous (feeder)posts shall not be forfeited for the next RACP benefit, if due. It is also submitted that State Police Headquarter issued further clarification vide letter dated 09.02.2015 under Annexure-N. It is submitted that basing on the clarification was issued by the Special Branch vide Annexures-N, P & Q, Opp. Party No.1 in consideration of the same, issued the impugned communication dated 05.11.2015 vide Annexure-R, which is under challenge in the present writ petitions.

10. Learned counsel for the State-Opp. Parties also submitted that in absence of any approved cadre rule for the employees working in the Special Branch, various difficulties were experienced for regulation of promotion and other service conditions of such ministerial staffs of the Special Branch. It is also submitted that to avoid such difficulties with regard to regulation of the service condition of the ministerial staffs of the Special Branch, State Police Headquarter vide letter dated 18.04.2013 under Annexure-T moved Opp. Party No.1 for

merger of 104 of ministerial posts of Special Branch cadre with BDPO cadre in prospective manner and reviewing the scope for the existing ministerial staff for special branch organization to continue in their parent cadre. It is also submitted that in absence of cadre rule, State Police Headquarters was also requested for issuing clarification regarding allowing the benefit of RACP to the ministerial staff of the special branch vide letter under Annexures-P, N & Q and in consideration of that, the impugned communication was issued. But, it is fairly submitted that subsequent to the issuance of the impugned communication on 5.11.2015 vide letter dated 22.09.2016 under Annexure-“U”, Opp. Party No.2 moved Opp. Party No.1 seeking further clarification regarding service conditions and extension of RACP to the ministerial staffs of the Special Branch. It is submitted that subsequently various communications were also issued seeking further clarification vide Annexure-W and Annexure-X to the counter.

11. Mr. Panigrahi, learned Additional Standing Counsel appearing for the State-Opp. Parties fairly submitted that on the receipt of the clarification as requested vide letter under Annexures-W,X & Y, necessary steps will be taken for implementation and allowing the benefit of RACP in favour of the petitioners. It is accordingly submitted by Mr. Panigrahi

that in absence of such clarification as requested vide Annexures-W,X & Y and prior to receipt of the same, the benefit of RACP cannot be extended in favour of the petitioners.

12. Learned counsel for the petitioners in reply to the stand taken in the counter submitted that during pendency of the matter and basing on the clarification issued in the impugned communication on 5.11.2015, the petitioners in W.P.C(OAC) Nos.1554/2016 & 959 of 2016 were reverted to the concerned posts and were extended the benefit of RACP/MACP.

13. It is submitted that the petitioners in W.P.C(OAC) 4217 of 2015 have not received the benefit of RACP even after completion of 30 years of service in a particular rank i.e. in the rank of Senior Assistant.

14. In the reply affidavit filed by Opp. Party No.3 to the rejoinder filed by the petitioners, Mr. Panigrahi submitted that during pendency of all these matters, the petitioners in WPC (OAC) No.4217 of 2015 moved this Court in WP(C) No.20654 of 2019 with a prayer for sanction of the benefit of RACP/MACP. It is also submitted that pursuant to the order passed by this Court on 01.11.2019 in W.P.(C) No.20654 of 2019, Director, Intelligence passed a detailed order on

11.6.2020 under Annexure-Z/4. It is also submitted that the petitioners in W.P.C(OAC) No.959 of 2016 also approached this Court in W.P.(C) No.22233 of 2019 and pursuant to the order passed by this Court and taking into account the willingness of the petitioners therein to accept financial upgradation in terms of the clarification issued on 05.11.2015, the benefit of RACP/MACP has already been extended in favour of the petitioners in O.A. No.959 of 2016. It is accordingly submitted by Mr. Panigrahi that because of the unwillingness of the petitioners in WPC (OAC) No.4217 of 2015 and the unwillingness of the petitioner No.1 in WPC (OAC) No.1554 of 2016, the benefit of RACP/MACP has not yet been extended in their favour. It is submitted that if the petitioners therein will express their willingness to get the benefit in terms of the impugned communication dated 05.11.2015, they can also be extended with the said benefit as has been extended in favour of the petitioners in WPC (OAC) 959 of 2016.

15. Heard learned counsel for the parties. Perused the materials available on record.

16. This Court after going through the same finds that even though the ministerial staffs working in the Special Branch were treated as District Cadre employees, but in absence of any cadre rule so framed, the impugned

communication on 05.11.2015 under Annexure-11 was issued and thereby denying the benefit of RACP in favour of the petitioners. This Court further finds that on receipt of the impugned communication, Director-cum-Additional D.G of police, Intelligence vide his letter dated 22.09.2016 under Annexure-U requested the Government to reconsider the matter afresh and to keep in abeyance the order dated 05.11.2015 till suitable clarification is issued in the matter. This Court further finds that subsequently vide Annexures-W,X & Y to the counter, similar request has been made to the Government to issue necessary clarification in the matter and thereby enabling the ministerial staffs working in the Special Branch to get the benefit of RACP. But, it is found that in spite of such communication issued under Annexure-U as well as under Annexures-W,X & Y, opp. Party no.1 till date has not taken any decision on the same. This Court also finds that no cadre rule has been framed in respect of the ministerial staffs working in the Special Branch. Therefore, in absence of any such cadre rule, the action of opp. Party no.1 in holding the post of Senior Clerk as an ex-cadre post, as per the considered view of this Court, is not just and proper. However, taking into account the nature of dispute and the clarification sought for vide Annexures-U, W,X & Y, this Court while disposing the

writ petitions directs opp. Party no.1 to take a decision, as requested therein, within a period of one month from the date of receipt of this order. However, it is observed that while taking such a decision, the admitted position regarding non-framing of any cadre rule of the ministerial staffs shall also be taken into consideration by Opp. Party No.1. It is further observed that on such re-consideration of the matter, the benefit of MACP/RACP be extended in favour of the petitioners.

17. With the aforesaid observation and direction, the Writ Petitions are disposed of.

18. The photocopy of the order be placed in the connected cases.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated 3rd November, 2022/sangita