

A GUNANIDHI MARTHA AND ORS.
v.
GOVT. OF ORISSA AND ORS.

MARCH 27, 2003

B [SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

Service Law:

C (*Andhra Pradesh*) Police Order No.266 of 1981:

*Promotion—Police Constable—Promotion to Lance Naik—Criteria—
Passing of test and andseniority—Held, a list is to be prepared of selected
candidates who have secured minimum pass marks in each individual subject
in outdoor and indoor tests as indicated in the Police Order subject to
D satisfaction of all other requirements including marks obtained in the
miscellaneous tests; and out of that list candidates are to be sent for training
on the basis of their original seniority irrespective of the total marks secured
by the candidates for the purpose of promotion to the rank of Lance Naik—
Respondents to draw a list accordingly and proceed further in accordance
with law.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 860 of 1998.

From the Judgment and Order dated 18.1.96 of the Orissa Administrative
Tribunal at Bhubaneswar in O.A. No. 2900 of 1994.

F WITH

C.A. No. 861 of 1998.

P.H. Parekh, Samer Parekh, D.P. Mohanty, Ms. Jina Maullick, Rajiv
Mishra for the Appellants.

G Janaranjan Das, Swetaketu Mishra and Radha Shyam Jena for the
Respondents.

The following Order of the Court was delivered:

H The order dated 18th January, 1996 passed by the Orissa Administrative
Tribunal is under challenge in these appeals. The controversy relates to

selection of Police Constables for training for further promotion to the rank of Lance Naik. Admittedly in the Police Manual, there is no provision for regulating the selection of Police Constables for training for promotion to the rank of Lance Naik; however, the same is regulated by the Police Order No. 266 of 1981 in which criteria for selection of candidates and procedure have been prescribed. According to the Police Order, a Constable can be promoted to the rank of Lance Naik provided (i) he has put in three years' service after recruits training; (ii) is below 35 years of age; (iii) has passed the district drill test; and

(iv) has a good record of service. The Selection Board constituted as per the aforesaid Police Order would conduct the test. The subject on which the test is to be conducted as specified in the said Order are as stated below:-

"Out-Door"

		Full Mark	Pass Mark	
1.	Squad Drill	20	10	D
2.	Arms Drill	20	10	
3.	Weapon training	30	15	
4.	Field Craft	20	10	E
5.	P.T.	20	10	
6.	Turn out	10	5	

In Door

A Simple Essay or a report or a letter to be written in Oriya	40	20	F
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MISCELLANEOUS

1.	Service records (the overall record should be examined and rewards and punishments)	40	G
2.	Sports and other extra curricular activities (give reasons)	20	H

A	3. Courses passed (i.e. P.T. Course, W.T. Course, VAC Course)	20
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Grand Total

 240 marks

B The pass marks on out-door and indoor subjects would be 50% i.e. 80 marks.”

C The said order spells out that the size of the Select List should be one and half times the number of anticipated vacancies. Since the number of expected vacancies in the post of Lance Naik was 24, a Select List of 36 candidates was to be prepared. 100 eligible Constables were called for promotional test. in the test, 57 candidates were selected for promotional post on the basis of the 50% aggregate marks secured by them irrespective of the marks secured in the individual items of both out-door and indoor tests and marks awarded in the miscellaneous test. A list of 36 candidates was prepared for training to the promotional post on the basis of the highest aggregate marks secured by them. The validity of the Select List of 36 candidates prepared for the training for further promotion to the post of Lance Naik was questioned before the Tribunal on the ground that the select List should have been prepared on the basis of the length of seniority in the rank of Constable. An application was filed before the Tribunal for intervention which was allowed and the intervenors were arrayed as respondents 4 to 13 before the Tribunal. The Tribunal, after considering rival contentions and respective submissions passed the order directing as under:-

F “Hence without quashing the entire selection, we would direct that first a list of candidates who had secured *the minimum of 50% in each of the indoor and outdoor subjects* should be prepared (List-I). Their marks in indoor and outdoor subjects should then be totalled up and to the aggregate marks of each of the candidates, the marks secured by him in miscellaneous subjects should be added. A list of 36 candidates who have secured the highest marks arrived at in this matter should be prepared (List-II). Then this List-II should be redrawn in order of seniority (List-III). Candidates should be deputed for training according to their placement in this list (List-III).”

G Aggrieved by the same, the appellants are before us in these appeals.

H Shri P.H. Parekh, the learned counsel for the appellants in Civil Appeal

No. 860 of 1998 urged that the Tribunal was not right in ignoring the length of service of the candidates as Constables; length of service of each qualified candidate should have been taken into consideration irrespective of marks secured in the individual subject. According to him, the Police Order did not prescribe that the candidates should secure 50% marks in each individual subject irrespective of aggregate marks secured by them; securing 50% aggregate marks in but-indoor tests was enough; there was no need to insist upon securing 50% marks in each individual item under out-door and indoor tests. He added that the Tribunal committed an error in directing to revise the Select List on the basis of the 50% marks secured in the individual subjects when the Select List had been prepared by the Selection Board without any *mala fide* or bias. He further submitted that a Select List could be prepared on the basis of 50% aggregate marks secured by the candidates in out-door and indoor tests and thereafter inter-se seniority could be arranged in Select List which would be fair, proper and reasonable.

Shri Janaranan Das, the learned counsel for the appellants in Civil Appeal No. 861 of 1998 while supporting the argument of Shri Parekh, the learned counsel for the appellants in Civil Appeal No. 850 of 1998, so far it related to securing 50% marks in aggregate in out-door and indoor tests without insisting upon securing of 50% marks in each individual subject in out-door and indoor tests, submitted that once the candidates are selected on the basis of marks secured by them irrespective of the aggregate marks secured, the candidate should be selected for training strictly in accordance with their seniority. Both the learned counsel submitted that the pass marks of outdoor and indoor tests would be 50% i.e. so marks as can be seen from the Police Order itself; insisting upon securing minimum pass marks in each item in out-door and indoor tests was not at all mandatory.

On the other hand, the learned counsel for the respondent 1 to 3 found themselves in difficulty in taking a clear stand having regard to the counter filed before the Tribunal and having not filed any appeal challenging the order of the Tribunal. The counsel for the private respondents reiterated their stand that was taken before the Tribunal.

We have carefully considered the respective contentions urged on behalf of the parties. It is clear from the Police Order extracted above that in out-door and indoor tests, full marks and pass marks are prescribed as against each item. Minimum pass marks under each item is 50% of the full marks.

- A No doubt, at the end of the prescription marks, it is stated that the pass marks in out-door and indoor subjects would be 50% i.e. 80 marks. That is correct, but that does not dispense with securing of pass marks in each item in out-door and indoor tests. If the contention of the learned counsel for the appellants is to be accepted that there is no need to secure minimum pass marks in each individual subject in out-door and indoor tests and that securing total 80 marks in out-door and indoor tests is enough, prescribing of minimum pass marks in each individual subject becomes meaningless and purposeless. Further, having regard to individual test prescribed in out-door and indoor tests, it will be clear that there is some purpose in prescribing minimum pass marks. For instance, item no. 3 in out-door test i.e. weapon training, 15 marks are required for passing out of 30 marks. Suppose a Constable secures zero marks or one or two marks out of 30, in the very nature of things, a Constable cannot be promoted to the post of Lance Naik without there being proper weapon training. When the candidates have appeared in the tests knowing fully well that they had to secure minimum pass marks in each individual subject, cannot be permitted to say that they need not secure pass marks and yet they should be considered for promotion. It is to be stated here itself that the prescription of pass marks in the Police Order was not at all challenged. It is clear from the said Police Order itself (Expt. A) that a list of candidates who passed the test should be prepared as per their original seniority and such select list should not be more than one and half times of the total probable vacancies.

Thus, it is clear that a list of selected candidates who passed the tests securing minimum pass marks in out-door and indoor tests adding marks in miscellaneous test must be prepared and out of them, 36 candidates should be chosen on the basis of their original seniority irrespective of the total marks secured by them in aggregate of out-door, indoor and miscellaneous tests. This would be consistent with the Police Order afore-mentioned. If we accept the argument of the learned counsel that the Select List of 36 candidates should be prepared on the basis of the aggregate marks secured by the candidates and thereafter the inter-se seniority should be fixed, it would lead to anomalous situation of ignoring seniority of the candidates. If such criteria is followed, some of the senior candidates though having passed the test, on account of their securing lesser marks in aggregate may be deprived of their promotion.

Under these circumstances, in our view, the impugned order needs to be modified to the effect that the authority shall re-draw i.e. prepare a fresh

select list of 36 candidates who have secured minimum pass marks in each individual subject in out-door and indoor tests as indicated in the Police Order subject to satisfaction of all other requirement including marks obtained in the miscellaneous test and out of that list, candidates are to be sent for training on the basis of their original seniority irrespective of the total marks secured in aggregate by the candidates for the purpose of promotion to the rank of Lance Naik. The authority shall now draw a list accordingly and proceed further in accordance with law. The appeals are disposed of in the above terms. No costs.

R.P.

Appeals disposed of.