

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 703 OF 1993.
Cuttack, this the 10th day of February 2000.

SHRI RABINARAYAN MOHAPATRA. APPLICANT.

-VERSUS-

UNION OF INDIA AND OTHERS. RESPONDENTS.

FOR INSTRUCTION

1. whether it be circulated to all the Reporters or not? Yes.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

(G. NARASIMHAM)
MEMBER (JUDICIAL)



(SOMNATH SOM)
VICE-CHAIRMAN
10.2.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 703 OF 1993.

Cuttack, this the 10th day of February 2000.

CORAM:-


THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.)

..

Shri Rabinarayan Mohapatra,
Aged about 54 years,
S/o. late Madhabananda Mohapatra,
of village-Randia, PS. Bhadrak (R),
Dist. Bhadrak, at present Addl. Supdt.
of Police (Vigilance), Cuttack. APPLICANT.

BY legal practitioner : M/s. M.M. Basu, S.D. Swain,
D. Chakraborty,
D. Dey,
A.K. Mohanty,
Advocates.

-VRS.-

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1. Union of India represented by
the SECRETARY to Government of India,
Department of Home Affairs,
Central Secretariat, New Delhi.
2. State of Orissa, represented by the
Chief Secretary Cum Secretary to
the General Administration Department,
to the Government of Orissa,
Secretariat, Bhubaneswar.
3. Principal Secretary to Govt. of Orissa,
Home Department, Secretariat,
Bhubaneswar, Dist. Khurda.
4. Union Public Service Commission,
represented by its Secretary,
Dholepur House, New Delhi-11.
- S. Som.

.. RESPONDENTS.

BY legal practitioner; Mr. K. C. Mohanty, Government Advocate
for State of Orissa.

By legal practitioner : Mr. U. B. Mohapatra, Additional Standing
Counsel (Central).

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O R D E RMR. SOMNATH SOM, VICE-CHAIRMAN:

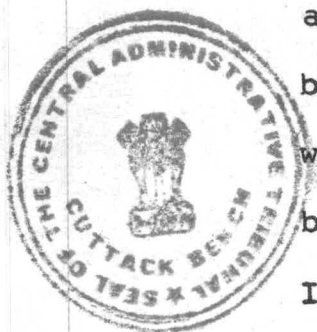
In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a declaration that the applicant is entitled to be included in the select list for promotion to the Indian Police Service with effect from 1988 from which he was excluded due to non-revision of the cadre by the Respondents. The second prayer is for a declaration that the applicant is entitled to be promoted from the date Shri B.D. Rout and Shri P.K. Panda were so promoted.



2. Applicant's case is that he was originally appointed as an Assistant Public Prosecutor in the Police Department on 16.8.1972. He went on deputation as Public Prosecutor in Central Bureau of Investigation on 9.7.1976. He was promoted to the rank of D.S.P. on 28.12.1979. He was further promoted to the rank of Addl. S.P. on 10.1.1986. On being promoted to the post of Addl. S.P., he joined at Sundergarh on 10.2.1986. On 9.1.1987, he was posted as Addl. S.P. (Vigilance), at Cuttack, Order dated 10.1.1986 promoting the applicant to the post of Addl. SP, Sundergarh and posting him at Sundergarh, is at Annexure-2. This was an ad-hoc promotion for one year or till recommendation of the Orissa Public Service Commission is received whichever is earlier. Since then

S. Som.

the applicant has been serving as Addl.SP. In order dated 8.3.1988, at Annexure-3, he was promoted to the post of Addl.SP (vigilance) on regular basis after consultation with the Orissa Public Service Commission. This promotion on regular basis was from the date of his officiation in Orissa Police Service, Sr. Class-I. Applicant has mentioned that he was eligible to be promoted to the Indian Police Service, in accordance with the Indian Police Service (Appointment by Promotion) Regulations, 1955. Applicant has stated that he has been continuously working as DSP since 1979 and had completed 8 (eight) years of continuous service by 27.12.1987. His date of birth is 3.1.1939 and he would be completing 54 years on 2.1.1993 and shall not be eligible for being considered for promotion to Indian Police Service unless he is so considered on or before 1.4.1993. The applicant had rendered most dedicated service and for which he has been awarded President's Police Medal in 1990. Applicant has stated that S/Shri Gangadhar Satapathy, Manmohan Das, Biswanath Hota, Sarangadhar Rajguru, Pramod Kujar Panda, Bidhubhusan Mishra and Banshidhar Rout have been promoted to Indian Police Service and none of these officers have been awarded President's Police medal. Applicant has referred various provisions of the Promotion Regulation, 1955. Applicant has stated that he became eligible for being considered by the Selection Committee since 28.12.1987. One Shri S.K. Pradhan was promoted to the Indian Police Service. In the seniority list of DSP, at Annexure-5,



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Shri Pradhan was at Sl.No.19. According to the applicant, Shri B.D.Rout and Shri K.C.Mohanty are seniors to Shri Pradhan. It is submitted that in 1988 Shri M.M. Das alone was promoted. It is stated that there must have been more than one vacancy as some vacancies must have been carried forward from 1987. But this carry forward vacancies continued and only Shri Das was promoted. In 1989, Shri G.D.Satpathy, Shri B.B.Hota and Shri B.B.Mishra, were promoted. In 1990 Shri S.D.Rajguru was promoted superseding three senior Officers. It is further stated that there was a void till S/Shri BD Rout and PK Panda were promoted when a large number of posts were created due to bifurcation of the Districts. Applicant has stated that ⁱⁿ none of these years, he was considered. His career was outstanding and he came within the zone of consideration. It is stated that in preparing the select list, the provisions of regulation, were not followed. Applicant has further stated that under the Regulation 5(3), once an officer name appears in the select list, he shall be included in the fresh select list even if he has in the meantime attained the age of 54 years. In view of this, applicant has stated that if his name was included once in the select list, he shall continue to be in the list for being promoted even after 31.3.1993. On the above grounds, applicant has come up with the prayers referred to earlier.



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3. State of Orissa, have filed a counter and supplementary counter opposing the prayer of applicant. Respondents have stated that Indian Police Service (Appointment by Promotion) Regulation, 1955 was amended in January, 1989. As per the old provisions, the number of officers to be included in the select list was not more than twice the number of substantive vacancies in the course of next 12 months or 5% of the senior Duty posts whichever is greater. After amendment of the Regulation in 1989 it was provided that number of anticipated vacancies in the next 12 months from the meeting of the Selection Committee plus 20% of it or 2 whichever is more are to be included in the select list. It is submitted that the applicant has only relied on the amended provisions and has lost sight of the provision of IPS (Appointment by promotion) Regulation 1955 prior to January, 1989. Respondents have stated that the applicant completed eight years of service as DSP on 28.12.1987 and was thus, eligible to be considered by the Selection Committee for promotion to Indian Police Service in the year 1988. Accordingly, his name was recommended alongwith other names totalling 17, placing him at Sl.No.17 of the said list, according to the seniority. This list forwarded to the GA Deptt. is at Annexure-R/3/1 and R/3/2. Amongst 17 names, applicant's name was at Sl.No.17. In the year 1989 names of 16 State Police Service officers including the name of applicant were recommended to the GA Department in letter at Annexure-R/3/3. Applicant name is at Sl.No.16 of this



J. Jom.

list, according to seniority. For the Selection Committee, for the year 1990, GA Department in their letter dated 17.9.1990 called for names of nine officers, accordingly nine names were sent. Applicant's name was not forwarded in the list of these nine officers as he could not come among these nine officers because of low seniority. For the Selection Committee meeting in 1991, GA Department requested for nominating 12 State Police Service Officers and accordingly, 12 names were forwarded. Names of these 12 officers have been mentioned in the counter. Applicant's name was at Sl.No.10 of this list. For the Selection Committee Meeting, 1992, the GA Department called for 10 eligible State Police Service Officers but the Home Department recommended the name of 11 officers including the name of applicant. In the counter, however, the Respondents have mentioned names of only 9 officers and that is why, direction was issued to the learned Government Advocate, Mr. K. C. Mohanty to produce the proceedings of the Selection Committee meeting of the year 1992. Respondents have stated that for different years, applicant name was recommended when he came within the list of eligible officers on the basis of seniority and his name could not be included for certain years as mentioned above, when he could not be included in the eligibility list because of his low seniority position in the rank of DSP. Respondents have further stated that awarding of President's Police Medal has no bearing on promotion to Indian Police Service



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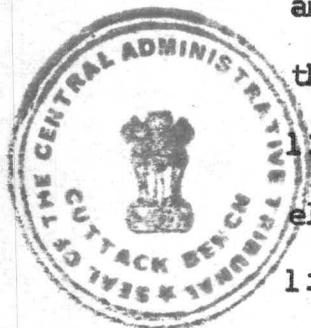
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because persons included in the select list on the basis of their seniority and suitability and President's Police Medal is awarded on the basis of meritorious service. Therefore, the applicant can not claim that because he has been awarded President's Police Medal he should have been included in the Select list over the head of his seniors. Respondents have stated that in 1987 only one vacancy was anticipated and therefore, four officers representing 5% of the Senior Duty posts of 87 as per the unamended promotion Regulation were to be included in the Select List and therefore, the eligibility list had to contained 12 names. Applicant's name was not included and one Shri S.K. Pradhan who was No.1 in the select list was appointed to IPS on promotion. In 1988 one vacancy was anticipated due to retirement of Shri SC Satpathy and the select list had to contain four officers and therefore, 12 officers were considered and MM Das who was first in the Select list was appointed to IPS cadre. In 1989 one vacancy was anticipated and according to the Promotion Regulation, four officers were to be included in the select list. Accordingly 12 officers were considered and Shri B.B. Mishra who topped the select list was appointed on promotion. After cadre revision in 1989 two more vacancies were caused in the promotional quota and Shri GD Satpathy and Shri BN Hota who were in the second and 3rd position in the Select list were appointed to IPS. 4th officer in the Select List, Shri SD Raiguru, filed Original



J. Sm

Application No. 97/89 before the Central Administrative Tribunal, Cuttack Bench, Cuttack and as per the decision of the Tribunal, he was appointed to IPS by promotion against the year 1988. Promotion of the State Police Service Officers to IPS in the year 1987, 1988 and 1989 were done, as per the un-amended Promotion Regulation. In 1991, two officers were included in the Select List but since there was no physical vacancy in the promotional quota, no State Police Officer was given promotion to I.P.S. In 1991-1992, the meeting of the Selection Committee could not be held. There was also no anticipated vacancy. In 1992-93, two vacancies were anticipated and four officers were to be included in the Select List. Eligibility list should have contained Police 12 names but only 10 State/Service Officers were found eligible. The applicant was included in the eligibility list but his seniority position was at 10. Applicant was graded as 'very good' but could not be included in the Select List as his position was quite low in the eligibility list. In 1993-94 the Selection Committee Meeting was held on 25.3.1993. Only one vacancy was anticipated and accordingly, three officers were to be included in the select list. The eligibility list had to contain three times i.e. nine officers. Applicant figured at Sl.No.8 of the Select list. He was graded very good but could not be included in the select list because of his low seniority position. Respondents have stated that calculation of

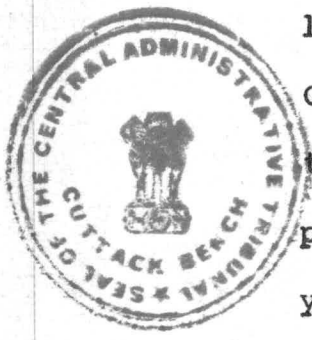


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vacancies, preparation of eligibility list were done strictly in accordance with promotion Regulation and on that ground they have opposed the prayer of applicant.

4. Respondents have filed a supplementary counter in which they have stated that the petitioner is claiming promotion from the date Shri BD Rout and Shri PK Panda were promoted to IPS and since this will adversely affect all the persons promoted after that date, the applicant should have made such persons respondents.

5. We have heard Mr.M.M.Basu, learned counsel for the Applicant, Mr.K.C.Mohanty, learned Government Advocate appearing for the State of Orissa and Mr.U.B.Mohapatra, learned Additional Standing Counsel appearing for the Government of India. After hearing of the case, we directed the learned Government Advocate Mr.Mohanty to submit the proceedings of the Selection Committee meeting for the year 1988 to 1992 both years inclusive. In response, learned Government Advocate has filed xerox copy of the minutes of the Selection Committee Meeting for the years, 1988, 90 and 1992 and has informed that the selection Committee was not held during the year 1989-1991. These records have also been perused. From the meeting of the Selection Committee for the year 1988 we find that the number of persons to be included in the select list were 4 and 12 persons were considered. The Home Deptt. had forwarded the name of applicant but as three times the number of persons to be put in the select list, were to be



J. Jom

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considered, only persons upto Sl.No.10 were considered. None of the persons junior to applicant were considered in 1988 Selection and the applicant can have no grievance in the matter. For the year 1989, name of the applicant was included but as one vacancy was anticipated and four officers were to be included in the select list, only 12 officers were considered. From the averments of Respondents and from the proceedings of the Selection Committee, it is seen that the meeting of the Selection Committee held on 5.3.1992, applicant was considered. He was rated as Very good. All other officers except one were rated as Very good. One officer was rated as Good. As the applicant was low in the seniority, his name could not be included in the panel. In 1993-1994, also Respondents have stated that the applicant was considered by the Selection Committee, he was also rated Very good but he was not included in the select list as he attained the age of 54 years on 1.4.1993.



6. From the above recital of the pleadings of the parties, it is found that in the year 1992-93, persons who were included in the select list were rated as very good. Applicant was also rated as Very good but as he was low in the seniority list he could not be included in the select list. From this it is clear that the applicant's name was considered whenever it was due to be considered but because of his overall assessment as very good and his low seniority position, he could not be included.

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Applicant can not make any grievance of this. It has been submitted by learned counsel for the petitioner that the applicant has got President's Police Medal which none of the other persons who were before the Selection Committee had got and because of this, he should have been rated more than very good i.e. outstanding. In support of his contention, learned counsel for the applicant has relied on the decision of the Honourable Supreme Court in the case of R. TAMILMANI VRS. UNION OF INDIA AND ANOTHER reported in AIR 1992 SC 1120. In that case, applicant had come up before the Hon'ble Supreme Court against the order of the Madras Bench of the Central Administrative Tribunal dismissing his application for promotion to Indian Administrative Service. In that case, applicant belonged to non-State Civil Service Officers and according to Rules applicable in such cases, he was interviewed by the Selection Committee alongwith four others. Three of the members of the Selection Committee rated the applicant as outstanding whereas other two members rated him as very good. Their Lordships of the Hon'ble Supreme Court held in that case that if out of five members three ranked the applicant as outstanding and two as very good, the result would be that there was definitely consensus that he was at least very good and in fact a little better. In view of this, the Hon'ble Supreme Court directed that the case of appellant should be put up for consideration before



S. J. M.

UPSC for appointment to the Indian Administrative Service by Selection. From the above it is clear that the facts of that case are quite different from the facts of the present case. For one thing, applicant's appointment to the Indian Police Service would have been by way of promotion from the State Police Service in accordance with the Indian Police Service (Appointment by Promotion) Regulation 1955. Under sub-rule 4 of Rule 5 of regulation, the select Committee is required to classify the eligibility officers as outstanding, very good, good or unfit as the case may be on an overall relative assessment of their service records. It has been submitted by learned counsel for the applicant that the service record does not mean the CCRs alone. The Award of President's Police Medal to the applicant should have also been taken note of by the Selection Committee. Be that as it may, law is well settled by several decisions of the Hon'ble Supreme Court that the Tribunal can not reassess the CRS of the officers in such cases and assessment of the selection committee which consists of a member of the UPSC and officers who are very senior and experienced in the matter of such assessment can not be interfered with by the Tribunal, on a re-assessment of the CRS. In consideration of this and also in consideration of the fact that in 1992 the applicant has been assessed as Very good along with all other officers, we hold that the applicant is not entitled to the reliefs claimed by him.



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7. In the result, with the observations ~~and directions~~ made above, the Original Application is rejected but *Som.* in the circumstances without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.2.2000