



# ODISHA SECRETARIAT SERVICE ASSOCIATION

ଓଡ଼ିଶା ସଚିବାଳୟ ସେବା ସଂଘ

OSSA HOUSE, PLOT NO.08, UNIT-III, KHARAVELA NAGAR, BHUBANESWAR  
Govt. Recognition L-No. : 16596/POLL, Dt.29.10.1957

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OS/SSA

Date:

8/06/2020

To

The Hon'ble Chief Minister, Odisha.

Sub: Filling up of vacant promotional posts of OSS Cadre.

Esteemed Sir,

With due deference this Association extends its hearty congratulation to you for becoming the most popular Chief Minister of the Country. You have been crowned with such a great dignity because of your unstinted good works for the socio-economic development of the people of the State during last twenty years. You have always been very kind towards the cause of the employees also. Now, I would like to draw your kind attention towards the following grievance of this Association for consideration.

That in order to way forward one of the 5T and Mo Sarakar agenda of the Government, the Chief Secretary had given instructions to all Departments to hold DPC and fill up all vacant promotional posts of different cadre by end of January, 2020. Because of the efforts of OSS Officers working in Office and Field Establishments of different Departments, the DPC meeting for almost all cadres have already been held and suitable Officers have been given promotions against vacant promotional posts in the meantime.



That, to our utter dismay even after lapse of five months of this calendar year, Home Department have not initiated any step for holding DPC meetings to fill up the vacant promotional posts of OSS cadre. Taking into account consequential vacancies arising out of retirement and promotion, total vacancies in the higher ranks of OSS Cadre would be-Additional Secretary-8 nos, Joint Secretary-13 nos, Deputy Secretary-25 nos, Under Secretary-36 nos, Desk Officer-64 nos and Section Officer-380 nos. during the calendar year 2020. Home Deptt is not convening DPC for consideration of promotion to the rank of Under Secretary and above taking the plea of the orders passed by Hon'ble High Court passed in W.P. (C) No. 9546 of 2012 and 5 similar cases and the recent views of Ld Advocate General, Odisha, Cuttack.

That, it is pertinent to mention that Hon'ble High Court vide their order dtd 1.08.2018 passed in W.P. (C) No. 9546 of 2012 and 5 other similar cases have struck down the OSS Amendment Rules, 2001 by declaring the same ultra vires and directed the State Respondents to convene review DPC for the applicants and other eligible Officers and give promotion to the cadre of Under Secretary as per the provisions of Rules, 1980 in respect of the vacancies of the year 2001 and also subsequent years and grant all consequential benefits.

That the State Govt have already filed SLP before the Hon'ble Supreme Court Court vide W.P. (C) NO-6168-73 of 2019 challenging the impugned order of Hon'ble High Court. Hon'ble Apex Court have admitted the SLPs filed by the State Govt and stayed of contempt proceedings pending against the State Officials.

That, it is recalled that consequent upon receipt of said interim orders from the Hon'ble Apex Court, after obtaining views of Law



Deptt D.P.C. meetings were held by Home Deptt for giving promotion to the ranks of Deputy Secretary, Joint Secretary and Additional Secretary on 26th April, 27<sup>th</sup> June and 29<sup>th</sup> June respectively during last year keeping reserve 3 posts of Deputy Secretary and 7 posts of Under Secretary for 3 petitioners(LOs) in service and 7 other Law Officers respectively subjecting the promotions to the outcome of the SLP. Besides, Home Deptt have been giving promotions to the suitable OSS Officers to the ranks of Under Secretary, Deputy Secretary and Joint Secretary from the valid select list till April, 2020.

That, unfortunately at the behest of Law Officers, Home Department reneged on its earlier decision, reopened the settled issues and solicited views of G.A.& P.G. and Law Departments again on (i) how to fill up the posts of Additional Secretary and Joint Secretary as the orders of High Court have not been stayed and (ii) which posts should be kept reserved for the Law Officers. Both G.A.& P.G. and Law Departments opined that DPC could be held and conditional promotions be given keeping required number of posts reserved for the petitioners leaving the question of reservation of post to the discretion of the A/D. Instead of taking a decision at their level, Home Deptt. referred the matter to the Ld Advocate General for views.

That, surprisingly, in the month of March, 2020, Home Deptt deviating from earlier decision taken in the DPC dated 26.4.2019 and approval Hon'ble Chief Minister obtained Govt order to keep reserve 8 posts of Additional Secretary and released 7 posts of Under Secretary and 3 posts of Deputy Secretary reserved earlier to give promotion to Desk Officers to the rank of Under Secretary.



That, now Learned Advocate General in his views opined that the Hon'ble High Court judgment stands in full force in absence of stay order by the Hon'ble Supreme Court. If at all the posts are to be filled up, the same can only be filled up in accordance with the judgment of Hon'ble High Court, which is as per 1980 Rules, subjecting all such promotion to the result of the SLP pending before the Hon'ble Supreme Court. Rules, 2001 having been declared ultra vires and quashed., no action can be taken in terms of Rules, 2001. It is however, always open for the State Govt. if it is in a hurry to fill up the vacant posts to seek clarification from the Hon'ble Supreme Court in the pending SLP through the Learned conducting Advocate on Records and also take steps to expedite hearing in order to put entire issue at rest.

That, disregarding all the developments in the aftermath of High Court's order and without properly representing all the facts, Home Department referred the matter to Ld Advocate General despite the fact that several suitable OSS Officers had already been given promotion to the rank of Under Secretary/ Deputy Secretary/ Joint Secretary by keeping required number of posts reserved for the petitioners and other Law Officers subject to the outcome of the SLP as per the views of the Law Deptt.

That, this Association finds that the opinion of Ld. Advocate General is unacceptable because of the fact that the State Govt. has already moved the Hon'ble Apex Court against the orders of High Court and the SLP is sub-judice even after several rounds of hearing. At this juncture, State Government cannot resurrect the old law (i.e. OSS Rules, 1980) and give promotion in pursuance thereof as both the OSS Rules, 1980 and the OSS Amendment Rules, 2001 have long been superseded by the OSS Cadre Rules, 2016 notified on 09.01.2017. From January, 2017 onwards, promotions are being



given in terms of OSS Rules, 2016 not in terms of the OSS Rules, 1980 or the Amendment Rules, 2001. Hence, holding of DPC as per 1980 Rules as opined by the Ld. Advocate General would violate the statute i.e. OSS Rules 2016. Besides, neither Hon'ble High Court nor the Hon'ble Apex Court has debarred the authority from holding DPC and giving regular promotions. Moreover, Hon'ble High Court has not passed any order directing the authority not to hold regular DPC and give promotion to OSS Officers to the rank of Under Secretary and above till holding of review DPCs are over.

That, when Ld Advocate General advised Home Deptt to seek clarification from Hon'ble Supreme Court and take steps to expedite hearing, instead of seeking clarification, Home Deptt has requested the AOR to make a special mention for early disposal of the case. It is learnt that the Misc. Petition has not been filed by the Ld. AOR so far. However, the case is listed on 6<sup>th</sup> July, 2020 for hearing. Due to lockdown post Corona outbreak, Hon'ble Supreme Court is taking up matters of urgent importance only. It is apprehended that the case may not be finalized on that date especially when so many intervenors are involved in this litigation. Hence, Home Deptt should keep on holding regular DPC as done earlier.

That, further, the recent decision of Home Deptt to reserve 8 posts of Additional Secretary in place of US/DS would adversely affect the promotion prospects of as many as 48 senior OSS Officers who are approaching retirement. All of them would retire without promotion and suffer recurring financial loss and mental agony till end of their life.

That, Hon'ble High Court has directed to give promotion to the petitioners and other Law Officers to the rank of Under Secretary by



reviewing earlier DPCs held since 2001. To review the proceedings of hundreds of DPCs, would be a herculean task and would take several months' time. Since the direction of the High Court is to give promotion to the rank of Under Secretary, it would be appropriate to reserve posts in the rank of Under Secretary as decided by Home Deptt last year. After all, there is no precedent of reserving all the posts in the highest promotional rank for indefinite period anticipating an uncertain outcome especially when the post of Additional Secretary was never in dispute.

That, in the meantime more than 26 OSS Officers have already retired from Govt. service without getting promotion during this year. If DPCs are not convened early, about 30 senior OSS Officers would retire this year without getting promotion to next higher ranks.

Under the facts and circumstances, this Association request your benign self to be gracious enough to direct Home Deptt to keep on giving promotions from the valid select list and simultaneously initiate steps for holding regular DPC to give promotion to different ranks of OSS Cadre during 2020 taking into account the retirement and promotional vacancies as per views of Law Deptt in order to impart justice to the OSS Officers who are on the verge of retirement. For this act of your generosity this Association shall remain ever grateful to you.

With Deep Regards.

Yours faithfully,

  
(Bibekananda Samal)

General Secretary