

(47)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

Date of decision:

9.2.1990

1. OA 129/89

~~I.K. Patnaik~~
R.L. Rath

Applicant

Vs.

Union of India & Others

Respondents.

M/s. A. Patnaik, L. Pangari & S. Udgata ... counsel for
the applicant.

Shri Ganeswar Rath, Standing Counsel(Central) ... For
& Shri T. Dalai, ASC (Central) respondents 1 to 3.

Shri K.C. Mohanty, Govt. advocate for Resp. Nos. 4 &
5.

S/Shri RR.K. Mahapatra & B. Routray, counsel for Res.6.

S/Shri A.K. Misra, S.K. Das and S.B. Jena, counsel for
respondents 6,7,12,17 and 19.

M/s. H.B. Swain & SS Swain, counsel for Respondents
14 to 18.

Shri H.S. Mishra, counsel for Respondent No. 20.

2. OA 209/89

Suresh Chandra Mohanty

Applicant

Vs.

Union of India & Others

Respondents

M/s. A Patnaik, L. Pangari & S. Udgata, counsel for the
applicant.

Shri Ganeswar Rath, Standing Counsel (Central) &
Shri T. Dalai, A.S.C. (Central), for Respondent Nos. 1
to 3.
Shri KC Mohanty, Govt. Advocate (State) for Resp.4 & 5.
M/s. H.B. Swain and S.S. Swain, counsel for Respondents
14 to 19.

3. OA 130/89

Sadananda Pati

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik, I. Pangari & S. Udgata, counsel for
the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) for Resp.

Shri K.C. Mohantray, Govt. Advocate (State) for Respond.
4 & 5.

S/Shri A.K. Misra, SK Das and SB Jena, for Resp. Nos.
6,7,12,14,17 & 19.

Shri H.S. Mishra, counsel for Resp. No. 20.

S/Shri H.B. Swain and S.S. Swain, counsel for Resp. 14
to 19.

4. OA 131/89

L.K. Patnaik

Applicant

Vs.

Union of India & Others

Respondents

Shri Ganeswar Rath, Sr. Counsel (Central) for Resp. Nos.
1 to 3.

Shri K.C. Mohantray, Govt. Advocate (State) for Resp.
4 and 5.

S/Shri R.K. Mohapatra and B. Routray, counsel for Resp.6.

S/Shri A.K. Misra, S.K. Das and SB Jena, counsel for
Resp. 6,7,12,14,17 & 19.

S/Shri H.B. Swain and S.S. Swain, counsel for Res. 14
to 19.

Shri H.S. Mishra, counsel for Resp. 20.

5. OA 207 /89

Priyanath Padhi

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik, L. Pangari & S. Udgata, counsel for
the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) and
Shri T. Dalai, ASC (Central), for Resp. 1 to 3.

Shri KC Mohanty, Govt. Advocate (State) for R. 4 & 5.
S/Shri H.B. Swain & SS Swain, counsel for Resp. 14 to
19.

6. OA 208/89

A. Chitransi

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik, L. Pangari & S. Udgata, counsel for
the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) &
Shri T. Dalai, A.S.C.(Central), for Respondents 1 to 3.

Shri K.C. Mohanty, Govt. Advocate, for Resp. 4 and 5.

7. OA 210/89

Shri B.K. Patnaik

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik, L. Pangari and S. Udgata, counsel for the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) and
Shri T. Dalai, A.S.C. (Central) for Respondents 1 to 3.

Shri K.C. Mohanty, Govt. Advocate (State) for Resp. 4
and 5.

S/Shri HB Swain and SS Swain for Resp. 14 to 19.

8. OA 211/89

K. Judesekhar

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik, L. Pangari and S. Udgata, counsel for the applicant.

Shri Ganeswar Rath, Senior Counsel (Central) for Resp.
1 to 3.

Shri K.C. Mohanty, Govt. Advocate (State) for Resp. 4
and 5.

S/Shri HB Swain and SS Swain for Resp. 14 to 19.

9. OA 212/89

P.R. Mohanty

Applicant

Vs.

Union of India & Others

Respondents.

S/Shri A. Patnaik, L. Pangari and S. Udgata, counsel for the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) for Resp. 1
to 3.

Shri K.C. Mohanty, Govt. Advocate (State) for Resp. 4
and 5.

S/Shri HB Swain and SS Swain for Resp. 14 to 19.

Bm

94

10. OA 213/89

Paramatam Singh

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik, L. Pangari and S. Udgata, counsel for
the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) for Resp. 1
to 3.

Shri K.C. Mohanty, Govt. Advocate (State), for Resp.
4 and 5.

S/Shri HB Swain and SS Swain for Resp. 14 to 19.

11. OA 228/89

Mahapatra
Sudhakar / Vs. Union of India & Others

S/Shri A. Patnaik and L. Pangari, counsel for the applicant

Shri Ganeswar Rath, Sr. Counsel (Central) for Resp. 1
to 3.

Shri K.C. Mohanty, Govt. Advocate (State) for Resp. 4
and 5.

S/Shri R.K. Mahapatra and B. Routray for Resp. 12.

S/Shri HB Swain and SS Swain, counsel for Resp. 14 to
19.

12. OA 229/89

Sriram Sagar

Applicant

Vs.

Union of India & Others

Respondents

S/Shri A. Patnaik and L. Pangari, counsel for the applicant.

Shri Ganeswar Rath, Sr. Counsel (Central) for Resp. 1
to 3.

S/Shri H.B. Swain and S.S. Swain, counsel for Resp. 14
to 19.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri N. Sengupta, Member (Judicial).

(Judgement of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman)

Ba

95

All the applicants in the above mentioned applications are officers of the Indian Forest Service of Orissa Cadre. They have a common grievance against the impugned notification No. 17203-1/88-IFS.II dated 3.2.1989 issued by the Ministry of Environment and Forests, New Delhi, appointing 16 State Forest Service Officers of Orissa to the Indian Forest Service with effect from 1st October, 1966 recruited under sub-rule (1) read with sub-rule (3A) of rule 4 of the Indian Forest Service (Recruitment) Rules, 1966. The recruitment of the above officers to the Indian Forest Service of Orissa Cadre is based on the judgment of the Supreme Court dated 10.12.87 in Writ Petitions No. 17467-17474/84 reported in AIR 1988 S.C. 535 - K. Prasad and Others Vs. Union of India and others. The case of all the applicants is based only on the common ground that the respondents have not correctly followed the directions of the Supreme Court in the above cases and have prayed that the impugned notification dated 3.2.89 should be quashed and that the respondents should be asked to follow the directions of the Supreme Court scrupulously. As the dispute is against the notification dated 3.2.89, in all the cases, they are being taken together and a common judgment passed.

2. It is necessary to refer to the background leading to the present applications. Not only the applicants belong to the Indian Forest Service (IFS), but also Respondents 6 to 20 as well as the late husband of Respondent No. 21. The Indian Forest Service was formed in the year 1966 under the All India Services Act, 1951. Under the I.F.S. (Cadre) Rules, 1966 and the I.F.S. (Fixation of Cadre Strength) Regulations, 1966, the strength of the State Cadre of Orissa on 1.10.66 was fixed at 53 posts consisting of 40 senior posts and 13 other posts. In 1967, under the relevant rules, 41 persons were selected for initial recruitment to the Service, but these selections were struck down by the Supreme Court as the Chief Conservator of Forests ^{a member of the Selection Board} was himself a candidate for selection. Thereafter, another Special Selection Board

Da

was constituted without the Chief Conservator of Forests which they selected 42 officers and were appointed on probation with effect from 1.10.66 by a notification dated 10.12.1971. All these 42 officers were confirmed in the I.F.S. with effect from 1.10.67. These officers included three of the applicants, namely, Shri Rajib Lochan Rath (OA-129/89), Shri Sadananda Pati (OA-130/89) and Shri Lakshmikant Patnaik (OA-131/89), but did not include Respondents 6 to 20 and the late Shri N.R. Bohidar, the husband of Respondent No. 21 who continued to remain in the Orissa Forest Service.

3. By the judgement dated 10.12.87 in ~~with~~ the Writ Petitions 17467-17474 of 1984, the Supreme Court set aside the initial recruitment to the Orissa Cadre of the I.F.S. under which 42 officers were appointed to the I.F.S. and directed, inter alia, as follows:

"The position as it has now emerged is that all 82 eligible officers as on 1.10.1966 should be considered and not merely some of them. Their suitability should be adjudged. If they are not found suitable, reasons should be given which the UPSC should be able to consider. If they are found suitable a list of such officers should be drawn up with ranking given to them in the order of preference for the consideration of the U.P.S.C. Since this has not been done the recruitments have to be set aside and the matter remanded with directions that it should be finalised as per the Recruitment Rules and in the light of the above discussion." (Para 37 of the Judgement).

In the aforesaid judgment, the Hon'ble Supreme Court further observed:

"We would like to make one more thing clear before we conclude. It is not our intention, nor can it be the result of our discussion, that the appointment of any of the officers recruited under rule 4(1) or 4(2) should be considered invalid. All the officers selected will have to be adjusted, if necessary, by amending the Cadre Regulations. The only result of our findings will be the readjustment of their seniority with necessary and consequential effect on their promotions in Service." (Para 39 of the judgment.)

4. As a result of the Supreme Court's judgement, another Special Selection Board was constituted and based on the selections made by it, Respondent No. 1 has issued the impugned notification dated 3.2.89 appointing Respondent Nos. 6 to 20 and

Back

late Shri N.R. Bohidar to the I.F.S. Orissa Cadre with effect from 1.10.1966. A copy of the said notification is marked Annexure -6 to the application. It may be mentioned that while three of the applicants are officers who were included in the original initial recruitment to the I.F.S., the others are direct recruits to the I.F.S who have been appointed on the basis of open competitive examinations.

5. A preliminary objection was taken by the learned counsel for the respondents that applications are not maintainable as the applicants have no locus standi or real cause for grievance as a result of the notification dated 3.2.89. His contention is that three of the applicants who were already selected to the I.F.S. in the initial constitution continue to be members of the Indian Forest Service and the others who are direct recruits to the IFS are not in any way connected with the initial recruitment. He also said that the inter se seniority of the officers ^{to} has still be decided and, therefore, no cause of action has arisen at present. This was, however, strongly refuted by the learned counsel for the applicants. He said that the notification would result in changing the seniority of all the applicants which has been in existence for several years. He said that some of the officers now included in the initial recruitment would be included in the I.F.S. from 1.10.1966 whereas many of them became members of the I.F.S. as a result of promotion much later and have been junior to the applicants for several years.

6. The learned counsel for the applicants accepts the judgment of the Supreme Court dated 10.12.87, but asserts that the respondents have not followed the same scrupulously. His contention is that the Supreme Court had directed the respondents to consider all the 82 eligible officers, but the respondents did not consider 42 officers who were already included in the initial constitution and as such it is not possible to draw up a proper ranking between the officers selected. By not doing so, different standards have been applied as far as the 42 officers selected

earlier and the remaining 40 officers who were considered by the Special Selection Board in 1988, ~~are concerned~~. He strongly urged that while the Supreme Court had stated that the earlier selection of 42 officers would not be considered invalid, and the officers selected would be adjusted, if necessary, by amending the Cadre Regulations and this could result in readjustment of their seniority with necessary and consequential effect on their promotions in Service. The cadre strength of IFS in Orissa was 53 and by selecting 16 more officers in 1988, the number of officers to be appointed under initial recruitment would go upto 58 (42 + 16) and unless the cadre was suitably increased, appointments to such a cadre could not be made under the relevant rules and regulations. According to para 6 of the I.F.S. (Initial Recruitment) ^{tions}Regula/ 1966, officers recommended by the Commission under sub-regulation (3) of regulation 5 shall be appointed to the Service by the Central Government, subject to availability of vacancies, in the State Cadre and the State Cadre can be changed only in consultation with the State Government. He quoted the judgment of the Supreme Court dated 10.12.87 (AIR 1988 SC 535) where it has been stated that it is not open to the Central Government to alter the strength and composition of the cadre without consulting the State Government concerned. The mere appointment of extra number of officers cannot be treated as automatic expansion of the cadre strength and composition in exercise of the power available under Rule 4(1) of the Recruitment Rules. It was pointed out that the Cadre Regulations do not lay down any water-tight classification of junior and senior posts and is not a vital feature of the composition.

7. The learned counsel for the respondents vehemently opposed the contentions of the learned counsel for the applicants. He said that there is no challenge to the selections made by the Special Selection Board as these have been done under the directions of the Supreme Court and the respondents have carried

out the directions of the Supreme Court scrupulously in letter and spirit. It is true that some of the respondents had not been originally selected to the IFS in the initial recruitment and they were later promoted to the IFS, but when they were included as members of the I.F.S. under the initial recruitment on the basis of the selections made according to the directions of the Supreme Court, such a selection or appointment cannot be challenged by anyone. The Supreme Court while dealing with the position in Orissa observed as follows:

"36. So far as Orissa is concerned, the position is very simple. It clearly emerges from our discussion above that all the 82 eligible officers had to be considered for initial recruitment. Though it has been alleged in the counter-affidavit that they had been so considered, the Government note referred to by counsel dated 2.6.1967 (at p. 47 of the paper book) indicates to the contrary. The S.S.B. merely selected 42 officers and made an omnibus observation that the others were found unsuitable. This, as explained in Chothia (AIR 1978 SC 1214) is not proper compliance with the rules and so the selection has to be set aside with a direction that it should be redone properly."

In the original selection an omnibus observation was made by the Selection Board that 40 officers were found ^{un} suitable which showed that the Board had not applied its mind fully, but this is not the case in the selection made in 1988. In any case, the selection as such is not challenged. He said that the Supreme Court had made it clear that it was not their intention that appointment of any of the officers recruited under Rule 4(1) or 4(2) should be invalidated. All the officers selected will have to be adjusted, if necessary, by amending the cadre regulations. He accepted that the only result of the latest selection would be readjustment of the seniority of officers with necessary and consequential effect on their promotion in the Service, but all this is strictly according to rules. He said that action is already under way to amend the cadre strength of the I.F.S. in Orissa. It was delayed as the proposal by the State Government to the Government of India was received in late 1989 and the necessary notification is likely to be issued shortly. As the Supreme Court had already accepted that there may have to be restructuring of the cadre strength, in case the number of officers found suitable

Bra

for initial recruitment exceeded the cadre strength fixed in 1966, it is, however, not necessary or obligatory to first amend the cadre strength and then appoint suitable persons to the Service under initial recruitment as this would only delay the appointments. Some of the officers are likely to be retiring in the near future and it was not considered necessary to wait for cadre restructuring which would certainly be done by the Central Government according to rules in consultation with the State Government who have already sent their proposals to Respondent No.1.

8. The learned counsel for the applicants referred to para 31 of the Supreme Court's judgment (supra) which states that once a person is found eligible and is adjudged suitable for recruitment under the Initial Recruitment Regulations, he has to be taken into the Service as part of the initial recruitment either immediately on 1.10.66 or as and when vacancies arise in the cadre. The learned counsel for the applicant said that in the circumstances, the appointment of all the respondents need not have been effective from 1.10.66, but only when vacancies arise in the cadre. It was explained by the learned counsel for the respondents that the Supreme Court themselves ^{have} given an illustration in the same paragraph as to how to deal with such matters. He said that as long as a person is appointed to the Indian Forest Service on the basis of the initial recruitment, his seniority or year of allotment will be determined under the relevant rules. The contention of the learned counsel for the applicants that by appointing the respondents 6 to 20 and the late Shri N.R. Bohidar to the I.F.S., under initial constitution, when there were no vacancies and without changing the cadre strength has no practical relevance. Nor is there any relevance of appointing all the eligible persons in any any order of preference. He

Boh

57

said that under Regulation 5, the Board is to prepare, in the order of preference, a list of officers of the State Forest Service who satisfy the various conditions and who are adjudged by the Board suitable for appointment to the post. This only means that while making such a list of suitable candidates, if persons who are eligible for appointment but are junior to many other eligible officers, they would be included in the select list, but since their inter se seniority and year of allotment would be determined under the relevant rules and they will be arranged in the seniority list accordingly, the question of preparing the list in the order of preference has no significance as such.

9. We have gone through the pleadings and given anxious consideration to the arguments by the learned counsel on both sides. We do not accept the preliminary objections on behalf of the respondents that the applicants have no locus standi or have no cause for filing the applications as they are likely to be affected in their seniority and future promotions, but we have to examine whether the relief asked for by the applicants can be allowed. It is the case of the applicants that they are not challenging the selection by the Special Selection Board in the initial constitution of the Service. Their objection is to the appointment of respondents 6 to 20 and the late Shri N.R. Bohidar against Regulations 5 and 6 as the Board did not prepare the list of eligible officers in order of preference and appointed the respondents when there were no vacancies. They also objected to the Central Government appointing the respondents 6 to 20 without first restructuring the cadre in consultation with the State Government. We have to consider whether the impugned notification is in contravention of the directions given by the Supreme Court or whether it is according to such directions. It has already been stated by the respondents that the selections have been made as per the directions of the Supreme Court in as much as it was clearly stated by the Supreme Court that the selection of the 42 persons included in the Service earlier

Boa


would not be invalidated. As such, it was not necessary to go into their records to adjudge their suitability, but the records of the other remaining 40 officers were considered and 16 officers found suitable. Once they are included in the initial recruitment list, their appointment has to be given effect to from 1.10.1966. Another objection was taken by the learned counsel for the applicants that the Supreme Court had asked the respondents to consider all 82 eligible officers as on 1.10.66 and not on 1.7.86 which would have meant that the applicant Shri L.K. Patnaik would have been covered in the initial recruitment. Here also, it may be noted that Shri Patnaik was actually appointed to the I.F.S. under initial constitution and promoted to senior scale with effect from 1.10.66. The Supreme Court has certainly said that appointments should be made according to the rules and regulations, but they had definitely allowed the restructuring of the cadre, if necessary. If the 16 officers selected by the Board in 1988 had to be accommodated as directed by the Supreme court, the expansion of the cadre to include them was inevitable and irrespective of the date on which they were actually appointed to the I.F.S., all persons selected as such would be deemed to be appointed with effect from 1.10.66 and their seniority would be reckoned according to the relevant rules.

Therefore, the actual date of their appointment to initial recruitment would not have any practical significance. In this context, ^{it} is not really material when the cadre is actually restructured, but it is important that this should be done quickly and as we are informed that the formalities are to be completed fairly soon, we will not hold that the respondents have flouted the directions of the Supreme court, although technically it is true that action to restruct^{ure} the cadre should have been taken by the State Government much earlier and appointments made after the cadre strength had been duly increased. These are,

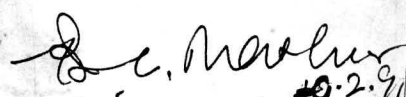
/in Senior Scale.

Ban

however, not fatal lacunae as to warrant invalidating the impugned notification. The seniority of the applicants whether they were promoted from the State Forest Service or directly recruited to the Service would be regulated under the relevant rules and as such there will be no practical adverse effect on their seniority or future promotions. We do not consider it necessary to interfere with the impugned orders on purely technical considerations. Already several years have passed since the question of initial recruitment was taken up and it is time that the initial recruitment should be brought to a finality. We, however, direct that the respondents should finalise the cadre restructuring quickly, preferably within two months from now and all consequential benefits allowed to the officers as a result of refixation of their seniority. With these observations all the 12 applications are disposed of. There will be no orders as to costs.


(N. Sengupta) 7.2.90

Member (Judicial)


(B.C. Mathur) 7.2.90
9.2.90
Vice-Chairman

