

I
30

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 121 OF 1986

Date of decision: 27th June, 1991.

N.C.S. RAO

: Applicant

Versus

Union of India and others : Respondents

For the applicant

: Mr. A.K. Misra, Advocate

For the Respondents

: Mr. Ganeswar Rath, Addl.
Standing Counsel (Central)

CORAM:

THE HONOURABLE MR. B.R. PATEL, VICE CHAIRMAN
AND

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment? Yes.
 2. To be referred to the reporters or not? *Yes*
 3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.
-

11
31

JUDGMENT

B.R.PATEL, VICE CHAIRMAN: The application was filed on 18.9.

1986 when the applicant was an Audit Officer in the Office of the Accountant General (Audit-I), Orissa, Bhubaneswar. He has since retired on superannuation on 30.9.1986.

2. He has approached the Central Administrative Tribunal, (the Tribunal for short) for promotional benefits from the year 1976 to the Indian Audit and Accounts Service (IA&AS) cadre and for seniority over respondents 4 to 9 with consequential service benefits.

3. The Respondents in their counter have maintained that since 1976 many more persons have superseded the applicant besides respondents 4 to 9 and unless all the officers who have superseded him (applicant) are impleaded relief sought cannot be given to the applicant. On receipt of the counter the applicant requested the Tribunal to allow him to implead the persons from 10 to 42 and the Union Public Service

C

[Signature]

//3//

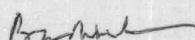
Commission(UPSC). His prayer was granted and these persons and the Union Public Service Commission have been impleaded as respondent Nos. 10 to 43 vide our order dated 5.1.1988. These newly added respondents have however, not filed any counter.

4. The Respondents Nos;1 to 9 have further maintained that the application was barred under Article 137 of the Limitation Act and under Section 21 of the Administrative Tribunals Act, 1985 (the Act for short) and as such, no relief could be given to the applicant . The other grounds taken by the respondents are that the promotion to the IA&AS Cadre was selection and the DPC after having considered his case in the year 1976, did not recommend his case for promotion. According to them there was no promotion to the cadre of IA&AS in the years 1977 to 1979. In 1980 the applicant's name was sent to the Commission for consideration of his case for

[Signature]

//4//

promotion, but the Commission after consideration of the case again did not recommend him for promotion and accordingly the applicant could not be promoted. In the years 1981-1982 there was no promotion to the cadre of IA&AS. For subsequent promotion, the respondents have maintained in their counter, that the High Court of Punjab and Harayana in Civil Writ Petition No. 2504 (Rajendra Gandhi and six others Versus Union of India and others) held that the vacancies occurring or available in IA&AS Cadre prior to 1983 should be filled up in accordance with Recruitment Rules 1983 (Annexure-R/2) and the instructions contained in Government of India, Department of Personnel and Administrative Reforms O.M. No. 22011/3/76-ESTT (B) dated 24.12.1980 (Annexure- R 4). The Hon'ble Supreme Court confirmed the judgment of the High Court of Punjab and Harayana by rejecting the Special Leave Petition. Accordingly a combined eligibility list of Audit



V
34

//5//

Officers was prepared but the name of the applicant was not included in the list as he could not come within the zone of consideration which was three times the number of vacancies to be filled in for the years 1980, 1981, 1982 and 1983 (upto June, 1983), as per the OM of the Department of Personnel and Administrative Reforms, a copy of which is at Annexure- R 4).

5. We have heard Mr. A.K. Misra the learned Counsel for the applicant and Mr. Ganeswar Rath the learned Additional Standing Counsel (Central) for the respondents and perused the relevant papers and the written argument submitted by the learned Counsel for the applicant. Mr. Misra has contended that article 137 of the Limitation Act is applicable only to those cases for which no specific time limit has been prescribed under any other Act. Since the Administrative Tribunals Act specifies the time limit in Section 21 of the Act the question of applicability of Section 137 of the limitation Act does not arise at all. Mr. Misra has further

Handwritten signature

VI
25

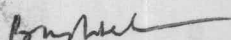
66//

said that the case was not barred by limitation under Administrative Tribunals Act since the A.G., Orissa, Respondent No. 3 passed orders only on 28.1.1986 withholding the applicant's memorial to the President of India and the application was filed on 18.9.1986 which was well within the time limit as provided under Section 21(1)(a) of the Act. He has also cited the judgment of the Hon'ble Supreme Court reported in AIR 1990 (SC) 10 that in the case of Service disputes the cause of action must be taken to arise not from the date of original adverse order but on the date when the order of higher authority where the statutory remedy is provided entertaining the appeal or representation, is made. He has also cited the judgment of the Hon'ble Supreme Court in the case of Sualal Yadav Vs. State of Rajsthan reported in (1977) 2 SCR 698 to the effect that if the department has not questioned or rejected any representations on grounds of delay and make it a ground for

Not here

//7//

dismissing the application. Mr. Rath has controverted the plea of Mr. Misra on the ground that Section 21 (2) of the Act has categorically laid down that the Tribunal will have no jurisdiction in regard to any order giving rise to the grievance which has been passed by the authorities beyond three years preceding the coming into being of the Tribunal i.e. 1st November, 1985. In this connection he has cited the decisions of the Tribunal reported in ATR 1986 (1) CAT 28 (Delhi) and ATR 1986 (1) CAT 203. We agree with Mr. Rath that the provision of Article 137 of limitation Act is not applicable to the present case in view of the specific provision under Section 21 of the Act. Now coming to the provision of Section 21 of the Act, we have gone through the judgment of the Principal Bench reported in ATR 1986 CAT 201. In para 2 of this judgment it has been mentioned that the Administrative Tribunals Act does not vest any power or authority to take cognizance of a grievance arising out of an order made prior to



VIII
37
//8//

1.11.1982, and further that the period of three years laid down under Sub-section 2 of Section 21 would have to be computed with reference to any order made on such a representation and not with reference to the earlier order". In the judgment reported in ATR 1986 CAT 28, the principal Bench Delhi have held as follows "Under Section 21 of the Administrative Tribunals Act, 1985, the grievance in respect which an application is made should have arisen by reason of an order made at any time within three years immediately preceding the date on which this Tribunal was constituted i.e. 1st November, 1985 any grievance in respect of an order passed beyond three years next before 1st November, 1985 cannot be taken cognizance of by this Tribunal for redress. Though this is a petition transferred from High Court, in the High Court itself the matter was pending for more than twelve years but the petitioner did not choose to file any

Amul

17
38

//9//

application for amendment of the writ petition. Irrespective of the fact whether any such request is barred by limitation, we do not think that, in the circumstances of the case, any indulgence could be granted by this Tribunal to allow such an amendment of this Case". In the judgments quoted above, the implication of the provision under Section 21(2)(a) has been clearly mentioned and no exception can be taken to it. However, in the present case we are concerned with the question whether the period of limitation should count from the date when the Accountant General (Audit-I) respondent No.3 passed order withholding the memorial addressed to the President of India. Though a copy of the Memorial has not been filed before us, on a perusal of Annexure-2 we presumed that the memorial addressed to President of India had mentioned all that had been mentioned in the previous representations and appeal addressed to Respondent No.3 and respondent No.2, because the

R. M. N. S.

(X)

39

//10//

ground for withholding the memorial was that no new grounds existed for forwarding the case to the C&AG's Office apparently for onward transmission. This order was conveyed to the applicant on 28th January, 1986. In view of the judgment of the Principal Bench in the case of Capt. Lachhman Singh Vs. Secretary, Ministry of Personnel and Training, quoted above, we hold that the period of three years laid down under Sub Section (2) of Section 21 would have to be computed with reference to any order made on such a representation and not with reference to the earlier order passed by respondent No. 3 rejecting his earlier representations and appeal but with reference to the latest order dated 28th January, 1986 withholding the memorial addressed to the President of India.

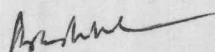
6. Having disposed of the question of limitation we would now devote ourselves to the merit of the case. In regard to the applicant's

Asst. Secy

(X1)
40

//11//

grievance that his case was ignored for promotion to IA&AS Cadre from June, 1976 even though he was entitled to such promotion, the respondents have maintained in their counter affidavit that the Departmental Promotion Committee which met in the year 1976 did not recommend the case of the applicant for promotion ~~in~~ to IA&AS Cadre. However, the confidential report of the applicant was sent to the Commission alongwith confidential reports of all the eligible officers/officials as per the practice then obtaining. But inspite of this, according to the respondents, the name of the applicant did not figure in the final list of the officers recommended by the Commission for promotion to the IA&AS . The applicant filed MA 188 of 1990 for production of certain documents. On consideration of this application, this Bench by its order dated 22.5.1990 decided that the relevant DPC proceeding and the ACRs folder of the applicant be kept ready for our perusal if need be on the date of hearing.



(XII)
41

//12//

They did not consider production of the remaining documents necessary for a just decision of the case. Though the advocate of the applicant made a prayer in this MA to allow the applicant to inspect the documents, no order was passed by the Bench on 22.5.1990 on this prayer. Even on 7.8.90 when ACRs of the applicant were produced, no order on this prayer was passed and the prayer was also not renewed or ^{pressed} ~~passed~~ _{re} though in the written note submitted by Mr. Misra on 22.4.1991 when hearing was closed Mr. Misra has referred to this prayer and made a plea that since the applicant has not been allowed to inspect the documents prejudice has been caused to him. We do not accept this plea of Mr. Misra for the reason that we read about the relevant portion of the DPC proceeding for all in the court room to hear. Though we went through the ACRs of the applicant, we were of the view that since we could not have taken the place of the DPC,

[Signature]

XIII
92

//13//

we did not consider it necessary to assess the performance of the applicant as reflected in the entries made in the ACRs to conclude whether he could be promoted to the IA&AS Cadre on the basis of the ACRs . We therefore, returned the ACRs along with DPC minutes with a direction that this should be produced on the next date of hearing.

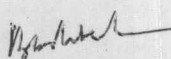
7. From the copy of the minutes of the meeting we have noticed that the DPC met on 28th February, 1976, 10th March, 1976, 13th, 14th, 15th, 19th 20th, 21st, 22nd, 26th, 30th April, 1976 and 11th and 12th May, 1976 in the Office of the UPSC to consider selection of officers for promotion to the Indian Audit and Accounts Service. The meeting was presided over by Mr. M. Singaravelu, Member of the UPSC and attended by a Deputy Comptroller and Auditor General (a) ~~two~~ additional deputy comptroller and Auditor General. The DPC perused the confidential records of all

Rashid

xiv
43

//14//

Accounts/Audit Officers of the Indian Audit and Accounts Department who were not over fifty years as on 1.1.1976 and had completed five years of service on that date as Accounts/Audit Officers. On the basis of the assessment of the Confidential Reports, the Committee recommended 40 officers for promotion to IA&AS subject to their integrity being certified by the Department. The names of the forty recommended officers have been listed in the Minutes. From this, it is clear that the DPC had gone through the Confidential records of all the eligible officers and the applicant was one of such eligible officers as he had then completed five years of service as an Audit Officer and was less than fifty years of age (he retired on superannuation on 30.6.1986). However, Mr. Misra wanted to know specifically whether the Annual Confidential Reports of the applicant were before the DPC. While going through the records we have found that one Mr. M.M.B. Annavi had written to Mr.

 Ramakrishnan, Joint Secretary, UPSC, New Delhi

(XV)
44

//15//

forwarding the CR files of officers who had completed five years of service as Accounts/Audit Officers and who were below fifty years of age as on 1.1.1976 as received from the field officers. In the list of the concerned officers, whose ACRs were sent to the commission the name of the applicant occurs at Sl.No.4. Thus there is absolutely no scope for any doubt that the applicant's ACRs were there before the Committee which considered the cases for promotion to the IAS&AS Cadre. In the year 1976, the Customs and Accounts Service Recruitment Rules dated 13th April, 1938 (the 1938 rules for short) were in force. These rules regulated the recruitment to Indian Audit and Accounts Service, the Imperial Customs Service, the Military Accounts Department and the Indian Railway Accounts Service and were in fact issued by the Finance Department vide resolution dated 30th April, 1938 a copy of which is at Annexure-R/2. Para-III of the rules provided for recruitment by promotion or transfer from another service or Department. Under this para

Signature

//16//

Rule 21 laid down that "Recruitment by promotion shall be made by selection from among the subordinate gazetted and ministerial establishment of the Service concerned after consultation with the Commission and the officers selected will be appointed by Government". Mr. Misra had misgiving about the method of selection inasmuch as, according to him, the method of selection has nowhere been defined in the rules. We have however, no doubt that the selection under these rules was to be made more on the basis of ~~the~~ merit than on the basis of ~~the~~ seniority because the selection has got to be from among a number of subordinate gazetted and Ministerial establishments of the services concerned. It is not a case of seniority cum merit or the basis of seniority subject to elimination of the unfit where seniority is more important than merit. Mr. Misra has further contended that since the grading of the officers is not available in the minutes of the DPC meeting it cannot be definitely

Mr. Misra

XV
yb

//17//

said that only those who had better grading or better performance than the applicant were selected by the DPC. However, there has been no allegation of mala fide or bias on the part of any of the members of the DPC and we also see no reason for any such allegation and as such we cannot reject the recommendation of the DPC on the ground that the grading has not been appended to the Minutes.

8. Mr. Misra has further averred in his written note that ^{applicant} the could not be promoted ^{an} to the IA&AS cadre because of adverse entries in the CR of the year 1965. He has characterized the concerned entries as ridiculous, irrational, absurd and contradictory inasmuch as the official has been rated as excellent with lot of drive and initiative with superb drafting but he should prove that his integrity is above board. This contention of Mr. Misra is based on paragraph-6 of the written reply of the respondents. We have gone through paragraph-6 of the written reply which reads as follows 'the facts stated in paragraph 6(D)

K. M. Misra

//18//

XVIII
4/7

of the application is disputed. The applicant's Confidential report for the period from 1.1.1965 to 13.10.1965 and 23.9.82 to 31.3.1983 were not of requisite standard and the applicant was kept under close watch'. Paragraph-6(D) of the application states as follows: "That the applicant while working for a period of thirty six years never received any adverse entry/remarks from any of higher officers of the Indian Audit and Accounts Department". In view of this, it is not possible for us to accept Mr.Misra's contention that the adverse entries if any, in the CR for year 1965 contains any contradictory remarks. Moreover the intervening period of ten years was sufficient for the applicant to have improved his work and conduct not only to wipe out the effect of the adverse remarks ^{if any,} but also to earn him _{in m} promotion to IA&AS cadre. There is moreover no indication as to whether the adverse remarks were communicated to the applicant and the applicant had made any representation and what the orders of the Competent Authority on the application was.

Pradhu

48 ~~117~~

//19//

9. Mr. Misra has referred to paragraph-7 of the counter which according to him speaks of highly improper and irregular manner in which the DPC has been constituted and has functioned in making promotions to the IA&AS Cadre. The portion on which this remark is based reads as follows;

"Such selection was based on suitability judged by duly constituted Departmental Promotion Committee in field offices and finally by the Departmental Promotion Committee constituted by the Union Public Service Commission." It was explained by Mr. Rath that according to the Customs and Accounts Recruitment Rules, ¹⁹³⁸~~1938~~ which was in force prior to the introduction of Indian Audit and Accounts Service (Recruitment) Rules, ¹⁹⁸³~~1938~~, promotion of Audit Officers/Section Officers of the Indian Audit and Accounts Department of Group 'A' Service was made by selection after consultation with the UPSC. There was a zonal Committee which considered the cases of suitable officers which were to be further considered by the DPC presided over by a member of the UPSC. Though constitution of zonal DPC was not

B. K. Misra

//20//

49 xx

according to rules it was the recommendation of the DPC presided over by a Chairman/Member of the UPSC which was finally acted upon. We agree with Mr. Rath inasmuch as the so called zonal DPC was for screening which in no way prejudiced the claim of the applicant since as mentioned above ACR were sent to the UPSC to be placed before the duly constituted DPC.

10. Admittedly there was no meeting of DPC in 1977 and 1978 and as such there was no promotion to the cadre of IA&AS. The DPC however met in the year 1980 and the minutes of this DPC has been produced before us. We have found that the DPC met on 22nd and 28th November, 1979 and 2nd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 15th and 18th January, 1980 in the Office of the UPSC to consider selection of officers for promotion to the Post of Indian Audit and Accounts Service. It was presided over by Mr. N. S. Sakssna a member of the UPSC and attended by Deputy Comptroller of Auditor General of India and two Additional Deputy Comptroller and Auditor General of India. From the

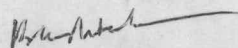
[Signature]

50

XXI

//21//

minutes we find that there were nine vacancies in the year 1977 and 14 each in 1978 and 1979. The Committee examined the confidential records of all the Accounts and Audit Officers of the Indian Audit and Accounts Department who were not over fifty years as on 1.1.1977, 1.1.1978 and 1.1.1979 respectively and had completed five years of service on those dates as Audit and Accounts Officers. The Committee recommended year wise panels for these three years according to the vacancies indicated above. From the letter of the Assistant Comptroller and Auditor General (P) dated 11.1.1980 addressed to the Under Secretary UPSC we find that a further batch of CR files as listed in the enclosed lists had been sent to the Commission. In the list of officers of the office of the Accountant General, Orissa we find the name of the applicant occurring at Sl.No.3 which goes to show that his performance record, were duly considered by the DPC and absence of gradation of officers in the minutes of the DPC produced before us would in no way alter the position as there is



57

XXII

//22//

no prejudice or bias alleged against the Chairman or any Member of the Committee. Moreover the Chairman and Members of the Committee are very experienced senior persons who had the expertise of assessing the performance of officers ~~with~~ the help of the ACRs and we are firmly of the view that their recommendations should be acted upon as no mala fide or bias has been proved against the Committee or any member of the Committee. As the applicant was within the age limit for the vacancies of the year 1977-78 his case had been considered for promotion. The recommendation of the DPC was approved by the Commission after which it was sent to the Comptroller and Auditor General of India for appropriate action vide the Commission's letter dated 17.3.1980. Mr. Misra has contended that the applicant could not be selected for promotion for the vacancies of 77-78 because of adverse entries of the President of Orissa Khadi and Village Industries Board to which the applicant was deputed as Financial Adviser and Chief Accounts

R. S. Mishra

//23//

92-XXIII

Officer from August, 1979 to July, 1980. The adverse remarks were communicated to the applicant on 5.8.1980 and he made his representation on 16.9.80 to the Accountant General praying for expunction of the adverse remarks. According to the applicant an order had been passed by the Competent Authority on the representation but it has been acted upon by the DPC denying the applicant opportunity for promotion. Mr. Rath in this connection has averred that no order could be passed on the representation made by the applicant because the Khadi and Village Industries Board was dissolved by the Orissa Legislative Assembly and the Chairman was no longer in office and it was not possible to obtain the remarks of the Chairman on the representation of the applicant. Hence it was decided by the respondent no.3 to keep the adverse remarks as well as the representation of the applicant in the CR file so that the DPC or other appropriate authority could form its own judgment about the suitability of the officers by reading the

Prakash

53 XXIV
//24//

CR together with the representation of the officer. In this connection Mr. Rath drew our attention to paragraph 9 of the counter. Mr. Misra has averred that it was the duty of the respondent No.3 to have come to a conclusion on the representation made by the officer and it is not the responsibility of the DPC to form their opinion about the representation made against adverse remarks. In usual course, we agree with Mr. Misra that the Competent Authority should form his opinion on the representation made on the basis of further reports obtained from the authority who have given adverse remarks. But in the circumstances mentioned by Mr. Rath the person who made the adverse remarks was no longer available to give his report and since the applicant did not work under respondent No.3 during this period it would not have been possible for the latter to form any opinion on the adverse remarks and to pass orders on the applicant's prayer for expunction of the adverse remarks. In the circumstances the best course open to the respondent No.3 was to keep

Boothel

54 xxv
//25//

a copy of the representation in the ACR file.

It was not so much for the DPC to pass any order on the representation of the applicant but to inform them that no order has been passed by the Competent Authority on the representation of the applicant so that the DPC would draw their

own conclusion about the adverse entries. ^{Moreover} the adverse remarks relate to the year 1979-80 or to 1980-81 whereas the vacancies were of the year 1977-78. in
11.

The President of India made the Indian Audit and Accounts Service Recruitment Rules, 1983 in consultation with the Comptroller and Auditor General of India (C&AG). The eligibility and manner of preparing the select list for appointment on promotion to posts in Gr'A' in the IA&AS Cadre is dealt with under Schedule-III of the Rules. Rule-7 provides for further maintenance of the Service. Sub-rule-2 of this rule lays down that initial recruitment to the Service shall be in the Junior Scale and shall be made by direct recruitment on the result of a competitive examination conducted by the Commission or by promotion of officers on the basis of selection on merit included in the select list. This rule further provides that the number of promotees

[Signature]

55 xxvi

//26//

shall not at any time exceed 33 1/3 per cent of the posts. Some officers moved the High Court of Punjab and Harayana (P&H High Court for short) in Civil Writ No.2504 of 1983 which impugned the action of the respondent authorities in not considering the petitioners for promotion to the posts of Assistant Accountant General in Class-I service because of the enforcement of 1983 Rules, according to which the petitioner were no more eligible to be promoted as they had already ^{attained} ~~attended~~ the age of 53 years. The High Court vide their order dated 20th December, 1983 held as follows:

"In the light of the discussion above and following the dictum of the Supreme Court in V. V. Rangaiah's case (supra) I allow this petition and direct the Respondents authorities to fillup the vacancies occuring or available with them prior to the 1st of July, 83

Prabhu

56 XXVII
//27//

in accordance with the Rules applicable to the service prior to the enforcement of 1983 Rules. The net result is that the Petitioner's claim for promotion to the posts of Assistant Accountant Generals, Class-I would be considered in the light of 1938 Rules and the instructions referred to above".

The instructions referred to by the High Court was the one dated December, 24, 1980 issued by the Department of Personnel, Government of India laying down the guidelines as to the manner of preparing the list to be filled in on the basis of selection. The C&AG filed a petition for Special Leave to appeal against the aforesaid order of the High Court of P&H. The Special Leave Petition was, however, dismissed by the Hon'ble Supreme Court. Mr. Rath drew our attention to paragraph-2(b) of the counter filed by the respondents and averred that the Hon'ble Supreme Court while dismissing the SLP directed that it would be only equitable to extend one time opportunity to the

Banaru

57 XXVIII
//28//

persons above 53 years to get considered for promotion and that accordingly a combined eligibility list of Audit Officers was prepared but the name of the applicant could not be included in the list as he could not come within the zone of consideration. According to the instructions issued by the Department of personnel reference to which has been made above, the zone of consideration was three times the number of vacancies when the number of the vacancies were four or more in the years 1980, 1981, 1982 and upto June, 1983. In view of this, according to Mr. Rath, the case of the applicant could not be considered for promotion against any of the vacancies. Mr. Misra, on the other hand, has contended that as the Honourable Supreme Court has directed that one time opportunity should be given to persons above 53 years to get considered for promotion, the applicant's case should have been considered for the years 1982 and 1983. We are

B. Misra

58 xxx
//29//

unable to accept Mr. Misra's plea because the case of the applicant could not be considered not because, he was overaged but, he could not come within the zone of consideration which was now limited to three times as per the instructions of December, 24, 1980 issued by the Department of Personnel, Government of India. In view of these instructions the one time age concession would not help the applicant. Mr. Rath also has placed before us a copy of the judgment of Hyderabad Bench of the Central Administrative Tribunal in TA Nos. 912/86, 914/86, 13 and 15/86, WP No. 3959/85. The applicants before the Hyderabad Bench contended that the new rules of recruitment which came into force on 26th March, 1983 cannot be applied to the vacancies which occurred in 1980-1982. The applicants had attained the age of 53 years by 26.3.1983 and their grievance was that in spite of the judgment of the P&H High Court the department did not consider their

R. S. Mehta

59 xxx
//30//

promotion to IA&AS Cadre. On an analysis of the various aspects, the Bench came to the conclusion that sub para-2 of Schedule-III of the IA&AS Recruitment Rules, 1983 was valid and the selection made applying 1938 rules and the instructions dated 24.12.1980 issued by the Personnel and Training, Department ^{of Government of India} cannot be questioned. From this judgment it is clear that as the judgment of the P&H High Court has been upheld by the Hon'ble Supreme Court the cases of officers had to be considered according to 1938 Rules and the instructions of the Department of Personnel and Training dated 24.12.1980. As the applicant's case could not come within the zone of consideration his case has not been considered by the DPC as has been mentioned by the Respondents and there is nothing we can do further in this regard.

12. Referring paragraph-15 of the counter affidavit Mr Misra has contended that respondents 5, 8 and 19 were promoted under the

Prakash

60

XXXI

//31//

1983 Rules against the vacancies relating to the year 1983(1.7.83 to 31.12.1983). Even though they had attained the age of 53 years as on 1.7.1983 Respondent No.8 Shri J.K.Murty had crossed 53 years on 1.7.1983 and was also junior to the applicant. He has also referred to the cases of eight other officers on the basis of Annexure-F to the written note who had crossed age limit of 53 years. We have examined this Annexure and have found that the names of the officers listed in the written note occurred at Sl.Nos.412, 415, 428, 434, 501, 504, 506 and 507. We have however, not found the name of Mr.J.K.Murty in this list. But the list in which these names occurred relates to officers promoted to senior time scale of IA&AS cadre on adhoc basis and not of officers promoted to IA&AS cadre. As may be seen from Rule 7(2)(ii) promotion of officers to the IA&AS cadre would be on the basis of selection on merit. But rule 7(4) lays down that though selection of officers for promotion would be made on selection on merit basis, promotion to posts in

K. M. M.

6/ XXXX11
//32//

senior scale and selection grade of junior administrative grade shall be made in order of seniority, subject to rejection of unfit, on the recommendation of the DPC constituted by the C&AG. Annexure-F to the written note submitted by Mr. Misra clearly mentions that the officers referred to by Mr. Misra were promoted to senior scale of IA&AS Cadre. Rule 7(2) has laid down that initial recruitment to the service shall be in the junior scale, which would make it abundantly clear that the officers listed by Mr. Misra were earlier promoted to the junior scale of the IA&AS. It is only for promotion to IA&AS that age limit of 53 years has been fixed vide Schedule-III to the Recruitment Rules, 1983 (Annexure-R/3) which lays down the conditions of eligibility and manner of preparing the seniority list for appointment on promotion to posts in Gr' A' in the junior scale of ~~including in~~ the IA&AS. Para-2 of this Schedule has laid down that officers who have attained the age of 53 years on the above date i.e. on the first day of July of the year to which the age of 53

Mr. Misra

62-XXXXIII
/33//

years pertain shall not be eligible . As such we are unable to accept the plea of Mr.Misra that the officers mentioned in his written note were promoted to IA&AS after they had crossed the age limit fixed.

13. The applicant has alleged that the vacancies that occurred in the posts of Welfare Officers in the years 1980-83 were not filled up. Mr.Misra has contended in his written note that after bifurcation of the office of the Accountant General, Orissa into Accountant General (A& E) and Accountant General(A) from 1.3.1984 there were two posts of Welfare Officers created ; one for the Audit organisation and the other for the Office of the Accountant General (A& E). The applicant offered himself as a candidate for the post under Accountant General(A) but without any selection, one K.C.Tripathy, Audit Officer, was appointed as Welfare Officer in June, 1985. Mr. Tripathy was junior to the applicant. Mr. Tripathy has not been made a party to this case and as such we are unable to entertain the

Prakash

63 XXXXIV
1/34/1

grievance of the applicant which affects Mr. Tripathy. Moreover no mention of this has been made in the application where it has been generally mentioned that the posts of Welfare Officers were not filled up for the years 1982 and 1983 (para-6(2) of the application). The respondents have maintained in their counter affidavit that the posts of Welfare Officer were filled up in accordance with the Provision of Indian Audit and Accounts Department (Welfare Officers) Recruitment Rules 1974 (Annexure- R.5): We have gone through these rules. Col.10 of the Schedule to the Rules provides for method of recruitment and it has been mentioned therein that the posts will be filled up 'by transfer on deputation'. Col.11 provides that officers of the Indian Audit and Accounts Department of the rank of Accounts Officer or Audit Officer with nine years approved service in the grade are eligible for selection. Col.13 of the Schedule provides that the selection

[Signature]

69
XXXXV

//35//

is to be made by the UPSC from amongst the eligible officers. In view of the Recruitment Rules providing for selection from amongst the eligible officers there is no escape from the conclusion that merit and not seniority which would play the decisive role in the matter of selection of officer for the post. Mr. Misra has listed in his written note a number of items of good work done by the applicant but that was for the superior officer to appreciate and record in the Annual Confidential Reports. Moreover a person cannot be judge of his own merit.

14. For the reasons mentioned above, we find no merit in the application which stands dismissed. No costs.

[Signature]
.....27.6.91
MEMBER (JUDICIAL)

[Signature]
.....27.6.91
VICE- CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.
dated 27th June, 1991.