

16

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Registration No. O.A.422 of 1988

**Date of decision: 29th November, 1991.**

K.P. Bhaumik ... Petitioner

Versus

Union of India & Others ... Respondents

Counsel for the applicant... In person (K.P. Bhaumik).

Counsel for the respondents. Shri K.C. Mohanty,  
Government Advocate (State)

Coram:- Hon'ble Shri K.P. Acharya, Vice-Chairman  
Hon'ble Shri I.P. Gupta, Member(A)

J U D G E M E N T

Hon'ble Shri I.P. Gupta, Member(A):-

This is an application filed under Section 19 of the Administrative Tribunals Act 1985. The applicant was appointed as Deputy Superintendent of Police in the Orissa Police Service on 26.6.1958. As per regulation 4 of the IPS Appointment by Promotion Regulations 1955 he was eligible for inclusion in select list on completion of 8 years as D.S.P. He was, therefore, eligible for the select list from 1967. He was not included in 1967 and 1968 select lists. After super-session for two years he was included in 1969 list and on that basis promoted to IPS w.e.f. 12.2.1970 i.e. from the date of approval of the list by UPSC and assigned 1965 as the year of allotment. In O.J.C. 378 of 1981 decided on 1.10.1985 the Hon'ble High Court of Orissa allowed the writ application filed by the applicant and called upon the opposite parties to

ful

constitute a selection committee to reconsider the case of the petitioner for inclusion in the 1967 or 1968 list. The special selection committee met on 28.10.66 and observed that in the earlier list prepared on 25.2.67 the name of Shri J.K.Das who was junior to the applicant was included at Sl.No.6. The selection committee on an over-all assessment of the service record of the applicant found him suitable for promotion to the IPS and on this basis recommended that his name may be included in the select list for 1967 prepared on 25.2.67 below Shri S.C.Satpathy. The name of Shri J.K.Das had to be excluded from the select list, as, under the rules, only six names were to remain in the select list. The date of approval of 1967 Select List by UPSC was 30.6.1967 according to the applicant. The committee further reviewed the case of the applicant for inclusion in 1968 select list and the maximum permissible number of State Police Service Officers who could be included in the selection list drawn on 18.10.68 was eight. However, the 1968 committee had prepared a list of only two officers who were found suitable for ~~the~~ inclusion in the list. The committee did not consider the name of Shri J.K.Das as he had already retired from service on 2.9.68. The selection committee examined the confidential reports of the applicant. The committee was satisfied that the applicant was suitable in all respects to be included in the list in order of his seniority. Accordingly the applicant's name was included at Sl.No.3 below Shri S.C.Satpathy who was at Sl.No.2.

Sub

2. In pursuance of the recommendations of the special Selection Committee, the Government of India issued two notifications to give consequential reliefs to the applicant. The first notification is at Annexure-2 and is dated 17.11.87. By this notification the applicant was appointed to IPS on probation w.e.f. 29.11.1969. The other notification is at Annexure-4 and is dated 8.12.1987. By this notification it was ordered that since the applicant had officiated continuously in cadre post w.e.f. 2.12.68 and since the date of continuous officiation in senior post is taken as the crucial date for fixation of seniority and since Shri Sreedhar Mishra (R.R.1964) was the junior most direct recruit IPS officer of State cadre who had started officiating continuously in senior post w.e.f. 21.6.88 i.e. a date earlier than 2.12.68 the crucial date for purpose of fixation of seniority of the applicant, the applicant was assigned 1964 as the year of allotment in the IPS.

3. The petitioner has claimed the following reliefs:-

To modify the Govt. of India, M.H.A's notification dated 17.11.87 and order dated 8.12.87 (Annexures-2 and 4) so as to (a) appoint the applicant to IPS from 25.8.69 instead of 29.11.69.

(b) Treat his deemed officiation in senior scale cadre post from 30.6.67 instead of 2.12.68.

(c) Fix his year of allotment consequent upon (a) and (b) above as 1963 instead of 1964.

(d) To promote him to selection grade, to the rank of DIG Level-II, DIG level-I by antidating his promotions accordingly and

(e) To pay all consequential monetary benefits i.e., arrears of pay and allowances and pay interest at the rate of 12% per annum.

And

19

(4)

4. The applicant has brought out the following points in support of his claims:-

(a) His date of appointment to IPS should be 25.8.69 since he was last in the selection list of 1967 and his immediate senior Shri S.C.Satpathy was appointed to IPS from 25.8.69 and another vacancy in the IPS existed on that date.

According to the applicant, there were 15 promotion posts and after taking Shri Satpathy 14 posts were full and one post <sup>shall</sup> ~~shall~~ remained vacant which could have gone to him as he was just below Shri Satpathy in the select list.

(b) Shri J.K.Das who was junior to him and whose name was replaced by the applicant in the select list of 1967 had officiated against cadre post from 23.9.64 to 2.9.68 when he retired. S/Shri J.Patnaik, J.N.Ghosh and O.C.Thiady who were non-select list Deputy Superintendents of Police were allowed to officiate in cadre posts respectively from 16.2.62 to 2.5.68 when he retired, 16.1.64 to 1.11.68 when he retired and 15.1.64 to 1.8.68 when he retired. Since the applicant was included in the select list of 1967 which, according to the applicant was approved by UPSC on 30.6.67, he should be deemed to have officiated in senior scale cadre post from 30.6.67 though he had actually officiated from 2.12.68, because his name was not earlier approved for 1967 select list but was approved for 1967 select list consequent upon the orders of the Hon'ble High Court. The applicant's case is that since he was deemed to have been included in 1967 list, his deemed officiation in the cadre post should be at least be from 30.6.67, when Shri J.K.Das who was not included in 1967 list and was junior had officiated from an earlier date and since even non-select list officers had officiated from earlier dates.

*And*

(c) Consequent upon (a) and (b) above his year of allotment would come to 1963 since the junior most direct recruit officer of the state cadre who started officiating continuously in senior post w.e.f. 19.1.67, that is a date earlier than 30.6.67 is Shri B.P.Saha (R.R.1963).

(d) Consequent on fixation of his year of allotment as 1963 instead of 1964 his subsequent promotions in the IPS should be antedated.

5. The learned counsel for the respondents (on behalf of the State of Orissa) pointed out that:-

(a) The applicant's prayer for relief is plural and not maintainable.

(b) Applicant's claim is barred by limitation

(c) The applicant has been given consequential promotional benefits consequent upon the Judgement of the Hon'ble High Court of Orissa.

(d) The applicant was placed in the 6th position in the 1967 Select List while there were only two vacancies. As such his claim for promotion to I.P.S on the basis 1967 Select List is baseless His appointment to I.P.S. on 29.11.69 was based on the Select List of 1968.

(e) His claim that the date of officiating appointment should be 30th June, 1967 instead of 2.12.1968 has no merit.

(f) There were 15 senior posts for promotion and out of these 13 officers were in position by 16.4.68. A list of such officers is given at Annexure-R 3/3. Although two more posts were available for promotion those were kept vacant on Govt. of India's instructions dated 7.8.67 a copy of which is at Annexure-R 3/4. There was no vacancy available for the applicant.

and

(g) There were 14 officers against promotion quota to the I.P.S. cadre as on 25.8.69 as at Annexure-R 3/5. Although one post on promotion quota was available, the same was kept vacant as per instruction of Govt. of India at Annexure R 3/4.

6. In the triennial review <sup>The</sup> cadre strength of I.P.S. <sup>was</sup> ~~were~~ increased and the promotion posts increased from

<sup>sub</sup> 15 to 17. These 2 additional posts were available on 29.11.69 and the applicant was appointed to I.P.S. from 29.11.69.

7. Let the above issues be analysed. An application before the Tribunal has to be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. The applicant's grievance is that consequent upon his subsequent inclusion in the 1967 select and 1968 select list in pursuance of action to implement the judgement of Hon'ble High Court of Orissa the orders passed by the competent authorities on 17.11.87 and 8.12.87 gave inadequate relief and, therefore, his case for promotion to various stages viz. officiating promotion to cadre post, promotion to I.P.S. and subsequent promotions in I.P.S. on the basis of the determination of year of allotment consequent upon determination of officiating promotion to cadre post and date of promotion to I.P.S. may be considered. Therefore, the reliefs being consequential to one another and flowing from action in pursuance of the implementation of the Judgement of Hon'ble High Court of Orissa cannot be said to be not maintainable.



8. As regards the limitation, the orders by which the applicant was aggrieved are dated 17.11.87 and 8.12.87. He made a representation to the Secretary to the Govt. of India on 15.2.88 and followed it up by another letter on 11.6.88. Within about 10 months of his first representation to the Govt. of India he filed the application before the Tribunal. His representation to Govt. of India was also not a delayed one and was made within about 3 months of the date of orders passed by the Govt. of India. Therefore, the case cannot be said to be hit by limitation.

9. As regards filling of 15 posts by promotion the respondents have pointed out that 14 officers were against promotion posts as on 25.8.69 Annexure-R3/5. Shri S.C. Satpathy's name, who was just above the applicant in the Select List of 1967 and select list of 1968 is included in 14 names. One post was kept <sup>vacant</sup>, according to respondents, as it was kept in abeyance. The instructions of the Govt. of India dated 7th August 1967 (Annexure-R 3/4) have been quoted in this regard. These instructions, general in nature, addressed to all State Govts. simply bring out that though a number of cadre posts have been kept in abeyance by State Govt., proposals are made for filling vacancies in the promotion quota in full. According to Rule 9 of IPS (Recruitment) Rules, 1954, the number of persons to be recruited by promotion shall not exceed 25% of the number of senior posts which is 15 in this case. It is open to Central Govt. not to fill any vacancy in promotion posts.

Jul

10. Cadre posts cannot be kept vacant or in abeyance according to cadre rules without approval of Govt. of India. No specific approval of Govt. of India for keeping one post in abeyance has been quoted. The order of State Govt. dated 20th December 1969 mentioned that one post of Addl. S.P was kept vacant from 2.3.69 to 28.2.70 due to shortage of Senior Officers, when the applicant was available on 25.8.69 for promotion. The post should not have been kept vacant or in abeyance. Further according to the decision in the case of Madan Gopal Singh Vs. Union of India (SIR 1976 (2) Vol 15-page 253), holding of a post in abeyance is permissible only when post remains vacant. Retrospective order holding a post in abeyance already occupied by an officer is not permissible. The holding of post in abeyance from 2.3.69 by order of 20.12.69 and when the applicant could have been given promotion from 25.8.69 when his senior, Shri Satpathy was promoted was not proper. What is contemplated under rules is a future situation only.

11. Regarding officiating promotion against a cadre post when Shri J.K.Das, junior to applicant officiated prior to 30.6.67 and other non-select list officers also so officiated, the applicant should be considered for deemed officiating promotion from 30.6.67 or from the date, the Select List of 1967 was approved where his name was included.

12. In the conspectus of the above view in the matter in the case, we direct the respondents to review within a period of six months the case for antidating the deemed promotions of the applicant to various stages (viz officiating promotion to cadre post, promotion to IPS and subsequent promotions in IPS on the basis of determination of year of allotment consequent upon determination of dates of



24  
(9)

officiating promotion to cadre post and date of promotion to IPS) in the light of observations made earlier in this order and determine the amounts as may be payable according to rules. Thereafter within a period of 2 months the monetary benefits as may be payable to the applicant according to rules should be paid. We are not inclined to grant any interest on arrears, since the action of respondents was not actuated by malice or illwill.

13. There is no order as to costs.

*I.P. Gupta*  
(I.P. Gupta)  
Member (A)

*K.P. Acharya*  
(K.P. Acharya)  
Vice Chairman.

