A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.16834 of 2023

(An application under Article 226 of the Constitution of India).

[redacted] .... ***Petitioner***

-versus-

1. ***State of Orissa, represented through Secretary to Govt, Dept. of Home, Orissa Secretariate, At/Po-Bhubneswar, Dist-Khurda*** .... ***Opposite Parties***
2. ***State of Orissa, represented through Addl. Chief Secretary to Govt, Dept. of Home, Orissa Secretariate, At/Po- Bhubneswar, Dist- Khurda***
3. ***DG&IG of Police, Police Head Quarter, Odisha, At/Po/Dist. Cuttack***
4. ***DIG of Police, Central Range, Cuttack Police Head Quarter, Odisha, At/Po/Dist. Cuttack***
5. ***Superintendent of Police, Kendrapara, At/Po/Dist: Kendrapara***

For Petitioner : ***Mr. M.K. Khuntia, Advocate***
Mr. B.K. Biswal, Advocate

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

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING :21.03.2025
DATE OF JUDGEMENT: 17.06.2025

V. Narasingh, J.

1. Heard Mr. Khuntia, learned counsel for the Petitioner and Mr. Das, learned Additional Standing Counsel for the State.

2. The Petitioner, who is working as an ASI, has assailed the order at Annexure-3 by which he was found guilty of the charge and consequential imposition of the punishment of black marks for his gross misconduct of alleged unnatural intercourse with the sub-ordinate at work place and the further direction to treat the period of suspension from 04.08.2016 to 02.12.2016 (120 days) as such, as well as, the rejection order of the appellate authority at Annexure-5 and revisional order at Annexure-7 reducing the punishment of three black marks to two. And, the rejection of memorial under Annexure-9 challenging the infliction of punishment of "two black marks".

The prayer in the present Writ Petition reads as under;

> *"It is therefore humbly prayed that this Hon'ble Court may graciously be*

pleased to quash the order of punishment "Three Black Mark" under Annexure-3 & the rejection of appeal under Annexure-5 and the order of revision under Annexure-7 and also the rejection of memorial under Annexure-9 as illegal & arbitrary;

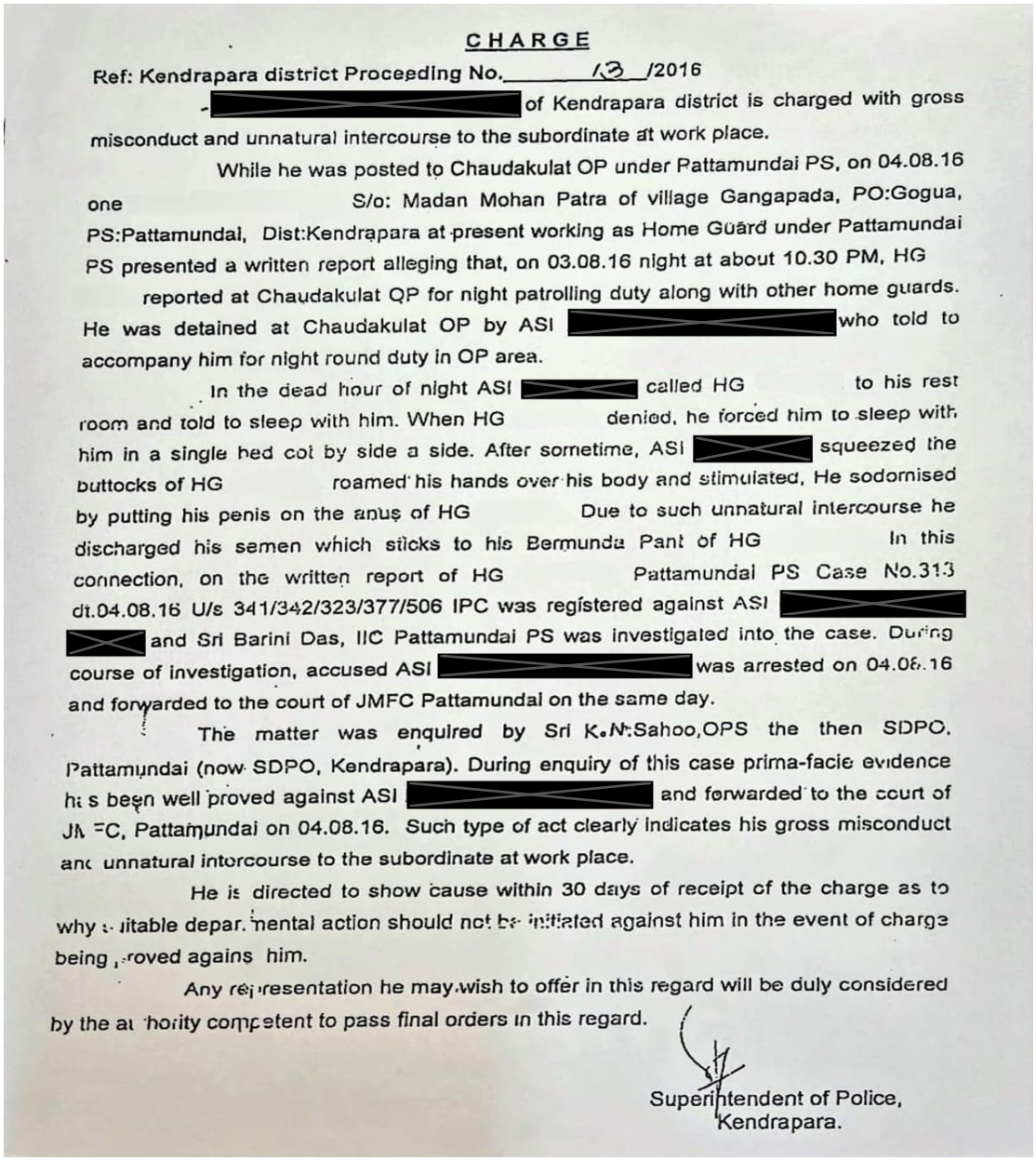
And further be pleased to give all the consequential service benefits to the petitioner;

xxx xxx xxx"

3. The brief undisputed facts which are germane for just adjudication read as under;

One home guard (the name is not being mentioned keeping in view the privacy of the person concerned) lodged an FIR against the Petitioner which was registered as G.R. Case No.314 of 2016 on the file of learned J.M.F.C. Pattamundai, arising out of Pattamundai P.S. Case No.313 of 2016 U/s. 341/ 342/323/377/506 of IPC.

4. As a sequel to the institution of such case, a memorandum of charge was served on the Petitioner in Kendrapara District Proceeding No.13 of 2016 which is at Annexure-1. The memorandum of such charge is culled out hereunder for convenience of reference;



CHARGE

Ref: Kendrapara district Proceeding No. 13 /2016

- [redacted] of Kendrapara district is charged with gross misconduct and unnatural intercourse to the subordinate at work place.

While he was posted to Chaudakulat OP under Pattamundai PS, on 04.08.16 one [redacted] S/o: Madan Mohan Patra of village Gangapada, PO:Gogua, PS:Pattamundai, Dist:Kendrapara at present working as Home Guard under Pattamundai PS presented a written report alleging that, on 03.08.16 night at about 10.30 PM, HG [redacted] reported at Chaudakulat OP for night patrolling duty along with other home guards. He was detained at Chaudakulat OP by ASI [redacted] who told to accompany him for night round duty in OP area.

In the dead hour of night ASI [redacted] called HG [redacted] to his rest room and told to sleep with him. When HG [redacted] denied, he forced him to sleep with him in a single bed cot by side a side. After sometime, ASI [redacted] squeezed the buttocks of HG [redacted] roamed his hands over his body and stimulated, He sodomised by putting his penis on the anus of HG [redacted] Due to such unnatural intercourse he discharged his semen which sticks to his Bermuda Pant of HG [redacted] In this connection, on the written report of HG [redacted] Pattamundai PS Case No.313 dt.04.08.16 U/s 341/342/323/377/506 IPC was registered against ASI [redacted] and Sri Barini Das, IIC Pattamundai PS was investigated into the case. During course of investigation, accused ASI [redacted] was arrested on 04.08.16 and forwarded to the court of JMFC Pattamundai on the same day.

The matter was enquired by Sri K.N.Sahoo,OPS the then SDPO, Pattamundai (now SDPO, Kendrapara). During enquiry of this case prima-facie evidence has been well proved against ASI [redacted] and forwarded to the court of JMFC, Pattamundai on 04.08.16. Such type of act clearly indicates his gross misconduct and unnatural intercourse to the subordinate at work place.

He is directed to show cause within 30 days of receipt of the charge as to why suitable departmental action should not be initiated against him in the event of charge being proved against him.

Any representation he may wish to offer in this regard will be duly considered by the authority competent to pass final orders in this regard.

Superintendent of Police,
Kendrapara.

(Redacted)

5. And in the memo of evidence, it was noted that the said home guard, who was the informant, was to be examined as P.W.2.

6. When matter stood thus, as the matter was settled between the parties, the Petitioner moved this Court by filing CRLMC No.1408 of 2017 and by order dated 08.08.2018 at Annexure-2, this Court quashed

the G.R. Case referred to hereinabove and the same reads as under;

> *"Heard learned Counsel for the parties.*
>
> *In offence under Section 377 of I.P.C. both the parties are major and have come to composition in the meantime.*
>
> *Learned counsels for the parties submit that the filing of case against the petitioner is actually a mistake of fact and for that both the parties have come to composition by intervention of their superiors. As the parties have come to composition, allowing the proceeding to continue shall only be an abuse of the process of the Court. In the ends of justice, therefore, the proceeding in G.R. Case No.314 of 216 pending in the court of J.M.F.C., Pattamundai is quashed.*
>
> *The CRLMC is accordingly disposed of.*
>
> *Urgent certified copy of this order be granted as per Rules."*

6A. Evidently, there is an inadvertent typographical error in the order of this Court in as much as in the 2nd paragraph of the order, the word "compromise" has been inadvertently wrongly reflected as "composition". The same error has also crept in the next sentence.

7. In deference to the order passed by this Court, which attained finality, the learned J.M.F.C. passed the consequential order of dropping the proceeding against the Petitioner and thereafter, the Petitioner filed W.P.(C) No.18896 of 2019 to consider his representation for dropping the departmental proceeding in view of the fact that G.R. case has been quashed by this Court and by order dated 30.10.2019 at Annexure-10, this Court disposed of the Writ Petition referred to hereinabove directing the Opposite Party No.1 therein (State of Orissa, represented through DG and IG of Police) to consider the request of the Petitioner and pass appropriate orders.

8. It is the grievance of the Petitioner that notwithstanding such order passed by this Court, impugned orders referred to hereinabove, the punishment of two black marks reducing it from initially imposed three along with the punishment to treat the suspension period as such were imposed.

9. Before adverting to the contentions raised by Mr. Khuntia, learned counsel for the Petitioner, it is apposite to refer to the relevant provisions of the Chapter-XXV of the Orissa Police Rules dealing with punishments and departmental punishments. Rule-824 describes Prescription of Departmental

Punishments. Rule-824(f) deals with Black mark or marks. The said rule is extracted hereunder;

> *"xxx xxx xxx*
>
> *824.* ***Description of departmental punishments:-*** *The following punishments may be inflicted departmentally on a police officer below the rank of Deputy Superintendent-*
>
> *(a) Dismissal,*
>
> *(b) Removal.*
>
> *[b-1]- Compulsory retirement; and]*
>
> *(c) Reduction in rank*
>
> *(d) Reduction in time-scale.*
>
> *(e) Withholding of the next increment for a specific offence, with or without corresponding postponement of subsequent increments,*
>
> *(f) Black mark or marks,*
>
> *(g) Removal from any office of distinction or specific emolument,*
>
> *(h) Censure,*
>
> *(i) Warning,*
>
> *(j) Confinements to quarters for a period not exceeding 15 days,*
>
> *(k) punishment drill, and*
>
> *(l) Extra guard or other duty;*
>
> *Provided that the punishments mentioned in Clauses (i) to (m) shall not be imposed on any officer of or above the rank of Sub-Inspector nor the punishment mentioned in (l) on any Assistant sub-inspector, Constable of*

Ordinary Reserve and Havildar of Armed Reserve.

Punishments mentioned in Clauses (a) to (h) are classed as major and the rest are minor. All major punishments and censure shall be entered in the service book other minor punishments may be so entered if the officer awarding the punishment so directs.

xxx xxx xxx"

The punishments (a) to (h) are classified as major and the rest as minor. It is further provided that all major punishments and censure shall be entered in the service books other minor punishments may be so entered if the officer awarding the punishment so directs.

9A. It is also apposite to take note of Rule-834 as well as Rules 835, 837 relating to Black Marks to appreciate the gamut of challenge. It would also be necessary to extract the Rules 844 and 845 under the sub-heading Criminal Prosecutions of Chapter-XXV of the Police Rules, the same is extracted hereunder;

"xxx xxx xxx

834.(a) Imposition of black marks:-

Black marks may be awarded alone or in addition to other punishments enumerated in Rule 824 except dismissal or removal, to all officers of and below the rank of Inspector.

No more than one black mark shall be awarded or any one offence

except when moral turpitude can reasonably be inferred.

(b) Three black marks shall ordinarily entail reduction or forfeiture or withholding of an increment, the period of which shall be specified in the order and, after the period is over the officer will be restored to his former position. Such reduction or forfeiture or withholding of increment shall not carry any black mark value.

(c) It shall be left to the discretion of the officer awarding the third black mark to waive the penalty noted in Clause (b). In exercising this option, he shall consider—

(i) the officers for which the previous black marks were awarded;

(ii) the length of time that has elapsed since they were awarded;

(iii)any good service the defaulter may have to his credit.

835. (i) Effect of black marks:- *A reduction or forfeiture or withholding of increment for specific offence shall carry the following black mark value*

		Black Marks
A reduction etc.,	*up to six months*	*1*
Ditto	*twelve months*	*2*
Ditto	*for longer than twelve months*	*3*
xxx	*xxx*	*xxx*

837. (1) General rules as to black marks – *(1) Black marks shall remain permanently on record and be taken into consideration in deciding the nature and extent of subsequent punishments:*

Provided that the due allowances shall be made for good service marks and any other recognition of good work on record in the delinquent's favour.

(2) The order awarding black marks shall specify the number of black marks outstanding against the delinquent, and when the imposition of two more blank marks may result in reduction in rank or compulsory retirement or removal or dismissal, or one more black mark may result in his reduction in rank or loss of increment under these rules, the order shall contain a warning to that effect.

xxx xxx xxx

844. Superintendent to examine, records of cases against police officers:- *The Superintendent shall go through the record of every case brought against a police officer in the Court, and shall take departmental cognizance of every criminal case in which a police officer is convicted or acquitted or discharged (except when the case is false) and record an order in writing (Appendix 39 and Rule 843).*

845. Effect of imprisonment:- *Every police officer, imprisoned for an offence implying moral turpitude, such as theft and perjury, or for a serious breach of discipline, such as allowing a prisoner to escape or sleeping on sentry duty, shall be proceeded against with a view to dismissal and shall ordinarily be dismissed. He shall receive pay up to the date of ceasing to perform his duties.*

xxx xxx xxx"

10. The first submission of Mr. Khuntia, learned counsel for the Petitioner is that the second limb of the punishment treating the suspension period as such having not been envisaged in the punishment prescribed under Rule 824 extracted hereinabove could not have been imposed and it is his further submission that so far as imposition of two black marks are concerned, in the factual matrix of the case at hand since the charge in the departmental proceeding as well as in the criminal case were one and the same since the criminal case has been quashed on compromise by this Court, it was not open for the Authorities in the factual backdrop of the case at hand to even impose any black mark and to fortify his submission, learned counsel for the Petitioner relies on the following judgments;

i. Sailendra Nath Mohanty vrs. Union of India & Others, 2014 SCC OnLine Ori 650

ii. Ram lal vrs. State of Rajasthan and others, (2024) 1 SCC 175

iii. Tapan Kumar Pradhan @ Tapan Pradhan vrs. State of Odisha and another (W.P.(C) No.15879 of 2019 disposed of on 30.01.2024)

iv. Bani Bhusan Dash vrs. State of Odisha, 2021 (II) OLR 1022

11. Learned counsel for the State, Mr. Das, learned ASC reiterating the fundamental distinction of appreciation of evidence in departmental proceeding and in a criminal case submits that since the evaluation of evidence in a departmental proceeding is based on preponderance of probability and that since the Petitioner belongs to a disciplined force, the order of punishment as affirmed by the Revisional Authority ought not to be interfered with. He also justifies the rejection of memorial. It is his further submission that since in the case at hand there has not been a clean acquittal rather it has been quashed on compromise the Authorities rightly passed the impugned punishment and it is his submission that the allegations that the Authorities did not take note of the order of this Court is ex-facie incorrect in as much as while passing the order the Disciplinary Authority has referred to the same.

12. He also supports the second limb of punishment and urges with vehemence that

considering that the Petitioner belongs to a disciplined force, the act complained will squarely come under the category of moral turpitude and he submits that taking a lenient view the punishment in question has been imposed, whereas in his considered opinion the Petitioner was liable for graver punishment.

13. On these competing submissions, this Court is called upon to answer as to whether the act complained of comes under the category of moral turpitude and if so, whether the punishment imposed can stand the scrutiny of this Court and more particularly in the light of scope of this Court to exercise such jurisdiction. As rightly pointed out by the learned counsel for the State Mr. Dash, the distinction between appreciation of evidence in a criminal case and in a disciplinary proceeding cannot be lost sight of and there is no cavil about such proposition of law. But as it is so often said that the decision in each case is dependent on the peculiar factual background of such case.

14. In this context, this Court respectfully refers to the authoritative pronouncement of the Apex Court in the case of **Haryana Financial Corporation and another V. Jagdamba Oil Mills and another, (2002) 3 SCC 496** wherein the Apex Court cautioned that judgments are not be read as "Euclid's Theorem"

15. On perusal of the charges as framed against the Petitioner in the departmental proceeding and the sections under which the FIR has been instituted, it is seen that they are one and the same and one of the charges is under Section 377 of the IPC. Section 377 of IPC of the penal code which was governing the field then that at the relevant time reads as under;

> "377. Unnatural offences.—
> Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

The very heading of the section is "unnatural offences".

16. This Court would be failing in its duty if it does not take note of the intervening circumstances which changed the face of the particular offence in view of the constitution bench judgment of the Apex Court in the case of **Navtej Singh Johar and others vrs. Union of India through Secretary, Ministry of Law and Justice, (2018) 10 SCC 1** and it is apt to note that the case was decided on 06.09.2018.

17. In the said case, the Apex Court was considering the constitutionality of Section 377 IPC so

far as criminalizing consensual sexual act between adults of any sexual orientation.

The conclusions in the case of **Navtej Singh Johar (Supra)** reads as under;

> "645. CONCLUSION
>
> 645.1. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Article 14, 15, 19 and 21 of the Constitution. It is, however, clarified that such consent must be free consent, which is completely voluntary in nature and devoid of any duress or coercion.
>
> 645.2. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the re-opening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.
>
> 645.3. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.
>
> 645.4. The judgment in *Suresh Kumar Koushal v. Naz Foundation*[2] is hereby overruled for the reasons stated in paras 642 and 643."

18. The Apex Court has categorically said that in so far as Section 377 which <u>criminalises consensual sexual acts of adult</u> persons above the age of 18

years in private is violative of Articles 14, 15 19 and 21 of the Constitution. But sounded a word of caution that such consent must be free, voluntary and devoid of duress of coercion. The apex Court has also clarified that provisions of Section 377 will continue to govern nonconsensual sexual acts against the adults.

19. This Court felt it imperative to refer to the aforementioned judgments of the constitution bench in view of the fact that one of the charges as framed is under Section 377 of IPC.

20. It is the submission of the learned counsel for the Petitioner that Rule 834(A) clearly stipulates that no more than one black mark shall be awarded for any offence except when moral turpitude can reasonably be inferred. The word moral turpitude has not been defined and in the considered view of this Court sans the judgment of the Constitution Bench the act as committed by the Petitioner qualifies as moral turpitude. Rule 845 dealing with criminal prosecutions gives clue regarding moral turpitude in as much as it can be impliedly held that as per the Police Rules moral turpitude can be such as theft and forgery or for a serious breach of discipline as such allowing a prisoner to escape or sleeping on sentry duty.

21. This Court is conscious of the fact that Rule 845 deals with the Effect of imprisonment but to get an insight into the intent of the executive defining "moral turpitude" the aforementioned reference has been made. Even otherwise the moral turpitude has known in common parlance means thus;

The expression moral turpitude in the present context implies to the offence as it was in the statute book under Section 377 of IPC. In view of the pronouncement of the Apex Court in the case of **Navtej Singh Johar (Supra)** and taking into account the compromise inter se between the parties since the same is voluntary and there is nothing on record to indicate that such consent was impelled on account of by any external factors or was outcome of any duress or coercion, as rules no longer qualifies as an offence in view of the judgment of the Apex court in the Case of **Navtej Singh Johar (Supra)**, this Court is not persuaded to accede to the submission of the learned counsel for the State that the act on the date the order was passed can be treated as an offence.

This aspect has been completely lost sight of by the departmental authorities while dealing with the claim of the Petitioner in the light of the judgment of this Court.

22. In this context, it is also worthwhile to refer to Rule 844 of the Criminal Prosecutions under the Odisha Police Rules which casts a duty upon the Superintendent to go through the records of every case brought against the police officers in Court and shall take departmental cognizance of every criminal case in which a police officer is convicted or acquitted or discharged. According to the learned counsel for the Petitioner in imposing the punishment the authorities have signally failed to take note of the same.

23. Per contra learned counsel for the State submits that since it deals with the contingencies of conviction, acquittal or discharge, the case at hand in which the proceeding has been quashed on account of compromise won't come within the category as stated in Rule 845 and as such, there is no infirmity in the order.

24. Taking into account the charge in the departmental proceeding and the quashing of the criminal case in which the alleged offence, inter alia, was under Section 377 of IPC, in the light of the judgment passed by the Apex Court in the case of **Navtej Singh Johar (Supra)**, this Court has no hesitation to hold that the charge in the departmental proceeding as well as in the criminal case are one and the same primarily on account of an alleged offence

under Section 377 of IPC. This Court is not oblivious of the contours of exercise of jurisdiction in interfering with an order passed in a departmental proceeding. But on conspectus of pleadings, this Court is of the considered view that allowing the punishment of "any black mark" as per Rule 834 of Police Rules, in the case at hand, would amount to abuse of process of law.

Accordingly the punishment for imposition of the black marks is quashed.

25. So far as the second limb of punishment is concerned, it is submitted by the learned counsel for the Petitioner, relying upon the judgment of the Hon'ble Supreme Court in case of **Vijay Singh vs. State of U.P. and others** reported in **(2012) 5 SCC 242**, that the punishment not envisaged under the Rules cannot be imposed. Admittedly, treating the "suspension period as such" which entails financial depravity cannot otherwise be imposed without giving an opportunity of hearing to a delinquent.

26. It is trite that no order, which results in civil consequence, can be passed without giving the delinquent an opportunity of hearing. Admittedly, in the case at hand the same has not been done, which renders the second limb of the punishment, additionally vulnerable.

27. Hence, on a perspicuous analysis of materials on record and in the light of the judgments of the Apex Court in the case of **Navtej Singh Johar (Supra)** as well as **Vijay Singh (Supra)**, the order of punishment at Annexure- 3 and the appellate as well as revisional orders at Annexure-5 and 7 respectively as well as the rejection of memorial, at Annexure-9 are hereby quashed.

28. The petitioner shall be entitled to consequential service and financial benefits. Accordingly, the Writ Petition stands disposed of. No costs.

(V. Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 17th of June, 2025/Santoshi

Signature Not Verified
Digitally Signed
Signed by: SANTOSHI LENKA
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 19-Jun-2025 20:30:44