

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 395 of 2012

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Ajay Kumar Sarangi, aged about 57 years, S/o Basudev Sarangi, at present working as S.P.(I), Special Branch, Odisha, Bhubaneswar.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Personnel Public Grievance & Pension, North Block, New Delhi.
 2. Union Public Service commission, represented through its Secretary, Dholpur House, Shahjahan Road, New Delhi – 110069.
 3. State of Orissa, represented through the Additional Secretary, Government of Odisha, General Administration Department, Secretariat Building, Bhubaneswar, Dist-Khurda, Odisha.
 4. Secretary, Ministry of Home Affairs, IPS-I Section, North Block, New Delhi.
 5. Secretary, Government of Orissa, Department of Home, Orissa Secretariat Building, Bhubaneswar, Dist-Khurda, Odisha.

.....Respondents.

For the applicant : Mr.K.P.Mishra, counsel

For the respondents: Mr.L.Jena, counsel
Mr.P.R.J.Das, counsel
Mr.J.Pal, counsel

Heard & reserved on : 20.11.2019 Order on : 09.12.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

- “(i) direct/order the Union Respondents to include the name of the applicant in the 2007 Select list and/or for the vacancy arose in the year 2007 and thereby allow the applicant all the monetary and consequential benefits with effect from 2007 in cadre post of IPS.
 - (ii) further pleased to direct not to invalidate the select list due to retirement of the applicant w.e.f. 30.6.2012;
 - (iii) pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.”

2. The factual matrix of this case is that he was in Orissa Police Service (in short OPS) prior to his retirement on 30.6.2012 and he claims that although he was eligible for promotion to Indian Police Service (in short IPS), as per the provisions of Indian Police Service (Appointment by Promotion) Regulation, 1955, but his case was not considered for such promotion till he retired from

service. It is the case of the applicant that his case was recommended for such promotion in the year 2007 by the Government of Orissa (respondent No.1.3) but due to laches at the level of respondents No. 1 & 2, he could not be promoted. It is stated in the OA that 7 vacancies were available in the year 2005 in the IPS cadre but since no DPC was convened by respondents No. 1 & 2 before his retirement the vacancies although were available in the year 2007 were not filled up before his retirement.

3. The respondent No.2 opposed the OA by filing their reply on 22.3.2013 by stating as under :

“5.1 It is respectfully submitted in this regard that the last SCM for promotion of SPS officers to the IPS of Orissa cadre was held in the year 1999. There were 08 vacancies, but only 02 officers were eligible and considered in the Selection Committee held on 14.10.1999./ since then no SCM has been held so far due to non receipt of proposal from the State Government.

5.2 It is further submitted that the Government of Orissa vide their letter No. AIS.II.62/2007-14649/AIS.I dated 23.7.2009 have informed that there are 06 officers available in the State Police Service for consideration for appointment to the IPS, however none of them have been confirmed in SPS as the matter is sub judice in the Supreme Court of India vide SLP No. 13237-13241/2008 – Sibashankar JMohapatra & Ors. –vs- State of Orissa.

5.3 The government of India, Ministry of Home Affairs have also informed vide their letter No.I-14011/27/2010-IPS.I dated 8.4.2010 that as per the communication received from the State Government, no steps can be taken to fill up the vacancies in the promotion quota of State Cadre of IPS as none of the officers in the State Police Service who may otherwise be eligible for appointment by promotion to IPS have been confirmed in the SPS as the matter is sub judice in the Supreme Court of India vide SLP No. 13237-13241/2008 – Sibashankar JMohapatra & Ors. –vs- State of Orissa.”

4. Counter reply of respondent No.3 states as under :

“The Para-5(2) of the said Regulations provides that the Selection Committee shall not consider the case of a member of the State Police Service unless, on the first day of January of the year for which the select list is prepared, he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

Further, the Para-5(3) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 provides that the Selection Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared.

Though, the applicant, Shri Ajay Kumar Sarangi had completed 8 years in the rank of Deputy Superintendent of Police in State Police Service as on 01/01/2007, but he was not confirmed in the State Police Service by that time. Therefore he had not fulfilled the required eligibility criteria for consideration for promotion to IPS by that time.

Besides the case of the applicant, there were also no other State Police Service officers found eligible for consideration for promotion to IPS by that time due to the above cited provisions of the Indian Police Service (Appointment by Promotion) Regulations, 1955. Therefore, no proposal was sent to UPSC for convening the Selection Committee Meeting for consideration of the State Police Service officers for promotion to the IPS.”

5. No rejoinder has been filed by the applicant.
6. Learned counsel for the applicant was heard. He filed judgment of Hon'ble Supreme Court in the case of Ramchandra Dayaram Gawabde –vs-

Union of India & Ors. [JT 1996 (6) 361] dated 10.5.1996 in support of his argument that his claim for promotion for the year 2007 should be allowed. He further submitted that there is no requirement for confirmation in OPS for promotion to IPS. He filed a copy of IPS (Appointment by Promotion) Regulation, 1995 in support of his contention.

7. Heard Mr.L.Jena, learned counsel for respondent no.1, Mr.P.R.J.Das, learned counsel for respondent No.2 and Mr.J.Pal, learned counsel for respondent No.3. It is submitted by Mr.Pal, learned counsel for respondent No.3 that since no seniority list was prepared by respondent No.3 in view of the disputes relating to seniority pending before Hon'ble Apex Court, the proposal for promotion for OPS to IPS could not be sent by the respondent No.3. He further submitted that matter was pending before Hon'ble Apex Court as stated in the reply filed by respondent No.2. Mr.Pal was directed vide order dated 14.10.2019 as under :

"It is seen that in the counter filed by Respondent No.3 it has been mentioned that applicant's case could not be considered since he was not confirmed. In view of the above submission, learned counsel Respondent No.3 to obtain instructions about the reasons for which applicant's confirmation could not be considered in spite of the fact that he has already completed eight years of service as OPS. Learned counsel for the respondents as well as the applicant may file brief written notes of submission along with citations, if any, on the next date."

However, no instruction was filed by learned counsel for the respondent No.3, although he filed an additional affidavit on 2.12.2019 enclosing copy of the orders of Hon'ble High Court and of the Tribunal in different cases pertaining to the seniority dispute in question. However, since these documents were not filed with the Counter and the copy of the orders enclosed revealed that these were passed much after 2007, which was the relevant year for the applicant's claim in this OA, we did not take into account the additional affidavit filed on 2.12.2019 by respondent No.3.

8. We have considered the pleadings as well as submissions made by learned counsels for both sides. It is submitted by respondent No.2 in their reply that no OPS officer could be confirmed in OPS by respondent No.3 and the matter was sub judice before Hon'ble Apex Court in the case of Shiba Shankar Mohapatra & Ors. -vs- State of Orissa, SLP No. 13237-13241 of 2008. Although no information could be given about the status of the case, it came to our notice that the case of Shiba Shankar Mohapatra & Ors. -vs- State of Orissa & Ors. In Civil Appeal No. 7537-7541 of 2009 (arising out of SLP(C) Nos. 13237-13241 of 2008) has been disposed of by Hon'ble Apex Court vide the judgment dated 12.11.2009 (AIR 2010 SC 706) in which it was held by Hon'ble Apex Court regarding the matter of seniority as under :

"31. The appellants have specifically pleaded that a seniority list was issued in 1979. Subsequently, another seniority list was issued in 1992. A tentative

seniority list was circulated in 1996, and after considering the objections by the State Authorities, a final seniority list was issued in June 1997. Again the seniority list was circulated in 1999. Though there had been dispute regarding issuance of the said seniority lists, however, the High Court in its judgment has taken note of the seniority list of 1979. Circulation of gradation list in June 1997 cannot be disputed/doubted for the simple reason that in Pursuram Sahu's case only this gradation list was under challenge. The applicants in OA No.203 of 2001 claimed to have been appointed in 1993. Their names should have definitely been included in the final gradation list circulated in June 1997. However, there is no explanation by them as to how it could not be challenged before the Tribunal and under what circumstances the gradation list issued in 1999 was challenged in 2001. At the cost of repetition, it is stated that, if the seniority list is to be challenged within 3-4 years of its issuance, we fail to understand as to why even OA No.203/2001 could not be dismissed on the ground of delay and laches, without entering into the merits of the case.

32. The issue before the High Court was regarding the principle of seniority for preparation of a combined gradation list of SIs (St) and SIs(g). However, the High Court failed to decide the said issue rather directed preparation of a combined list in conformity with eligibility criterion.

33. The other original application filed in Sudhir Chandra Ray's case was liable to be dismissed only on the ground of delay and laches and we dismiss the same. The High Court has set aside the direction issued by the Tribunal directing the State Authorities to prepare the gradation list of SI(St) and SI(g) in accordance with the dates of passing out of the Sub-Inspector training course. This part of the order has not been challenged by anybody and thus, this part of the order has attained finality, therefore, the said part of the order does not require any interference in either of these appeals. So far as the appeals arising out of writ petition nos.1233/06, 2878/06, 3424/06 and 5637/06 are concerned, stand allowed to that extent and the remaining part of the direction contained in paragraph 9 of the judgment stand set aside.

34. So far as the appeal arising out of writ petition no.426/06 which has arisen from the judgment and order of the Tribunal in OA No.203/2001 is concerned, the relevant facts thereof, have not been taken into consideration either by the Tribunal or by the High Court and the matter has been decided making reference to the facts of other connected cases. Thus, in view of the above, we set aside the judgment and order of the High Court in Writ Petition No.426/06 only to the extent of the last part of the order, namely, "if it is found that promotion of a Sub-Inspector was not considered before consideration of Sub-Inspector placed below him in the seniority list, his promotion shall be considered with effect from the date of promotion of his junior in case he had fulfilled minimum eligibility criteria for promotion at the time of consideration of his junior". The first part of the order contained in paragraph 9 as already explained hereinabove has attained finality, thus, does not require any interference. The High Court is requested to decide the case to that extent only taking into consideration the law as explained hereinabove including the issue of delay and the facts involved in that case expeditiously.

35. The appeals stand disposed of accordingly. No cost."

9. In view of the above, it is clear that as on 22.3.2013 when the respondent No.2 filed their counter, the SLP No. 13237-13241/2008 (Shiba Shankar Mohapatra & Ors. -vs- State of Orissa & Ors.) had already been disposed of vide judgment dated 12.11.2009 of Hon'ble Apex Court. It was not been clarified by the respondents how the averment was made in the Counter filed on 22.3.2013 stating that the case was pending. The reasons for not sending the names of eligible OPS officers for promotion to IPS for the year 2010 and 2011 after disposal of the above SLP, have not been explained in the counter filed by the respondent No.3. It is also not the case of the respondents

that there was any stay order for promotion based on the seniority list which was the subject matter of litigation. The reasons for not considering the existing seniority list treating it as provisional, subject to final outcome of the disputes for sending the name of eligible OPS officers for promotion to IPS have not been furnished by the respondents.

10. Another reason furnished in the respondent No.3's Counter is that the applicant could not be confirmed in OPS as on 1.1.2007 although he had completed 8 years of service. The reasons as to why the applicant could not be confirmed in OPS as on 1.1.2007, have not been explained by the respondent No.3. In the written submissions by the respondent No.3, the doubt was raised as to whether it is necessary to confirm an OPS officer before consideration for promotion to IPS. It is unfortunate to note that instead of clarifying these doubts with the respondent Nos. 1 and 2, the issue of promotion of OPS officers to IPS had not been taken up on one pretext or other for reasons which could have been easily sorted out.

11. However, the applicant has not raised the issue of his confirmation in OPS in the OA nor challenged the action of the respondents not to confirm him in OPS. Learned counsel for the applicant has argued that confirmation in OPS is not required for promotion to IPS. We are unable to accept such submissions in view of clear provision in the IPS (Appointment by Promotion) Regulations, 1955 that an officer of State Police Service will not be considered for promotion unless he is substantive in the State Police Service [vide third proviso to the Regulation 5(2)].

12. It is seen from the Regulation 5(1) of the IPS (Appointment by Promotion) Regulations, 1955 that it is mandatory for the Selection Committee to meet every year to prepare the list of SPS officers eligible for promotion to IPS. The first proviso to the Regulation 5(1) stipulates that when there is no vacancy on first January of a year or when Central Government decides after consultation with State Government no recruitment shall be made for a particular year, then no meeting of the Selection Committee will be held. As per the second proviso, if the Selection Committee cannot meet for any other reason, then when the Committee meets again, it will have to prepare select list for each year for which the Committee could not meet. It is clear from the provisions in 5(1) of the IPS (appointment by Promotion) Regulations, 1955, that the Selection Committee is required to meet every year unless the conditions as stipulated in first proviso of the Regulation 5(1) are fulfilled. If the Committee fails to meet for any reason other than the reasons specified in first proviso to the Regulation 5(1), then when it meets, it will have to prepare the Select List for the previous years when the Committee could not meet.

13. It is noticed that although the applicant claims consideration of his case for the year 2007, the OA was filed in May, 2012 and no application under

Section 21 of the Administrative Tribunals Act, 1985, explaining the delay in filing the OA has been filed by the applicant. As the grievance of the applicant related to consideration for promotion to IPS for the year 2007, he should have agitated the matter within time as stipulated under Section 21 or filed an application for condoning the delay. Hence, we are of the view that the prayer for relief at para 8(i) of the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Further, the respondent No.3 has denied the contention that the case of the applicant was sent to UPSC for promotion. There is nothing on record to show that the applicant's name was actually sent by respondent No.3 to respondent No.2 for promotion to IPS for the year 2007 as claimed in the OA.

14. In view of above discussions, and taking into account the fact the applicant's name has not been forwarded by the respondent No.3 to the respondent No.2 for promotion to IPS in the year 2007 as claimed in the OA, we are unable to allow the reliefs prayed for by the applicant in this OA. However, taking into consideration the discussions in paragraphs 9 and 10 of this order about the issues relating to promotion of OPS to IPS, we dispose of this OA with direction to the respondents to take expeditious action as deemed appropriate on the observation in paragraphs 9 and 10 of this order as per the provisions of law. The OA stands disposed of accordingly, with no order as to costs.

15. Registry is directed to send a copy of this order to the Respondent Nos. 1 and 5.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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