

A.F.R.



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.398 of 2023

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

D. Venkata Satya Rao **Petitioner**

-versus-

1. State of Orissa **Opposite Parties**
2. Principal Secretary to
Government, Finance
Department, Odisha
3. Collector and District
Magistrate, Rayagada

For Petitioner : Mr. P.K. Mishra, Advocate

For Opposite Parties : Mr. S.P. Das, ASC

**CORAM:
JUSTICE V. NARASINGH**

DATE OF HEARING AND JUDGMENT : 06.02.2025

V. Narasingh, J.

1. Heard learned counsel for the Petitioner and learned counsel for the State.



2. The grievance of the Petitioner working as a Senior Revenue Assistant in the Collectorate of Rayagada is denial of RACP, in terms of the impugned order dated 26.08.2021 at Annexure-10 basing on the views at Annexures 11 & 12.

3. It is the case of Petitioner that he appeared in the recruitment test conducted in Rayagada District and secured 34th position in the common merit list. Since he was denied appointment as such, he assailed the same by filing O.A. No.2960(C) of 1998 before the Orissa Administrative Tribunal.

4. By order dated 03.11.2011, the O.A. was disposed of inter alia directing the State-Respondent to appoint the Petitioner (the applicant therein) against any existing vacancies but seniority was directed to be reckoned from the date of appointment of his junior that is from 27.12.1997. For convenience of reference the operative portion of the order passed by the learned Tribunal is extracted hereunder:-

"xxx

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xxx

In view of the submissions of both parties, and as the advertisement did not indicate any reservation for the SEBC category and as the persons below the applicant who have



secured less marks than the applicant have been appointed against the SEBC category and as the applicant also belongs to such category, respondents may now appoint the applicant against any existing vacancy, but seniority of the applicant shall be reckoned from the date of appointment of his juniors pursuant to the recruitment test of 1994. Such seniority should be allowed but pay may be fixed notionally only and no arrear or financial benefits on this account can accrue to the applicant. However, his pay be fixed notionally. These orders be completed within a period of three months from the date of receipt of a copy of these orders.

xxx

xxx

xxx”

5. In terms of the order passed by the learned Tribunal by order dated 18.12.2013 at Annexure-2 the Petitioner was appointed and the stipulations in the said order which is germane for adjudication is extracted hereunder;

“The seniority of Sri Rao shall be reckoned from the date of appointment of his juniors pursuant to the recruitment test of 1994. His pay may be fixed notionally and no arrear financial benefits on this account can accrue to Sri Rao.”



6. Relevant extract of Annexure-3 which is consequential to the order dated 18.12.2013 at Annexure-2, reads as under:-

“In accordance with the Order No. 48 dated. 03.11.2011 of Hon'ble Odisha Administrative Tribunal, Bhubaneswar in O.A No. 2960(C) 1998 and in continuation of this office Order No.2532 dated. 18.12.2013, the seniority of Sri Rao is reckoned from the date of appointment of his junior i.e Smt. Rasmita Mishra, who joined on 27.12.1997 at 1.C.D.S.,K.Singpur, pursuant to the Recruitment test of 1994. As such, the pay of Sri Rao is fixed at Rs. 3050/- w.e.f. 27.12.1997. Further, the pay of Sri Rao is fixed at Rs. 9150/- notionally w.e.f. 28.12.2013 i.e. his date of joining as Junior Clerk in Collectorate, Rayagada”

7. Learned counsel for the Petitioner, Mr. Mishra draws the attention of this Court to the order dated 27.01.2014 passed by the Additional District Magistrate, Rayagada reckoning his seniority from the date of appointment of the Junior one Ms. Rashmita Mishra who joined on 27.12.1997 at 1.C.D.S.,K.Singpur pursuant to the recruitment test of 1994.

The order further reveals that Petitioner's pay was fixed at Rs.9150/- notionally with effect



from 28.12.2013, the date of joining as a Junior Clerk at Rayagada.

It is apt to note here that the Petitioner was promoted to the rank of Senior Clerk (in Level 7 of pay matrix of ORSP Rule, 2017) by order dated 31.07.2018.

8. The Government of Odisha in Finance Department as per resolution dated 06.02.2013 considering the recommendation of the fitment committee introduced a Revised Assured Career Progression Scheme (RACP).

9. Since the Petitioner was denied the benefit of RACP he made a representation which was forwarded by the Collector, Rayagada under letter dated 23.07.2019 to the Joint Secretary to Government, the Revenue and Disaster Department (Annexure-8).

9-A. While forwarding the grievance of the Petitioner and seeking clarification, the Collector, Rayagada has referred to the observation of the screening committee that the case of the Petitioner was not considered for sanction of MACP by the Revenue and Disaster Department inter alia on the ground that he does not fulfill the mandatory requirement under Rule 9 of the OMS (Method of



recruitment and conditions of service of clerk and assistants in District Offices and offices of Heads Of Department) Rules,1963 i.e. he does not have four years of service experience with effect from the date of joining as Junior Clerk on the date of consideration for extension of the benefit of MACP i.e. 01.01.2013.

10. Pursuant to such communication of the Collector, the impugned orders at Annexures 10 to 12 have been passed which are assailed in the case at hand, as noted.

11. It is the submission of the learned counsel for the Petitioner that the sole ground on which he is being denied entitlement to RACP notionally with effect from 01.01.2013 is the ground that he is treated to have joined the service with effect from 18.12.2013 in terms of the order dated 18.12.2013 at Annexure-2.

12. Learned counsel for the State, Mr. Das, ASC submitted with vehemence referring to assertions in paragraphs-5 & 6 of the counter in particular that since the Petitioner actually joined from 18.12.2013 there is no illegality or irregularity in not allowing him the benefit of RACP notionally. For convenience



of reference paragraphs-5 & 6 of the counter affidavit is extracted hereunder:-

"5. That instead of giving parawise reply to each and every paragraph of the writ application, the deponent respectfully submits that the petitioner has joined on 28/12/2013 in Govt. Service. As per order of OAT Vide Order No.48 dated 03.11.2011, his pay has been fixed w.e.f. 27.12.1997. But at the time of consideration of his case for promotion, it has been clarified by Govt. vide letter No.25987 dated 23.08.2016 of R&DM Department that promotion can be applied to him after completion of 4 years of continuous service i.e. 4 years of service experience with effect from the date of his joining as Junior Clerk which is a mandatory requirement of conditions of Service of Clerk and Assistants in the District Offices and Offices of the Heads of Department. The copy of the letter No.25987 dated 23.08.2016 is filed herewith as ANNEXURE-A/3.

6. That as per Rule-13 (vi) of ORSP Rule, 2017, it is stated that promotion earned in the post carrying same level in the promotional hierarchy as per recruitment rules shall be counted for the purpose of MACPS. The case of the petitioner is not coming under the Rule. Hence his case was not considered by the screening committee in the year 2018. As per decision of screening committee, necessary clarification



was sought from Govt. in R & D.M Dept., regarding extending the benefits of MACP to the petitioner vide office letter No.449 dated 23.02.2019 & letter No.927 dated 22.04.2021. In turn, the R & D.M Dept. has clarified vide their letter No.25623 dated 26.08.2021 under Annexure-10 that RACP/MACP extends benefits similar to promotion and therefore the conditions required for promotion are to be fulfilled. Hence, until a person is eligible for promotion, he would not be entitled for RACP/MACP benefits. As such, the O.P i.e. Collector, Rayagada has taken due steps to address the grievance of the petitioner. The copy of the letter No.449 dated 23.02.2019 & letter No.927 dated 22.04.2021 are filed herewith as ANNEXURE-B/3 Series.”

13. It is submitted with equal vehemence by the learned counsel for the Petitioner referring to the judgments of the Apex Court in the case of **Union of India vs. K.B. Rajoria** reported in **2000 SCC (L & S) 665** that notional promotion ought to have been taken into account while considering the number of years of service of the Petitioner and he has also relied on the judgment of this Court in the case of **Gopal Chandra Sethi Vs. The Executive Engineer, Balasore Electrical Division and others** reported in **(2016) 2 OLR 250** so far as passing of accounts examination is concerned.



14. As already noted, the Petitioner on going through the rigors of selection was selected for appointment as Junior Clerk in Rayagada District. Since he was denied the rightful appointment he ventilated his grievance before the Tribunal and by order dated 03.11.2011, the learned Tribunal by allowing the prayer of the Petitioner specifically directed his seniority to be reckoned from the date of appointment of his juniors pursuant to the recruitment test of 1994 and that has also been reflected in the appointment order of the Petitioner dated 18.12.2013 which has been referred to hereinabove (Annexure-2).

15. In such view of the matter, the submission of the learned counsel for the State relying on the counter affidavit filed that the petitioner did not have adequate number of years of service ex-facie is untenable.

16. In this context, this Court respectfully reiterates the observation of the Apex Court that adopting such an approach would amount to "perpetuating the wrong done to him".

17. The Petitioner's seniority having been reckoned with effect from 27.12.1997 the date his junior has joined in terms of the order dated



27.01.2014 in terms of Annexure-3, it is not open for the authorities to assert that the Petitioner does not have adequate number of years of service. In the process, the authorities are trying to justify the unjustifiable and they cannot be allowed to take advantage of their own wrong.

18. In view of the discussion in the foregoing paragraphs, the impugned order at Annexure-10 as well as Annexures 11 & 12 are hereby quashed and this Court directs the Opposite Party to sanction and allow the MACP to the Petitioner with effect from 28.12.2017 notionally with consequential financial benefits taking into account the emoluments already paid.

Such exercise shall be completed within six months from the date of receipt/production of copy of the judgment.

19. The writ petition thus stands disposed of. No costs.

**(V. Narasingh)
Judge**

*Orissa High Court, Cuttack,
Dated the 06th February, 2025/Ayesha*

Signature Not Verified

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Signed by: AYESHA ROUT
Reason: Authentication
Location: High Court of Orissa, Cuttack
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