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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 18 of 1991

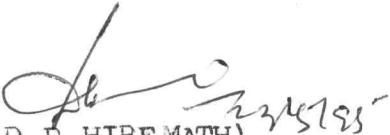
Cuttack this the 23rd day of May, 1995.
P.K. Sahu Applicant

Vrs.

Union of India & Others Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *Y*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? *Y*


(D.P. HIREMATH)
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER(ADMINISTRATIVE)

23 MAY 95

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O. A. NO. 18 OF 1991.

Cuttack this the 23rd day of May, 1995.

CORAM:

THE HONOURABLE MR. JUSTICE D.P.HIREMATH, VICE CHAIRMAN

&

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER(ADMN.)

Prafulla Kumar Sahu, 42 years,
son of Upendra Sahu, Jasarajpur,
PO Samasarpur,
Dist-Cuttack now working as Dy.
Director Social Forestry Project,
Koraput 'A' Division, Koraput.

...

Petitioner

By the Advocate ... M/s. Aswini Ku. Mishra, S.K.Das,
S.B.Jena, Advocates.

Versus.

- 1) Union of India represented through
Secretary to Government of India,
Ministry of Environment and Forest,
Paryavarana Bhawan, CGO Complex, Phase-II,
Lodi Road, New Delhi-110003.
- 2) State of Orissa represented through its
Secretary to Government of Orissa, G.A.
Dept., Bhubaneswar.
- 3) State of Orissa represented through
Secretary to Government of Orissa,
Forest, Fisheries and A.N. Deptt., Bhubaneswar.
- 4) Union Public Service Commission,
represented through its Secretary,
Dholpur House, New Delhi.
- 5) Shri Santosh Kumar Biswal,
Dy. Director, Social Forestry Project,
Keonjhar, Dist, At/Po-Dist-Keonjhar.
- 6) Sri Swapneswar Gochhi, Dy. Director,
Social Forestry Project, Sundargarh District,
At/Po-Dist-Sundargarh.
- 7) Sri R.N. Panigrahi, Dy. Director, Social Forestry,
Project, Phulbani Dist, At/Po/Dist-Phulbani.
- 8) Sri Sidheswar Mohanty, Divisional Manager,
Berhampur Plantation Division, 'B'
Orissa Forest Development Corporation Ltd.,
Bramhangar, Lane-IPO, Berhampur, Ganjam.

.... Opp. Parties.

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By the Advocate ... M/s. C. A. Rao, S. K. Patnaik,

Mr. K. C. Mohanty, Government
Advocate (State).

Mr. Akhaya Kumar Mishra,
Additional Standing Counsel
(Central).

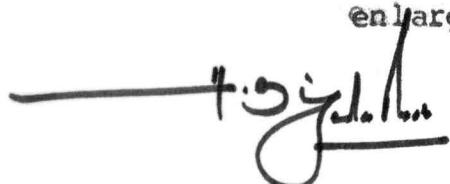
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O R D E R

H. RAJENDRA PRASAD, MEMBER(ADMN.) The applicant, Shri Prafulla Kumar Sahu, was selected and trained for Orissa Forest Service-Class II in 1971 and appointed on 2.4.1973. In the gradation list of Class-II Officers published on 4.1.1989, his name was shown at No. 71. A selection Committee to consider the cases of promotion of eligible Officers from O. F. S, Class II to I.F.S. met on 18.11.1990, examined the cases of 36 officers and recommended 10 of those to the Union Public Service Commission for promotion to I.F.S. The applicant's name was one of those whose cases were considered but not recommended.

2. The grievances of the applicant are five-fold, namely:-

- (i) the number of available vacancy were wrongly calculated;
- (ii) CRs of officers only for the period upto 31.3.1989 were taken into consideration by the Committee;
- (iii) the vacancies were not determined on an annual basis but vacancies of three years were bunched together thereby needlessly enlarging the zone of consideration;



(iv) his CRs written during the period of his deputation to Orissa Forest Corporation do not faithfully reflect his outstanding performance or deserved grading correctly. The Reporting Officer gave him a rating less than outstanding whereas his work had been of truly outstanding quality during the period;

(v) he has been superceded by his juniors without any valid reason or justification.

3. The applicant prays for; the quashing of the recommendations reportedly made by the selection Committee held on 18. 11. 1990; directing the respondents to recalculate the available vacancies to be filled up by O. F. S. Officers by splitting them yearwise; considering his case retrospectively from 1979 on the ground that he is a 1971 recruit and had completed the required 8 years of service by 1979.

4. Regarding the calculation of vacancies available for filling up by promotion from O. F. S., the applicant gives the following position as on 1. 11. 1989:

a)	No. of posts in the Orissa cadre of I.F.S.	...	...	124
b)	No of senior posts in the State Government.	...	...	71
c)	Central Deputation Reserve	...		14
d)	No. to be filled up by promotion			28
e)	No. of O.F.S. Officers already promoted.	...	...	10 (d-e)

15/11/1990

f)	No. of vacancies available for promotion.	...	...	18
g)	No. of officers wrongly promoted and due to be reverted (S/Shri Pitabas Mohapatra and G. Sahu)			2
h)	Total vacancies that should become available.	...		20 (f+g)
i)	No. of officers to be considered by the Committee.	...		40 (twice h')
j)	No. actually considered by the Committee.	...	...	36
k)	No. recommended	...	...	10
l)	No. of vacancies for which recommendations were made	...		5

5. Respondent No.1 agrees generally with the above position explained by the applicant, except that -

Cases of 38 Officers (and no 36 as stated by the applicant at j above) were considered, and ^{that} only 8 (and not 10 as stated at c. above) Officers of O.F.S. were promoted and in position on the said date, ^{and} that only 7 vacancies (and not 18 or 20 as stated at f and h above) were available for filling-up by promotion. The respondents justify this figure of 7 as under:

Authorised strength	...	124
No. already filled up	...	111
No. remaining to be filled up	...	13
Less Direct Recruits to O.F.S. in 1991	6
Balance (13-6)	...	7

1.25.1.1

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They further explain that the two vacancies mentioned at 'g' in the preceding para had not come ^{up} or placed before the Selection Committee since the two officers mentioned therein had been reverted only a day prior to the date of the meeting of the Committee. And that their search was confined to only 7 vacancies and not for 18 or 20, as argued by the applicant.

6. Three issues have cropped up persistently in a number of similar cases wherein OFS Officers with eight years' service to their credit were not selected for promotion to IFS. Their grievances in every case have been:

(i) Sixteen OFS Officers were promoted to IFS by Ministry of Environment and Forests, Government of India vide notification dated 3rd February, 1989. This was in compliance with the directives of the Supreme Court in C.A. 3072/80 disposed of on 10.12.1987. Some of these sixteen Officers had been holding positions in IFS by promotions already. The applicant in this case as well as in other (similar) cases have argued that as some of these officers had in any case already been promoted by virtue of their seniority and earlier selection to IFS, the pertinent posts relating to such Officers should be taken as having been 'vacated' by them and should be transferred and thrown open to other OFS Officers with requisite eligibility down the line awaiting their own promotion. This plea in fact forms a strong plank of all cases of this type. The Respondents refute such claims on three counts: firstly, that the Supreme Court verdict itself clarified that any further promotions would be ordered only after all the initial recruits had been adjusted against their respective categories, by altering or refixing the overall cadre-strength for the purpose, if necessary; secondly, that all OFS Officers selected for promotion in

1.51.1.1

two instalments do infact form the initial cadre regardless of their promotions or seniority and no shifting of posts is therefore permissible to any group ^{adjunct} or sub-stream, before the entire crop of initial recruits is adjusted in keeping with the cadre-strength as fixed in the beginning, or revised subsequently in compliance with Supreme Court's Order in this regard; and finally, that the overall percentage of promoted Officers can at no time or under any circumstances exceed the maximum of 33.3% fixed for them. We cannot, therefore, agree that the vacancies hitherto occupied by any of the initial recruits earlier promoted to senior posts can or need to be added on to the share of promotional posts from OFS, which action could, incidentally, also result in the number of such promotions exceeding 33.3% of the IFS cadre strength.

(ii) OFS Officers have argued in every case that 1/3rd of the 25% of the Deputation Reserve in respect of the Senior Duty Posts under the State Government should be shifted to the share of OFS Officers in determining the number of posts to be offered to them on promotion. The respondents argue that this is neither envisaged nor permissible under the regulations. They say it was nowhere intended that any part of the State Deputation Reserve of 25% (quantified as 18 in the IFS Cadre schedule published vide GOI notification No. 160161 10/87-AIS-II-A dated 16.10.1987 and No. 28062/1/88-AIS II dated 10.5.1988) are to be added to the share of promotional quota. A look at the schedule does not indeed show that the 25% Deputation Reserve (item 5) was either intended or meant to be split into a third of the figure to be appended to promotional share of posts. We are inclined to agree with this interpretation and do not admit the position that Deputation Reserve, or any portion of it, can accrue to the share of promotional posts for OFS officers. The plea of the applicant in this case, and those like him in analogous cases, on this score are not found acceptable.

(iii) The applicants in all these cases have also argued that promotions to the fullest extent

— T. S. J. —

upto 33.3% of the total number of vacancies arising during a year should be duly filled up by promoting adequate number of eligible and suitable officers from OFS. The Respondents on their part have invariably argued that it is not necessary to do so, that the rules merely specify 33.3% as the upper limit for OFS promotions and that it is only necessary to ensure that the number of posts to be filled up by promotion to IFS from OFS should not at any time exceed 331/3% of the total vacancies available at any point. In support of this, the respondents draw attention to the notification of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training Notification No. 14015/6/89-A.13 dated 22.2.1989 amending Rule 9(1) of the IFS (Recruitment) Rules, 1966. The amended rule runs as follows:

Rule 9(1) - The number of persons recruited under Rule-8 in any State or Group of States shall not at any time exceed 331/3% of the number of posts as are shown against items 1 and 2 of the cadre in relation to that State or Group of States in the Schedule to the Indian Forest Service (fixation of cadre strength) Regulations, 1966.

6.1. We agree with the Respondents that the proportion of 1:3 earmarked for recruitment to the Service by way of promotions and direct recruitment denotes the maximum number that can be inducted into it by either of the two methods of intake. But we cannot accept the argument that they are free not to fillup the vacancies upto the full share of promotions reserved for this category. It cannot be conceded that the number of promotions can be simply reduced and promotional posts left unfilled at any particular juncture of time unless there are valid and justifiable reasons for such inadequate promotions. In other words, if there are no

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overwhelmingly valid reasons for not doing so, promotions to the maximum ceiling of 33 1/3% are indeed required to be made by promotion from O.F.S. to I.F.S.

6.2. In the present instance there were reasons for not doing so. Right from the initial constitution of the service in 1966, disputes arose as to the inter-se-seniority in the OFS, interpretation of SFS Rules, identification of the ^{precise} number of initial recruits and the exclusion or non-consideration of certain officers at the initial constitution of IFS. These problems resulted in a series of court verdicts necessitating a succession of revisions of seniority of OFS officers on the one hand, and the reconsideration of more officers ~~promotion to and for IFS~~ ^{promotion to and} alterations in its cadre-strength on the other. This also led to a situation where 16 more officers who were selected to IFS subsequent to the initial selection having to be duly adjusted within the overall specified strength of Orissa IFS Cadre. It is evident that because of these unanticipated developments, the position was unclear for a few years after 1966-67. To compound the situation, some officers were promoted in anticipation of subsequent regularisation of such promotions, and atleast two officers were promoted provisionally on wrong seniority. All this took a few years before the position could eventually stabilise by refixation ^{of} the cadre-strength to the extent necessary and adjusting ^{all} the initial recruits. The facts of this case have to be viewed and understood against

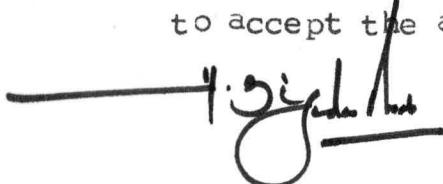
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this background.

6.3. These contributory factors incidentally also explain why the meetings of Selection Committee could not meet between 1987 and 1990, and why vacancies could not be apportioned and considered annually, during these years. It is also stated by Respondent No.1, that while it is true that the Selection Committee should normally meet annually, the same cannot be said to be a mandatory requirement inasmuch as there also exists a provision of age relaxation to the officers coming up for consideration before it, in case it is not possible to hold annual meetings due to any extraordinary circumstances.

(Para 19 and 20 of counter-affidavit by Respondent.1)

7. Coming to the question of the grading accorded to the applicant in his CRs during his deputation to Orissa Forest Corporation Ltd., all that can be said is that such gradings (as well as the overall assessment) in the CRs depend upon and reflect the overall perceptions of the Reporting and Countersigning authorities. While the officer reported upon can hold any estimate of his own performance during a period, the eventual assessment has to be that of the Reporting and Countersigning Officers. Consequently, we find ourselves unable to accept the arguments of the applicant as far as

T. S. Ghosh

the question of CRs is concerned. With regard to the contention of the applicant that the CRs only for the period ending 31.3.1989 were considered instead upto a later period, the respondents state that the Committee scrutinises cases of only those officers who become eligible for the same on the 1st January of the year in which the meeting is convened. It was logical, therefore, to examine the CRs only upto 31.12.1989 and not of any later period. There is in short nothing which warrants interference in the proceedings and in the matter of recommendations made on their basis by the Selection Committee.

7.1. In view of what has been discussed in the foregoing paragraphs, we hold that -

- a) there was nothing provenly incorrect in determining the number of vacancies placed before the Selection Committee Meeting held on 18.11.1990 to consider promotions from O.F.S. to I.F.S.;
- b) the bunching together of vacancies was unavoidable and based on valid reasons; and
- c) the Committee was correctly guided by the contents of CRs of the concerned officers placed before them.

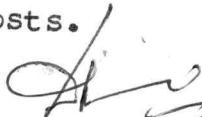
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In consequence of the above findings,
we do not find it possible to quash the orders of
promotion contained in Annexures 5 and 6 to the
application. The Original Application is disallowed.
No costs.


(D.P. HIREMATH) 3/51/95
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

23 MAY 95

KN Mohanty, CM.