IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14214 of 2025
CNR No.ODHC010353232025

In the matter of an application under Articles 226 and 227 of the Constitution of India.

.....

Chandan Das .... **Petitioner**

-versus-

State of Odisha and Others .... **Opposite Parties**

For Petitioner : Mr. B. Routray, Sr. Advocate
with Mr. S. Sekhar, Advocate

For Opp. Parties : Mr. C.K. Pradhan, AGA
Mr. T. Patnaik, Advocate for
O.P. No.4

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing:30.10.2026 and Date of Judgment:30.10.2026

Biraja Prasanna Satapathy, J.

1. At the outset, learned Senior Counsel appearing for the petitioner made a submission that he may be permitted to delete Opp. Party No.5 from the cause

title as he has no grievance as against the said Opp. Party. Accordingly, permission is accorded to delete Opp. Party No.5 from the Cause Title in Court.

2. Heard learned counsel appearing for the parties.

3. The present Writ Petition has been filed inter alia challenging the rejection, rejecting the claim of the petitioner to get the benefit of appointment as against the post of OAS-A (JB) in terms of the provisions contained under Section 34(2) of the Rights of Persons with Disabilities Act, 2016 (In short, "the Act") read with Para-5(3) of the Resolution dated 25.02.2021 so issued by the Govt. in the Department of Social Security & Empowerment of Persons with Disabilities under Annexure-10.

3.1. Learned Senior Counsel appearing for the petitioner contended that pursuant to the advertisement issued by the OPSC vide Advertisement No.17 of 2022-23 under Annexure-1,

petitioner made the application as a disabled candidate having belong to Category-III. It is contended that in the said advertisement as against the post of OAS-A (JB), the total vacancy was indicated at 242 and Reservation in respect of Category-III was indicated at 3(three) and in respect of Category-IV at 2.

3.2. Learned Senior Counsel appearing for the petitioner contended that in the said selection process, vacancy indicated as against Category-IV at 2, was a Backlog vacancy, taking into account the fact that such vacancies could not be filled up in terms of the earlier advertisement issued vide Advertisement No.15 of 2021-22 under Annexure-E/1 to the counter affidavit filed by Opp. Party No.1.

3.3. It is contended that since the vacancy as against Category-IV, so indicated in the Advertisement No.17 of 2022-23, was a Backlog vacancy, in view of the provisions contained under

Section 34(2) of the Act, 2016 read with Para-5(3) of the Resolution dated 25.02.2021, the said vacancies are inter-changeable.

Section 34(2) of the Act and Para-5(3) of the Resolution reads as follows:-

> *"34(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.*
>
> *Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government."*
>
> *xxxx xxxxx xxxx xxxx*
>
> *"5(3). If in any recruitment year, any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability;*
>
> *Provided that, if the nature of vacancies in an establishment is such that a given category of*

person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government."

3.4. However, without doing the same petitioner was appointed as against the vacancy meant for ORS Group-B, in terms of the notice dated 19.10.2024, so issued by the Commission under Annexure-7. It is contended that as per the said recommendation made by the Commission with issuance of the final select list under Annexure-7, petitioner having made the application as against Category-III, was provided with appointment as against ORS Group-B Post.

3.5. However, it is contended that since 2(two) posts in Category-IV, so reflected in the Advertisement issued under Annexure-1 were Backlog vacancies and could not be filled up, with recommendation made by the Commission, in view of the provisions contained under Section 34(2) of the Act read with Para-5(3) of the Resolution, both the posts should have been inter-changed by providing appointment to the petitioner. But without proper appreciation of

the aforesaid provision so contained in 2016 Act and the Resolution issued in the year 2021 under Annexure-10, claim of the petitioner was rejected vide the impugned order dated 17.12.2024 under Annexure-13, and that too without assigning any reason whatsoever.

3.6. Not only that vide letter dated 20.11.2024, though the department requested the Govt.-O.P. No.1 to consider the grievance of the petitioner in terms of the Resolution issued on 25.02.2021 under Annexure-10, but without looking into the said provision and the provision contained under the Act, claim of the petitioner was rejected vide the impugned order dated 17.12.2024 under Annexure-13.

3.7. It is accordingly contended that since it is not disputed that both the posts in the rank of OAS-A(JB) in Category-IV, were Backlog vacancies, taking into account the position of the petitioner in the

select list issued by the Commission under Annexure-7, he should have been appointed as against the post of OAS-A (JB), with due interchange among the five categories.

3.8. It is also contended that in Para-14 of the counter affidavit filed by Opp. Party No.1, the aforesaid fact is admitted with regard to the status of both the posts meant for Category-IV as Backlog vacancies. Para-14 of the counter affidavit reads as follows:-

> *"14. That, the above 2 unfilled PwD vacancies of OAS cadre for Odisha Civil Service Examination for the year 2021 have been carried forward for the first time and has been added in the advertisement for the Odisha Civil Service Examination, 2023. A copy of the relevant page of the OPSC Advertisement for the Odisha Civil Service Examination, 2023 is annexed herewith as Annexure-F/1. Therefore, the unfilled PwD vacancies of the OAS cadre in respect of the Odisha Civil Service Examination for the year from 2017 to 2021 has been properly carried forward as per provision of Para-5 of the SSEPD Department Resolution No.1843 dated 25.02.2021 under Annexure-B/1 and the same have been included in the Advertisement for the Odisha Civil Service Examination, 2023. The petitioner has been allocated with Odisha Revenue Service under SEBC-PwD-CAT-III against the vacancies of the Odisha Civil Service Examination, 2022 where no unfilled vacancies of previous year pertaining to OAS cadre was present for being carried forward and interchanged."*

4. Learned Addl. Govt. Advocate on the other hand contended that since petitioner made his application as a disabled candidate having belong to Category-III, taking into account the position in the select list issued by the Commission on 19.10.2024 under Annexure-7, petitioner was appointed as against the post of ORS Group-B. However, when such a claim was made for inter-change of both the posts so meant for Category-IV and to provide appointment to the petitioner as against the post of OAS-A(JB), such claim was duly considered and rejected by Opp. Party No.1 vide order dated 17.12.2024 under Annexure-13.

4.1. It is also contended that taking into account the position of the petitioner in the select list and the claim made as a Category-III candidates, 2(two) similarly situated Category-III PWD candidates, placed at Sl. No.167 and Sl. No.314 of the select list, were recommended and appointed as against the post of OAS-A(JB).

4.2. However, taking into account the position of the petitioner in the select list at Sl. No.455, he was rightly appointed as against ORS Group-B post. It is accordingly contended that no illegality or irregularity can be found with the impugned rejection, so far as claim of the petitioner is concerned.

5. Learned counsel appearing for the OPSC on the other hand contended that the Advertisement in question was issued under Annexure-1, basing on the requisition made by the Govt.-O.P. No.1 on 17.12.2022 under Annexure-A/2. It is contended that taking into account the position of the petitioner in the final select list issued on 19.10.2024 under Annexure-7 and the vacancies indicated in the advertisement, petitioner was recommended for his appointment as against ORS Group-B post. It is also contended that the Commission has no power for interchange of the posts meant for Category-IV.

6. Having heard learned counsel for the parties and considering the submissions made, it is found that petitioner participated in the recruitment process in terms of the advertisement issued by the Commission vide Advertisement No.17 of 2022-23 of the Odisha Civil Services Examination, 2022 under Annexure-1. It is not disputed that petitioner made his application as a disabled candidate having belong to Category-III. Basing on the final select list issued by the Commission on 19.10.2024 under Annexure-7 and the position of the petitioner in the select list at 455, petitioner was appointed as against the post of ORS Group-B. Two(2) of the persons in same category being placed above the petitioner in the select list at Sl. No.167 and 314, were appointed as against the post of OAS-A(JB) in respect of the vacancies meant for Category-III, in the advertisement issued under Annexure-1.

6.1. However, after such appointment of the petitioner as against the post of ORS Group-B and

taking into account the fact that the vacancies meant for Category-IV in the advertisement being Backlog vacancies, relying on the provisions contained under Section 34(2) of the Act, 2016 read with Para-5(3) of the Resolution dated 25.02.2021, petitioner raised his claim for his appointment as against the post of OAS Group-A (JB), with due interchange of the posts.

6.2. However, such claim of the petitioner was rejected vide the impugned order dated 17.12.2024 under Annexure-13 of Opp. Party No.1. Placing reliance on the provisions contained under Section 34(2) of the Act and Para-5(3) of the Resolution dtd.25.02.2021 under Annexure-10, this Court is of the view that since in the advertisement issued under Annexure-1, 2 (two) posts were meant for Category-IV as against the post of OAS Group-A (JB) and it is not disputed that those 2(two) vacancies are Backlog vacancies, it is the view of this Court that in view of the aforesaid provisions with due interchange

of the posts among the five categories petitioner's claim should have been allowed.

6.3. It is also found from the RTI information available under Annexure-15 series, those 2(two) vacancies in Category-IV are yet to be filled up.

6.4. In view of the aforesaid analysis, this Court while quashing the impugned rejection so issued by Opp. Party No.1 dated 17.12.2024 under Annexure-13, directs the said authority to provide appointment to the petitioner as against the post of OAS Group-A (JB) with regard to the vacancy meant for Category-IV with issuance of a fresh order of appointment, if petitioner comes within the zone of consideration taking into account his position in the select list issued under Annexure-7, with due interchange of the posts among the five categories.

6.5. However, it is observed that petitioner will not claim Seniority over his batchmates in the said category after getting the benefit of appointment as

against the post of OAS(Group-A) (JB) and he will be treated as a fresh entrant in the cadre with necessary pay protection only.

7. The Writ Petition stands disposed of accordingly.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 30th October, 2026/Basudev

Signature Not Verified
Digitally Signed
Signed by: BASUDEV SWAIN
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 04-Nov-2026 19:23:33