IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14708 of 2024
CNR No. ODHC010441532024

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

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Krupasindhu Swain & Anr. .... ***Petitioners***

-versus-

State of Odisha & Ors. .... ***Opposite Parties***

For Petitioner : Mr. M. Mohanty, Sr. Advocate
along with
Ms. S. Mohanty, Advocate

For Opp. Parties : Mr. C.K. Pradhan, Addl. Govt. Advocate

PRESENT:
THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 05.11.2026 & Date of Judgment:05.11.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through hybrid mode.

2. Heard Mr. M. Mohanty, learned Sr. Counsel appearing for the Petitioners along with Ms. S. Mohanty, learned counsel and Mr. C.K. Pradhan, learned Addl. Govt. Advocate appearing for the Opp. Parties.

3. The present writ petition has been filed inter alia with the following prayer:-

> *"It is, therefore, humbly prayed that, this Hon'ble Court may graciously be pleased to admit this writ petition, call for the records and after hearing the parties, may be pleased to pass the following reliefs:-*
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> *a) The Opp. Parties may be directed to include the names of the petitioners in the revised select list dated 14.06.2024 under Annexure-8; as their names were found place in the previous select lists dated 29.12.2023, 08.02.2024 & 28.05.2024;*
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> *b) The Opp. Parties be directed to give promotion to the petitioners to the rank of Havildar;*
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> *c) And may pass such other Order/Orders/Direction/Directions as may be deem fit and proper in the interest of justice;*
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> *And for this act of kindness, the petitioners shall as in duty bound remain ever pray."*

4. Learned Sr. Counsel appearing for the Petitioners contended that Petitioners while continuing as Home Guard, they were appointed as against the post of Constable, taking into account the vacancy meant for such Home Guards to the extent of 10% in the year 2012. Petitioners accordingly joined as Constable on 18.08.2012 so available in the service book enclosed under Annexure-1 series.

4.1. It is contended that Petitioners after being so appointed as against the post of Constable, they acquired the required training successfully and became eligible for their promotion to the rank of Havildar.

4.2. Taking into account the date of appointment of the Petitioners as against the post of Constable on 18.08.2012 and the training so acquired, Petitioners were held eligible to get the benefit of promotion to the rank

of Havildar and a select list was published by the Opp. Party No. 4 on 25.12.2023 under Annexure-B/4. In the said final select list published under Annexure-B/4, names of the present Petitioners find place at Sl. Nos. 43 & 44 with their date of initial appointment as against the post of Constable as on 18.08.2012.

4.3. It is contended that while the matter stood thus, basing on the order passed by this Court on 11.01.2024 in W.P.(C) No. 41360 of 2022, when 4 (four) of the Constables were also declared eligible to get the benefit of promotion, a fresh select list was published on 08.02.2024 under Annexure-4. In the said select list, names of the present Petitioners were found place at Sl. Nos. 43 & 44.

4.4. Learned Sr. Counsel appearing for the Petitioners contended that basing on such redrawn select list, Petitioners were held eligible to undergo the required Drill Instructor's Training (DIC) vide the communication issued on 28.05.2024 under Annexure-5. In the said list, Petitioners' names were found place at Sl. Nos. 20 and 21. However, prior to undergoing such training, even though Petitioners were declared physically fit to undergo the same under Annexure-7 series, the impugned order was issued on 14.06.2024 under Annexure-8, wherein Petitioners were held ineligible to undergo DIC course of training for their promotion to the post of Havildar. Accordingly, by challenging the exclusion of the names of the present Petitioners in the list published on 14.06.2024 under Annexure-8, wherein the Petitioners were deprived to undergo the DIC course of training, the present writ petition was filed.

4.5. It is contended that pursuant to the order passed by this Court on 21.06.2024, Petitioners were allowed to undergo the training and Petitioners have also qualified the same. It is contended that since Petitioners were deprived to undergo the training because of the impugned order issued under Annexure-8, even though they acquired the said training pursuant to the interim order passed by this Court, but they are yet to get the benefit of promotion to the rank of Havildar, even though persons similarly situated and junior to them have got the said benefit in the meantime. It is accordingly contended that since Petitioners were wrongly excluded from undergoing the training because of the impugned order dtd.14.06.2024 under Annexure-8, and pursuant to the interim order passed by this Court on 21.06.2024, they have already undergone the training, necessary direction be issued to the Opp. Party Nos. 3 and 4 to promote the Petitioners to the rank of Havildar from the date persons similarly situated were so promoted with consequential service and financial benefits with quashing of Annexure-8.

5. Learned Addl. Govt. Advocate while supporting the impugned order dtd.14.06.2024, made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party No. 4 and the affidavit filed on 25.06.2024 so available at Flag-10 of the brief.

5.1. It is contended that even though it is not disputed that in the redrawn select list of eligible Constables so issued on 08.02.2024 under Annexure-4, Petitioners were held eligible to undergo the DIC training, but since complaints were made with regard to inclusion of the names of the Petitioners in the said list by 2 (two) of the Constables, a fresh

decision was taken with regard to the redrawn select list published on 08.02.2024 under Annexure-4. On such consideration, since it was found that Petitioners have been illegally included in the select list issued under Annexure-4, while issuing the impugned order dtd.14.06.2024 under Annexure-8, names of the present Petitioners were not included, permitting them to undergo the DIC course of training.

5.2. In support of such submission, reliance was placed to Para 8 of the affidavit filed on 25.06.2024 so available at Flag 10 of the brief. Para 8 of the affidavit reads as follows:-

> *"8. That, reason behind exclusion of name of the petitioners from the final redrawn list dtd. 14.6.2024 vide Annexure-8 of eligible constables to undergo DIC course of training is that, as per Rule-15 of Order, 2021 vide Annexure-A/4 which is a Rule governing the promotion of Constables to the rank of Havildar, the interse seniority of constables is required to be drawn on the basis of aggregate mark obtained by each candidates in the recruitment test and as per the redrawn merit list of 2021 which came out as per the judgment passed in the review petition bearing RVWPET Nos. 48, 49, 50, 51 of 2018, the names of the present petitioners namely Krupasindhu Swain is at Serial No.45 and the aggregate mark secured by him is 26 and the name of the other petitioner namely Basanta Kumar Das is at Serial No.46 and the aggregate mark secured by him as 24.75 whereas the persons who filed representation vide Annexure-C/4 Series namely Akhaya Kumar Mohanty is at Serial No.10 and the mark secured by him 47.75 and the another person namely Susil Kumar Bar who filed their representation vide Annexure-C/4 Series is at Serial No.11 and he has secured*

47.75 marks. From this it is clear that going by Rule-15 of Order, 2021, the said Akhaya Kumar Mohanty and Susil Kumar Bara having secured more marks than petitioners, they have been placed at Serial Nos. 10 and 11 of revised redrawn select list drawn on 23.6.2021 pursuant to the judgment delivered by this Hon'ble Court in review petition bearing RVWPET Nos. 48, 49, 50, 51 of 2018. In such view of the matter, since and the considering Clause-4 of Appendix-C appended to the amended Order, 2023, the name of the petitioners have been excluded from the eligible list of constables to undergo DIC Course of training inasmuch as, in the said Clause-4 of Appendix-C which form part of the amended Notification dtd.4.8.2023, has also the reference to the order 15 of Recruitment Rule i.e, Order, 2021 vide Annexure-A/4.

True copy of Revised redrawn seniority list filed as Annexure-E/4."

5.3. It is accordingly contended that since challenge was made by 2 (two) of the candidates with regard to inclusion of the names of the present Petitioners in the redrawn select list issued under Annexure-4, while considering such grievance made by the 2 (two) of the Constables, it was found that Petitioners are wrongly included in the redrawn select list issued under Annexure-4, their names were not indicated while issuing order dtd.14.06.2024 under Annexure-8.

5.4. It is also contended that such a step was taken, taking into account the complaint made by 2 (two) of the Constables that since they have secured more marks and in terms of the provisions contained under the Odisha Police Service (Method of Recruitment & Conditions of Service

of Constables) Order, 2021 so amended vide notification dtd.04.08.2023 under Annexure-B/4, names of the Petitioners have been wrongly included, Petitioners were not permitted to undergo the training with passing of the impugned order dtd.14.06.2024 under Annexure-8.

5.5. Reliance was placed to Rule 15 of the 2021 Order and Rule 16-A of the Amended Order. Rule 15 and Rule 16-A of the Order reads as follows:-

> *"15. Inter Se Seniority: (1) The inter se seniority of the candidates appointed as Constables by way of direct recruitment during a particular recruitment year shall be determined in accordance with the aggregate marks obtained by each candidate in the recruitment test conducted by the Board and in the final examination conducted by the Training Institute in the ratio of 1:2.*
>
> *xxx xxx xxx*
>
> *16-A. Promotion of Constables to the rank of Havildar and promotion of Havildars to the rank of Havildar Major in Districts shall be governed as per the provisions outlined under APPENDIX-C appended to these Order."*

5.6. It is accordingly contended that since in terms of the provisions contained under Rule 15 r.w. the amended Rule 16-A of the 2021 Order, Petitioners were found ineligible for their inclusion in the list to undergo the DIC course of training, their names were excluded while issuing the impugned order dtd.14.06.2024 under Annexure-8. It is accordingly contended that no illegality or irregularity can be found with the action

of the authorities in not allowing the Petitioners to undergo the DIC course of training.

6. To the submission made by the learned Addl. Govt. Advocate, learned Sr. Counsel appearing for the Petitioners made further submissions contending inter alia that since Petitioners were appointed as against the post of Constable against the vacancies meant for Home Guards to the extent of 10%, provisions contained under the 2021 Order are not applicable to their cases. In fact, seniority of the Petitioners is required to be considered in terms of the provisions contained in the Resolution issued on 25.05.2021 under Annexure-G/4. Reliance was placed to Para 10 and the illustration to the said Para of the Resolution, which reads as follows:-

> *"10. In all Districts, the principle of Horizontal reservation will be applicable for selection of Homeguard candidates as decided by the Hon'ble OAT in different OAS. against 10% vacancy of the advertised vacancies. 10% of total advertised vacancy shall be calculated for Homeguards. Out of Common Merit list of Homeguards irrespective of Men or women, the top marks secured candidates upto the 10% posts so calculated shall be selected. Thereafter, they shall be placed in their respective category i.e. Gen(HG) in UR, SEBC(HG) in SEBC, SC(HG) in SC and ST(HG) in ST category. After placing them in their respective category, against the balance posts in the respective categories, non- Homeguard Candidates shall be selected.*
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> ***Illustration:*** *Suppose, in One District the total advertised vacancy is 93. 10 of 93 is 9.3 rounded upto 09. Out of common merit list of Homeguards, top 09 candidates are to be selected.*

Then they will be allotted slots in their respective categories. If in top 9 Home Guard candidates, if there are 04 UR(HG) Men, 01 UR(HG) Women, 03 SUBC (HG) Men and 01 ST(HG) Women are placed, they be allotted slots in their repetive categories. Balance number of vacancies in different categories shall be available for selection of non Home guard candidates of that category, i.e. UR-47-05(HG)=42(Non Home Guard), SC-15-0(HG)=15 (Non-Home Guard), SEBC-10-03(HG)= 07 (Non-HG), ST-21-01-20(Non HG).”

6.1. It is accordingly contended that since Petitioners were appointed as against the post of Constable against the vacancies meant for Home Guard, they cannot be taken as direct recruitees and accordingly provisions contained under Rule 15 and the Amended Rule 16-A are not applicable to the case of the Petitioners. But by wrong application of those Rules to the case of the Petitioners, they were deprived to undergo the training vide the impugned order dtd.14.06.2024 under Annexure-8. It is accordingly contended that since Petitioners in the meantime have already undergone the training and they are eligible in all respect to get the benefit of promotion to the rank of Havildar, such benefit be extended with issuance of appropriate order from the date similarly situated Constables, were given such benefit with all consequential service and financial benefits as due and admissible.

7. Having heard learned counsel appearing for the Parties and considering the submissions made, it is found that both the Petitioners while continuing as Home Guard, they were appointed as against the post of Constable, where they joined on 18.08.2012. The same is also reflected in the service book so enclosed under Annexure-1 series.

7.1. Taking into account such date of appointment of the Petitioners against the post of Constable in the list published under Annexure-3 on 29.12.2023 indicating the names of the Constables who are otherwise eligible to get the benefit of promotion, names of the present Petitioners were reflected at Sl. Nos. 39 & 40, as against SEBC category.

7.2. Not only that in the redrawn select list issued on 08.02.2024 under Annexure-4, names of the Petitioners were reflected at Sl. Nos. 43 & 44 and all those selectees were made eligible to undergo DIC course of training. However, as found from the impugned order dated 14.06.2024 under Annexure-8, names of the present Petitioners were excluded and accordingly, the present writ petition was filed challenging the same.

7.3. Considering the stand taken in the writ petition and submission made by the learned Sr. Counsel appearing for the Petitioners and the stand taken in the counter affidavit and so also the instruction so provided by way of affidavit on 25.06.2024, it is the view of this Court that provisions contained under Rule 15 and the amended provisions of Rule 16-A of the 2021 Order are not applicable to the case of the Petitioners as Petitioners got the benefit of appointment as against the vacancy meant for Home Guards to the extent of 10%. Accordingly, it is the view of this Court that relying on the said provisions, seniority of the Petitioners could not have been re-determined after issuance of the redrawn select list under Annexure-4. Not only that, it is the view of this Court that after publication of the redrawn select list on 08.02.2024 under Annexure-4, if any complaint was made by any other eligible Constables, prior to taking any decision in excluding the Petitioners from the list, Petitioners should have been given an opportunity of hearing.

7.4. Since no such opportunity was ever given and the same is also found with no document stand enclosed to the counter affidavit as well as to the instruction, it is the view of this Court that without following the principle of natural justice, Petitioners should not have been deprived to undergo the DIC training with issuance of the impugned order dtd.14.06.2024 under Annexure-8.

7.5. Since it is not disputed that pursuant to the interim order passed by this Court on 21.06.2024, Petitioners have already undergone the DIC course of training and Constable appointed subsequent to the appointment of the Petitioners have already availed the benefit of promotion, this Court directs Opp. Party Nos. 3 & 4 to extend the benefit of promotion in favour of the Petitioners to the rank of Havildar from the date persons similarly situated were so extended with all service and financial benefits, but on notional basis. This Court directs Opp. Party Nos. 3 & 4 to complete the entire exercise within a period of three (3) months from the date of receipt of this order.

8. The writ petition accordingly stands disposed of.

(BIRAJA PRASANNA SATAPATHY)
Judge

Orissa High Court, Cuttack
Dated the 5th November, 2026/Sneha

Signature Not Verified
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Reason: Authentication
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