

8

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 24 of 1991

Cuttack this the 23rd day of May, 1995

Gadadhar Mohapatra

...

Applicant (s)

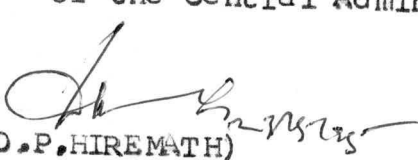
Versus

Union of India & Others ...

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.


(D.P. HIREMATH)
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

23 MAY 95

9

18

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No.24 of 1991

Cuttack this the 23rd day of May, 1995

C O R A M:

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

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

...

Gadadhar Mohapatra, 48 years
son of Artabandhu Mohapatra, Gopalpur,
PO: Champeswar, Dist: Cuttack at present
working as Dy. Director, Social Forestry,
Sambalpur Division, Sambalpur

... Petitioner

By the Advocate: M/s. A.K. Misra,
S.K. Das,
S.B. Jena

Versus

1. Union of India represented through
Secretary to Government of India,
Ministry of Environment & Forests,
Paragavaran Bhaban, CGO Complex,
Phase-II, Lodhi Road, New Delhi-110003
2. State of Orissa represented through
its Secretary to Government of Orissa,
General Administration Department,
Bhubaneswar
3. State of Orissa, represented through
Secretary to Government of Orissa,
Forest Fisheries and A.H. Department,
Bhubaneswar
4. Union Public Service Commission,
Dholpur House, New Delhi
5. Sri Pitabash Mohapatra, I.F.S.
Project Manager, S.F.D.C. attached
to Head Office, At: Kalyaninagar,
Cuttack
6. Sri Gadadhar Sahu, I.F.S.
Divisional Forest Officer,
Forest Resources Survey Division,
Cuttack, AT/PO/Dist: Cuttack

... Respondents

19

By the Advocate: Mr. U. B. Mohapatra,
Addl. Standing Counsel
(Central) for Respondent 1

Mr. K. C. Mohanty,
Govt. Advocate (Orissa) for Respondent 2 & 3

Mr. C. A. Rao for Respondent 4

M/s. Devanand Misra
Deepak Misra
A. Deo & P. Panda for Respondent 6

...

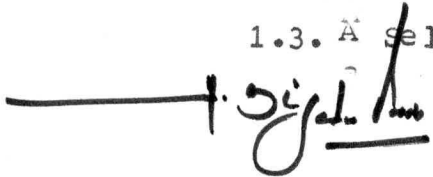
O R D E R

H. RAJENDRA PRASAD, MEMBER (ADMN) : The applicant was selected to O.F.S. Class-II and appointed to the cadre on 2.4.1968.

1.1. The Government of Orissa published revised Gradation lists of O.F.S. Class II and O.F.S. Class I on 4.1.1989 and 15.11.1989, respectively, in pursuance of the directives of Hon'ble High Court of Orissa in O.J.C. 588 of 1972. In the gradation list of O.F.S. Class II the applicant figured at serial number 31, while Shri Pitabas Mohapatra (Respondent No.5) and Shri Gadadhar Sahoo (Respondent No.6) were placed at 54 and 56, respectively. Similarly, in the gradation list of O.F.S. Class I, the applicant, Respondents 5 & 6 were shown at 23, 44 and 46, respectively.

1.2. The petitioner, being a direct recruit to O.F.S. Class II in 1966, acquired eligibility for consideration to be inducted to the senior time-scale of I.F.S. In 1974.

1.3. A selection Committee to consider the



cases of eligible officers met on 9.12.1986. The names of Respondent 5 & 6 were included in the list of four officers drawn up by the Committee but the petitioner was omitted from it although he had been shown to be duly senior to the said respondents in the relevant gradation lists.

1.4. No meeting of the Selection Committee took place in 1987 and 1988. The next meeting of the Committee held on 27.12.1989, revised the list earlier drawn up by the previous Committee on 9.12.1986, and included the names of Shri Swaraj Dutta and the present applicant in place of Respondents No. 5 & 6. The applicant's contention is that Shri C.V.S. Murthy and Shri M.N. Mitra had retired in 1986 and 1987, respectively, and three vacancies had also arisen due to the enlargement of the cadre strength. Thus, in December, 1987, five clear vacancies were available to be filled up by eligible O.F.S. Officers, but two of those were 'encroached upon' by Respondents No. 5 & 6 even though they were junior to the applicant.

1.4. The applicant's grievance is that even though his name was included in the list drawn up by the Committee on 27.12.1989, he was not promoted to the senior-scale, whereas Respondents 5 & 6 were promoted on the strength of the recommendation of the previous Committee on 9.12.1986, which recommendations had been duly reviewed, revised and modified by the

— 1. Singh

atter Committee.

1.6. By the time of the Committee's next meeting on 17.11.1990, one more vacancy had arisen due to the demise of one Shri B.B.Routray, but the applicant's name was not included even in the list prepared by 17.11.1990, although, according to the applicant, six vacancies were available to be filled up.

1.7. The applicant does not attribute any malafides to any officer or authority but resents the casual manner in which his case was dealt with and the delay which occurred in not promoting him after his name was included in the list of select officers on 27.12.1989, even while allowing his juniors (Respondents 5 & 6) to continue in the I.F.S.

2. The specific grievance of the applicant with regard to the proceedings of the Selection Committee Meeting on 17.11.1990 are that -

- (i) vacancies arising upto 1990 were not split-up, apportioned and considered on an year-to-year basis, and instead, by bunching together of the accumulated vacancies, the scope and zone of consideration was avoidably enlarged.
- (ii) CRs of eligible officers were considered right upto the period ending 31.3.1989, instead of confirming such consideration

— 1.3.91 —

to CRs upto 31st March, 1986, for the 1987 vacancies.

3. Basing his case on the aforesaid arguments, the applicant prays for a direction to be issued to Respondents 1 to 4 to -

- a) promote him to the Senior Scale of IFS from 7.12.1987, i.e., the date from which Respondents 5 and 6 were so promoted;
- b) promote him retrospectively on the basis of the recommendations of the Committee on 9.12.1986; and
- c) accord service and financial benefits accruing from such retrospective promotion.

The case was filed on 29th January, 1991, admitted the next day on 30th January, 1991, and though listed twenty-two times thereafter, was adjourned for various reasons, and was heard finally on 7.4.1995. Although the applicant had also prayed for orders to injunct Respondents 1 & 2 from promoting any of his juniors, no orders were passed on the interim prayer.

4. Respondent No. 2 and 4 have filed their counter-affidavits. The contents of the counters are as under :

- 4.1. Inasmuch as All India Services Act, 1951 applies only to those officers who are borne on the establishment of the Service, the present applicant, not being so borne, is not entitled to protection of any of

— 1. Singh —

its provisions. The application moreover is barred by limitation.

- 4.2. The applicant's name was included in the select list of officers prepared by the Review Committee at its meeting held on 9.12.1986 subject to clearance of his name on the outcome of the enquiries then pending against him.
- 4.3. The seniority of the applicant, which was below Respondents 5 & 6 in the original gradation list, was changed in pursuance of the judgment of Hon'ble Supreme Court and Hon'ble High Court on 7.1.1988 and 10.6.1974, in C.A. No.2051-52 and O.J.C. 588 of 1972, respectively. Consequently in the gradation list of OFS Class II and Class I Officers published on 4.1.1989 and 15.11.1989, respectively, he was placed above Respondents 5 & 6.

While it is true that the applicant had completed eight years of service, the mere completion of such service does not automatically entitle him to promotion to I.F.S., if he is not within three times the number of officers who are to be included in the list for consideration from whom only a third can be eventually selected for promotion to posts earmarked for induction from S.F.S. upto 33 1/3% of the total number of vacancies.

- 4.4. When the meeting of Selection Committee was held on 9.12.1986, there was only one existing vacancy besides one which was anticipated on account of retirements/

— 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

anticipated retirement of one Haripada Basu and Manindranath Mitra.

Shri C.V. Sitarama Murthy had retired on 1.4.1985, and not 1986, as contended by the applicant and the resultant vacancy was filled up from the select list of 1985.

Although five more vacancies arose on 16.10.1987 due to enlargement of the cadre-strength, the same could not be foreseen for the preparation of select list of 1986 to be placed before the Committee which met on 9.12.1986. Thus there were no more than 2 vacancies available to be filled up by the Committee on 9.12.1986 as explained at (vi) above.

For the aforesaid vacancies, altogether 12 officers came up for consideration in terms of Rule 5(2) of IFS (Recruitment by Promotion) Rules, 1966, and 4 officers were selected. The applicant's name did not get included.

The names of two officers - Shri Pitabas Mohapatra & Shri Gadadhar Sahoo - were included provisionally *

- 4.5. No meetings of the Selection Committee could be held in 1987 and 1988, because of the pendency of OJC 588/72, and 180/73 in Orissa High Court and C.A. Nos. 2051/2052 of 1974, SLP No. 2958/1975.

When the revised seniority lists of OFS Class-II and Class I were published on 4.1.1989 and 15.11.1989, respectively, six officers who had earlier been within the zone of consideration went out of the zone of selection to be

* pending finalisation of their seniority which was sub-judice at that point of time.

— T. G. S. —

replaced by six who were not earlier in the zone. The Review Committee which met thereafter on 27.12.1989 decided to revise the list of 4 officers prepared earlier at its meeting on 9.12.1986 and selected 4 officers among whom figured the applicant's name. His inclusion in the list and promotion to IFS were subject to the outcome of a disciplinary case then pending against him(it ended with stoppage of two increments with cumulative effect on 17.10.1989). A vigilance report was also pending at contemplation stage at the time.

It is clarified that the names of Sarvashri Pitabas Mohapatra & Gadadhar Sahoo were included by the Committee at its meeting on 9.12.1986 on account of an interim order passed by Hon'ble Supreme Court in SLP 2984/85 but these officers were reverted later, and not continued in IFS as alleged by the applicant (Cf. Para 1.7. above)

4.6. Altogether 38 eligible officers were considered by the Selection Committee which met on 17.11.1990 for five available vacancies. It recommended 10 officers and the same was approved Respondent No.4 on 9.1.1991 and the same was communicated to the State Government on 29.1.1991. With this, the list finalised on 27.12.1989 which included the applicant's name, became defunct having been superceded by a later Committee.

5. In view of the detailed explanation given by them the Respondents contend that the applicant is not

— 1.3.91 —

entitled to a retrospective promotion or any of the other reliefs prayed for by him.

6. It is to be said that the events and developments attendant on the present application have been brought out fairly elaborately by the Respondents. The circumstances which led to the supercession of the recommendations of the Selection Committee at its meeting on 9.12.1986 by the revised recommendations of the said Committee at its subsequent meeting have been explained in detail. So have the reasons for the non-promotion of the applicant. All the events and related developments which preceded the Selection Committee meeting on 17.11.1990 stand revealed in detail.

7. The arguments of the Respondents that the applicant is not free to invoke the provisions of All India Services Act, or that the application is barred by limitation, are rejected as untenable.

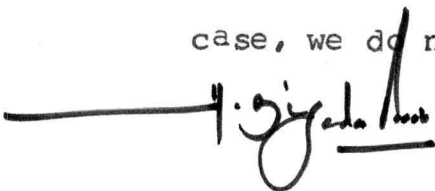
8. It is nevertheless clear that the applicant was not entitled to automatic consideration for promotion to the senior-scale of IFS on completion of eight years ^{And it is therefore} ~~is also~~ not acceptable. It is true that the applicant was placed senior to Respondents 5 and 6 in the gradation list of OFS Class II and Class I published by the State Government. However, he was not eligible to be included in the zone of choice for being included in the select list upto 9.12.1986, on account partly of lack of requisite

— 1. G. G. G. G. G.


seniority and also because of lack of enough vacancies for such inclusion. And when it was eventually found feasible to recommend and include his name, a disciplinary proceeding was pending against him.

9. The contention of the applicant that five clear vacancies were available for filling up at the relevant time is not found to be correct in view of of the facts explained by the Respondent in para 4.4. above. Similarly, it is not found to be correct that Respondents 5 & 6 were wrongly promoted and allowed to continue in the promotional post indefinitely; their initial promotion was itself due to an interim order of the Apex Court, and their reversion followed the disposal of the said case. The reasons for the non-convening of the Selection Committee during 1987 and 88 have been convincingly enumerated. There is no provision for splitting up of vacancies on annual basis nor is such procedure ~~is~~ at all envisaged by any regulation. And finally there is nothing intrinsically wrong in taking into consideration the CRS of the concerned officers upto 31.3.1989 by the Committee which met on 27.12.1989; there is no reason at all why the CRs only upto 31.3.1986 should have been considered.

10. In the light of the facts revealed in this case, we do not find it possible to concede the reliefs



prayed for by the applicant. The Original
Application is disallowed. No costs.


(D.P. HIREMATH)
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

23 MAY 95

B.K.Sahoo//