

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 63 OF 1992
Cuttack this the 31st day of August, 1999

Tapan Kumar Behera

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *31.8.99*

31.8.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.63 OF 1992
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Tapan Kumar Behera
aged about 40 years,
Son of Shri Manatosh Behera
at present working as
Superintendent of Police, Signals,
Orissa, At/Po/Dist: Cuttack

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Applicant

By the Advocates : In person

-Versus-

1. Union of India represented by its
Secretary, Department of Home
New Delhi
2. State of Orissa represented by the
Secretary to Government
Department of Home, At/Po: Bhubaneswar
District: Puri
3. Secretary to the Government of Orissa,
Department of General Administration,
At/Po: Bhubaneswar, Dist: Puri
4. Director General of Police, Orissa
At/Po/District: Cuttack
5. Shri S.K.Pradhan, IPS
Superintendent of Police, Rourkela
District: Sundargarh
6. Shri Manmohan Das, IPS
Superintendent of Police, Railway
At/Po/District: Cuttack
7. Shri Bidhubhushan Misra, IPS
Superintendent of Police,
Cuttack Sadar, At/Po/Dist: Cuttack
8. Shri G.D.Satpathy, IPS
Superintendent of Police (Vigilance)
Headquarters, At/Po/Dist: Cuttack

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9. Shri B.N.Hota, IPS
Superintendent of Police
At/Po/Dist: Dhenkanal

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Respondents

By the Advocates : Mr.K.C.Mohanty
(For Res.2 to 4)

Mr.U.B.Mohapatra
Addl.Standing Counsel
(For Res. 1)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application seeking direction on respondents 1 to 4 to confer on the applicant the benefit of promotion to I.P.S. cadre and consequently for issue of notification declaring his promotion to that cadre; for quashing the selection and appointment of Res. 5 to 9 to the I.P.S. cadre; and alternatively to direct Res. 1 to 4 to consider his case for promotion to I.P.S. cadre from the date of his entitlement in each year 1991, applicant Tapan Kumar Behera's case is that he entered the Orissa Police Service in Class II on being selected by the Orissa Public Service Commission and was appointed as D.S.P., Signals on probation vide Govt. notification dated 27.7.1978 (Annexure-1). On being directed by the Additional Director General of Police in letter dated 1.1.1979, the applicant had undergone basic course of Police Training at the Police Training College, Angul with effect from 1.2.1979. This was approved by the Government in letter dated 3.3.1979. He had successfully completed the training and passed all the departmental examinations in higher standard result of which was published in Orissa Gazettee dated 9.5.1980,

communication of which was made to him in Memo dated 12.6.1980 (Annexure-2).

2. The applicant was confirmed in the rank of D.S.P.(Signals) with effect from 12.8.1978 vide Govt. notification dated 23.6.1982 (Annexure-3). He was promoted to officiate as Superintendent of Police -II (Signals) vide Govt. notification dated 23.10.1983 (Annexure-4). This post of Superintendent of Police-II(Signals) was created by Govt. notification dated 1.10.1974 (Annexure-5). It is submitted by the applicant that this post of S.P. II(Signals) carried a scale of pay identical to the senior scale of pay for all other Sperintendents of Police in I.P.S. cadre and the Government in letter dated 18.4.1985 (Annexure-6) fixed the scale of pay of the applicant at Rs.1200/- in the scale of pay of Rs.1200-50-1700/- with effect from 23.10.1983. He was confirmed in the rank of S.P. II(Signals) with effect from 23.10.1984 vide notification dated 31.8.1989 (Annexure-7).

3. Though under I.P.S. (Appointment & Promotion) Regulations, 1985, an officer substantive in the State Police Service, who has completed eight years of continuous service (whether officiating or substantive) in a post of Deputy Superintendent of Police or any other post included in the State Police Service is to be considered by the Selection Committee for promotion to the I.P.S. cadre, his case was never considered and was illegally ignored even though he had successfully completed eight years of continuous service as Deputy Superintendent of Police (Signals) and Superintendent of Police II(Signals) since 12.8.1986. Further, according to

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him, as he was holding the post of S.P. (Signals), he was senior to Res. 5 to 9, who were Additional Superintendents of Police and whose cases were considered for promotion to I.P.S. cadre at the relevant time, because the rank of S.P. (Signals) is superior to that of Additional S.Ps. The pay scale of S.P.(Signals) as on 1.1.1986 was Rs. 22400-Rs. 35800 whereas pay scale of Additional Superintendent of Police (Res. 5 to 9) then was Rs. 2250-3500/-.

2. On the basis of these averments the applicant claims that his non-consideration for promotion to the I.P.S. cadre is arbitrary and illegal as well.

3. On 25.2.1992, while admitting this Application, the Tribunal kept the question of limitation to be taken up at the time of hearing. It was ordered that result of this application would govern future service benefits of the applicant. On 10.4.1992 it was further ordered that any appointment to the I.P.S. cadre on promotion on the basis of select list of the year 1991-92, if made, the appointee should be informed that his/her appointment is subject to the result of this application.

4. Respondents 5 to 9, though duly noticed neither appeared nor contested the case. Res. 2, viz., the State of Orissa filed counter opposing this application and it was submitted by the learned Govt. Advocate Shri K.C. Mohanty appearing for the State of Orissa that respondents 3 and 4 though would not file separate counters would support Res. 2's counter. Shri U.B. Mohapatra, learned Addl. Standing Counsel appearing for Union of India (Res. 1) also adopted the counter of Res. 2.

3. In the counter this application has been opposed on the ground of bar of limitation as the application was filed in the year 1992, though the grievance of the applicant that he has been ignored for promotion to the I.P.S. cadre from August, 1986 or latest from 10.6.1987, when Res.5 was taken to I.P.S. cadre, the application is also not maintainable because the applicant had not preferred any representation/appeal to the Government of India before filing this application.

4. On merits it is submitted that the applicant was specifically recruited for the post of D.S.P.(Signals) and not for any post borne in the cadre of Orissa Police Service Class-II by the Orissa Public Service Commission. He was appointed as D.S.P. (Signals) on probation after being selected in response to the Govt. advertisement for that post in the year 1978 under Annexure-R-2/1 prescribing certain qualifications which are different from the qualifications required for regular Deputy Superintendent of Police in Orissa Police Service Cadre as reflected in Annexure-R-2/2. The training course and the syllabus for D.S.P. (Signals) under Annexure-R-2/3 also differs from the framed syllabus of regular officer under O.P.S. cadre under Annexure-R-2/4. The trainings required for the two services are different because of difference in nature of duties. More over the method of recruitment for the post of D.S.P.(Signals) is different from recruitment of regular D.S.P. inasmuch as no Combined Competitive Examination was conducted to select the applicant for the post of D.S.P.(Signals), whose qualifications have been

specifically advertised.

For consideration for selection to the cadre of I.P.S., a minimum of eight years continuous service in the regular Principal Police Service of the State is necessary. But the applicant, after five years of service was promoted as S.P. (Signals) which in any way equivalent to the post of regular S.P. under I.P.S. cadre. Had the applicant been selected as regular D.S.P. he would have continued as Addl. Superintendent of Police along with his seniors till he was considered for regular promotion to the I.P.S. cadre. The post of S.P.(Signals) is not a cadre post of the Orissa Police Service. It is an ex-cadre post different from the regular Orissa Police.

The posts of D.S.P. (Signals) are not included in the Principal Police Service of the State. Had this post not been declared by the Government as equivalent to D.S.P., D.S.P.(Signals) could have held charge of the District or Sub-Division of a District which is an essential requirement under Regulation-II(J) of I.P.S. (Appointment by Promotion) Regulations, 1955, to be considered for promotion to the cadre of I.P.S. No officer in any rank of wireless grade has ever been trained to remain in charge of the Police Stations, Police Circles, Sub-divisions and District Police Administration dealing with the crime, criminals, law and order problems and so on which are the primary functions of the State Police Service, because such officer is neither trained for that purpose nor supposed to perform such duties.

This in brief is the averment in the counter opposing the application.

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6. The applicant, after receiving a copy of counter filed rejoinder consisting of 80 typed sheets besides rules, instructions and so on. This rejoinder is more or less a reiteration in an argumentative way the facts averred in the Original Application. Only a new relevant aspect as noticed by us is in regard to the fact that the State Government in O.A. 1814/92, disposed of by the State Administrative Tribunal admitted in their counter in that case that Police Signals Establishment is an integral part of Orissa Police Establishment. The State Government filed a reply to this rejoinder reiterating their earlier stand. Applicant Shri Tapan Kumar Behera appeared in person and argued the case at length so also Shri K.C.Mohanty, learned Government Advocate for the State of Orissa supported by Shri U.B.Mohapatra, learned Addl.Standing Counsel for the Union of India. We have heard them at length. Also perused the records including the written submissions filed by the applicant.

7. Facts are not at all in controversy. The primary point for consideration is whether the applicant having ^{been} recruited as D.S.P.(Signals) and having been promoted as S.P.(Singlas) is eligible for consideration for promotion to the cadre of I.P.S. Promotion to I.P.S. cadre is guided under the Indian Police Service(Appointment by Promotion) Regulations 1955. Under Clause-5 of the Regulations, the concerned Selection Committee shall ordinarily at intervals not exceeding one year prepare a list of such Members of State Service, as held by them to be suitable for promotion to I.P.S. Under

Clause-II(J) State Police Service means (for the State of Orissa) the Principal Police Service of ^{the} a State, a Member of which normally holds charge of a Sub-division or a District for the purposes of Police Administration and includes anyother duly constituted police service functioning in a State which is declared by the State Government to be equivalent thereto.

Admittedly no notification of the State Government declaring either D.S.P.(Signals) or S.P.(Singlas) as equivalent to Principal Police Service of the State has been issued. Hence question arises whether either the post of D.S.P.(Signals) or S.P.(Signals) is a part and parcel of Principal Police Service of the State. This expression "Principal Police Service" impliedly means service where a member of which is normally in charge of a Sub-division of a District for the purpose of Police Administration. The expression "Police Administration" and "District" are not defined under the Regulation 1955. Even these two expressions do not find place in General Clauses Acts of the Central or of the State. Hence these two expressions have to be understood in terms of their popular meaning. The Dictionary meaning of Police (Black's Law Dictionary-5th Edition at Page.1014) is " a Branch of the Government which is charged in preservation of public property and tranquility; The promotion of the public wealth safety and morales and the preservation, detection and punishment of crimes. Indian Police Act, 1861 has been enacted to reorganise the police and make it a more efficient instrument for the prevention and detection of

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crime. In other words, Police Administration, in general would mean that part of the administration which is in charge of maintenance of law and order dealing with the prevention and detection of crimes. So far as expression "District" is concerned, it cannot mean Police District under Police Act which even includes the entire State, because of preceding expression "Sub-Division", the meaning of District would mean a Revenue District. In fact, the expression "District" is defined in Black's Law Dictionary (5th Edition at Page-427) as one of the territorial areas into which an entire State or Country, County, Municipality or other political Sub-division is divided for judicial, political, electoral or administrative purposes. In other words, "District" means a Revenue District.

D.S.P.(Signals) or S.P.(Signals) by nature of their duties is not kept in charge of a particular Sub-division or a District. This being so, one of the two essential ingredients to be recognised as a Member of Principal Police Service is absent in the instant case.

Question then arises whether the applicant either as D.S.P.(Signals) or S.P.(Signals) was/is concerned with Police Administration, i.e., Police Administration as discussed above. Admittedly he has no power to register or investigate into a crime which is the basic requirement of the Police Administration. He has no power even to arrest a criminal. It is true that the applicant's decision direct to the point with reference to interpretation of expression "Principal Police Service" and "Sub-division of a District" appearing in

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the Regulation (Supra) has been cited at the Bar.

It is true that the applicant pleaded that in O.A.1814/92 disposed of by the State Administrative Tribunal, the State of Orissa had taken a stand that the Police Signal Establishment is an integral part of the Orissa Police Establishment. The applicant in this connection also placed before us the judgment dated 12.3.1993 pronounced by the State Administrative Tribunal (Annexure-A/6) filed in course of arguments. It is true that the State of Orissa had taken that stand in that case. However, the issue in that case was whether Constables serving under Signal Establishment can be transferred to regular Police Establishment, vice versa. In other words issue in that case was whether Constable working under Signal Establishment formed a separate cadre from the Constables working in Regular Police Establishment. It was held with reference to the pleadings and documents that there was no separate cadre of Constables for Signal Establishment and there is general recruitment of Constables and some out of recruited Constables are selected to undergo training in Signals and they are made to work in Signal Establishment. Thus it is clear that there is no admission by the State Government in that case that either D.S.P.(Signals) or S.P.(Singlas) formed part of regular Police Establishment of the State.

We are, therefore, not prepared to accept the contention advanced by the applicant that he forms part and parcel of Regular Police Service of the State. In other words, he is not a Member of the Principal Police Service of the State kept in charge of Sub-division of a District.

8. As earlier stated posts of D.S.P.(Singlas) is not a cadre post of Orissa Police Service. It is true that the scale of pay prescribed for the post of S.P.(Signals) is more than the pay scale prescribed for Additional S.Ps. Merely on the basis of higher scale of pay in a post not being the feeder cadre to superior post, one cannot have claim over that superior post.

It is true that the recruitment for the post of D.S.P.(Singlas) is held by Orissa public Service Commission, but the qualifications prescribed for the post of D.S.P.(Singlas) and regular D.S.P. are not identical. The respective qualifications appear under Annexures-R-2/1 and R-2/2. As to the physical, for instance, the requirement of Chest measurement for a candidate appearing for the post of regular D.S.P. is not less than 32" even unexpanded. However, such requirement for D.S.P.(Singlas) is only 31". So far as educational qualifications are concerned, post of D.S.P.(Singlas) requires a Graduate in Telecommunications/Radio Engineering/Technology or equivalent or M.Sc.(Physics and Applied Physics) with Wireless/Electronics as a special subject. Besides, two years practical and administrative experience in a Major Telecommunication Organisation is also preferable. But these are not the educational qualifications required for recruitment to the post of regular D.S.Ps. Even we find, there is difference in the Training course vide Annexure-R-2/3. The duration of training course for D.S.P.(Singlas) is six months which includes 390 periods in four months for out door training and 376 periods in four months for indoor training.

However, the duration of training for regular D.S.Ps is one year vide Annexure-R-2/4. Besides subjects imparted in training in these two courses are also different. For instance, Police Station duty, Court duty, Reserve duty, Police Administration, Forensic Science, Medical Jurisprudence, First-aid, Finger print/foot print, photograph, plan drawing, map reading, traffic control, preparation of F.I.R., investigation of specialised types of crimes, preparation of case diary, prosecution reports, charge-sheets and so on which are essential for the training course of regular D.S.Ps are absent in the syllabus of training for D.S.P.(Signals). Hence simply because the applicant has undergone training in Police Training College, Angul where regular D.S.Ps also undergo training, he cannot claim that he has acquired the same specialisation and experience as a regular D.S.P. who forms a different cadre.

In this connection, we may refer to the decision in Dr. Ram Raj Ram vs. State of Bihar reported in 1996 SCC(L&S) 1201 (not cited at the Bar) with reference to Bihar and Orissa Veterinary Service Class-I Recruitment Rules, 1935. On 1.6.1977 an advertisement was published by the Bihar Public Service Commission inviting applications for appointment against a temporary post of Special Officer in Bihar Animal Husbandry Service Class-I(Special). The appellant emerged successful and was directly appointed in January, 1978 in the scale of pay of Rs.1160-1580/-, the pay scale of regular Class-I being Rs.620-1415/-. But this special service post had no cadre of its own. Yet the appellant was graded as the senior-most in the Veterinary Department to stake claim to

the post of Director(Veterniary). But the Hon'ble Supreme Court held that this special service could not have been made a basic cadre by stroke of a pen giving go bye to the statutory rules of 1935.

Thus it is clear that unless the qualifications, training course, nature of duty, pay scales and so on of two different posts are identical, question of treating the one post at par with the other post would not arise, more so, ^{whim} one post forms a different cadre by itself.

We have perused all the pleadings, written submissions and documents forming part of this voluminous record, ~~So~~ also various decisions cited by both sides but no decision is direct to the point as earlier stated, in regard to interpretation of expression "Principal Police Service" and "Sub-division of a District" as occurring in Regulation 1995 (Supra). Hence those decisions have not been dealt in this judgment. Further it is not expected of us to refer each and every averment and document of this voluminous record. Therefore, those ~~which~~ are more relevant for determining the issue before us have been referred to.

Thus in view of our discussion above, we hold that the applicant not being a Member of the Principal Police Service of the State remaining in charge of a Sub-division or District is not eligible to be considered for selection to I.P.S. cadre.

9. The learned Government Advocate, in course of arguments submitted that this application is not maintainable since the applicant has not preferred any appeal under Rule-16 of All India Services(Discipline &

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Appeal) Rules, 1969. We fail to understand how these rules are applicable to the applicant, who has not been involved in any disciplinary proceeding. We do not find any merit in this contention in regard to maintainability of this application. There is however, some force in the contention raised by the learned Govt. Advocate on the point of limitation. In para-5(3) of the Original Application the applicant has stated that he should be declared as deemed to be selected to the I.P.S. cadre from the date of his entitlement, i.e. from 1.1.1987, or latest from the date his junior, i.e. Res.5 was taken to I.P.S. cadre, i.e. 10.6.1987. Still he preferred this application in February, 1992. The period of limitation under Section 21 of the A.T.Act being one year, this portion of the prayer is hopelessly ^{barred} ~~barred~~ by law of limitation. Of course the other cause of action that he was again ignored to be considered in the year 1991 is within time.

10. In the result we do not see any merit in this application which is accordingly dismissed, but no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *1.8.99*

B.K.SAHOO

31.8.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)