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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 80 of 1991

Date of Decision: 24.12.91

H.S. Kumar

Applicant

Versus

Union of India & others

Respondents

For the applicant

M/s.P.K. Ray, S.Ray
& Arun Mohanty, Advocates

For the respondents

M/s.K.C.Mohanty, Government
Advocate (State of Orissa) &
M/s.Ashok Mohanty, Standing
Counsel (Central)

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HON'BLE MR. K.P. ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MR. J.C. ROY, MEMBER (ADMINISTRATIVE)

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

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JUDGMENT

MR .K .P .ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985 the petitioner prays for a direction to opposite party nos. 1 to 4 not to take into consideration the adverse entries made in the Confidential Character Rolls of the petitioner from 1987-88 and 1988-89 and to direct the opposite parties to consider the case of the petitioner for promotion and to give promotion with effect from the date from which the juniors of the petitioner were promoted.

2. Shortly stated the case of the petitioner is that he joined Orissa Forest Service(Class-II) in the year 1968. The petitioner served the Government of Orissa in various capacities and ultimately the case of the petitioner came up for consideration by the Selection Committee held on 17th November, 1990 for promotion to the cadre of Indian Forest Service. Grievance of the petitioner is that on illegal grounds the name of the petitioner has been omitted from the select list and he has been illegally deprived of the promotion which ought to have been given to him. Hence this application has been filed with the aforesaid prayer.

3. In the present case CP No. 1 i.e. the Union of India represented by the Secretary to the Government of India in the Ministry of F&E Paryavaran Bhawan and the State of Orissa represented by the Secretary to the Government of Orissa in General Administration Department and Secretary to the Government of Orissa ⁱⁿ and the Forest _{in}

Fisheries and Animal Husbandry (OP Nos. 2 and 3) have filed their counter. Counter has also been filed on behalf of the private opposite party Nos. 7, 8, 9 & 14. Rest have not filed any counter.

4. The stand taken by the Central Government and that of the State Government is practically the same which is apparent from the averments of their respective counters. It is maintained by the Central Government and the State Government that the Selection Committee considered the cases of all the officers including that of the petitioner (who came within the consideration zone) and the different officers graded. The petitioner being found unfit, was not included in the select list.

5. In their counter submitted by the private opposite parties Nos. 7, 8, 9 and 14 it is maintained that the selection and appointment has been made as per the grading given by the Selection Committee on the basis of the records of these opposite parties and no illegality having been committed in the matter of their selection and appointment, such appointment should ^{not} be unsettled.

6. We have heard Mr. P. K. Ray, learned counsel for the petitioner and Mr. K. C. Mohanty, learned Government Advocate for the State of Orissa and Mr. Ashok Mohanty, learned Standing Counsel (Central).

7. The fact that a Selection Committee had met on 17th November, 1990 to adjudicate the suitability of different officers of the Orissa Forest Service including that of the petitioner for promotion to the cadre of Indian Forest

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Service was not disputed before us. The next admitted position is that at the time when the Selection Committee had met, there were certain adverse entries against the petitioner recorded in his Confidential Character Rolls for which the petitioner had made a representation and such representation was pending consideration by the Government. It was also admitted before us on the basis of the averments finding place in para-9 of the counter that the adverse remarks recorded in the Confidential Character Rolls of the petitioner for the year 1987-88 and 1989/90 has since been expunged and intimated to the petitioner vide General Administration Department letter no.6570/SE dated the 7th August, 1991. The only crucial question that needs determination as to whether in view of the expunction of the adverse remarks the case of the petitioner needs to be reconsidered. Mr.K.C.Mohanty, learned Government Advocate submitted that the adverse entries recorded in the C.C.R of the petitioner for the above mentioned period was not taken into consideration by the Selection Committee because the representation made by the petitioner was pending consideration by the Government and was not finally disposed of. This fact also finds place in paragraph-5 of the counter. In order to be convinced about the correctness of this statement made on instructions vide order dated the 18th November, 1991, we had called upon opposite party nos. 2 and 3 to cause production of the minutes of the Selection Committee held on 17th November, 1990 which would indicate the basis adopted for

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selection and whether the adverse entries were ruled out from consideration. Notice to cause production was duly served on OP Nos. 2 and 3, but for reasons best known to the said opposite parties nothing was stated to us regarding production of the file till the conclusion of hearing of this case.

8. On 2nd December, 1991 a memo was filed by the learned Government Advocate for the State of Orissa Mr. K. C. Mohanty accompanied by an oral submission that the minutes of the DPC had been called for by this Bench in connection with O.A.225/91 and hence the Bench may peruse the minutes of the DPC held on 17.11.1990 in connection with this case and pass necessary orders. In such circumstances the minutes of the DPC held on 17.11.1990 was perused and therefrom it was found that the case of the petitioner had been considered and he was found to be unfit. At the cost of ~~repeation~~ it may be said that contention of Mr. Ray, learned counsel for the petitioner is that consideration if any in regard to the case of the present petitioner cannot amount to just and proper consideration in the eyes of law and therefore such consideration is not legally acceptable. In regard to this contention, it was further urged by Mr. Ray that since the representation pending with the Government was not disposed of, ~~consideration~~ of those adverse entries was not just and proper in the eyes of law. In order to repudiate this contention, learned Government advocate submitted before us that the adverse entries recorded against the petitioner for the above mentioned period was not taken into consideration by the Selection Committee because the representation made by

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petitioner was pending consideration. On a perusal of the minutes of the DPC, it would be found at paragraph-5 that the Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them. It runs thus :-

"The Committee did not take into consideration the adverse remarks in the ACRs of the officers which were not communicated to them while assessing their sub**t**ability".

From the above quoted observations of the Selection Committee it is clear that those adverse entries which have not been communicated to the concerned officers, have not been taken into consideration which eventually means and presupposes that the adverse remarks which were communicated to different officers have been taken into consideration while assessing the performance of those officers irrespective of the fact as to whether representation is pending or disposed of. In case the Selection Committee did not **take** notice of the adverse remarks appearing against those officers whose representations are pending consideration including the petitioner then it would have been mentioned in the minutes that the adverse remarks in ACRs which were either not communicated to those officers or those officers to whom communication was made conveying the adverse rem**ak**ks and representations pending consideration were not taken into account. In the absence of such a note in the minutes of the Selection Committee we are bound to presume that the adverse entries in question were

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were considered by the Selection Committee because in the case of the petitioner those adverse entries were communicated to the petitioner and his representation was pending consideration. Since, admittedly, the adverse entries have been expunged, in all fairness to the petitioner and from the point of view of justice, equity and fair play and good conscience, the case of the petitioner needs to be reconsidered.

9. In addition to the above we find from the records (contained in Annexure-4) which is a letter addressed to the Special Secretary to the Government, General Administration Department by Shri R.K. Bhujabal, IAS, Secretary to the Government of Orissa in the Department of Housing & Urban Development bearing No.16489 dated 19th March, 1990 that the petitioner has been categorised as 'outstanding' by Shri Bhujabal. For better appreciation, it is necessary to quote the letter in extenso:

"I have gone through the representation of Shri H.S. Kumar sent with DO No.614/SE dated 2.2.1990 of Shri B.R. Rout, Deputy Secretary, General Administration (SE) Deptt. regarding adverse remarks in his C.C.R. in the year 1987-88 (from 14.12.1987 to 31.3.1988). I have seen the work of this officer personally. I am of definite view that the officer has been very harshly charged by the counter-signing Officer. I reconsider my early endorsement and dis-agree with the remarks given by the counter-signing officer. In my opinion Shri Kumar should be rated as outstanding".

From the above quoted views expressed by Mr. Bhujabal, it can be verywell said that not only the adverse remarks have been expunged but also this officer has been graded as 'outstanding' by the Secretary,

16

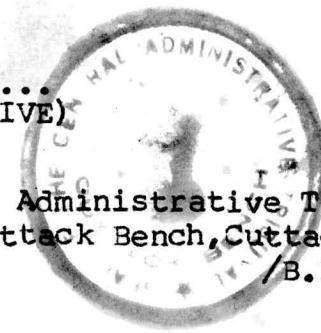
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Mr. Bhujabal. At the cost of repetition it may be said that this letter is dated 19.3.1990 and that the Selection Committee held its meeting on 17.11.1990 and in case the adverse entries during the period in question were not considered by the Selection Committee evidently it can be presumed that the opinion expressed by Mr. Bhujabal was not placed before the Selection Committee which could not take notice of the fact that the Secretary has graded this officer as 'outstanding' and therefore we are of the opinion that grave injustice has been done to the petitioner. Had this opinion been placed before the Selection Committee, it is not known what view the Selection Committee would have taken and what could have been the grading of the petitioner vis-a-vis other officers who have been graded as outstanding or very-good. In the circumstances stated above we are of opinion that consideration of the case of the petitioner is not according to the law and therefore we would direct that a Special Selection Committee be convened and the case of the petitioner may be reconsidered and in case the petitioner is found to be suitable for promotion he should be given due promotion with effect from the date on which his juniors were promoted. Thus the application is accordingly disposed of leaving the parties to bear their respective cost.

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..... MEMBER (ADMINISTRATIVE)



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VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
/B.K. Sahoo