

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.156 of 1995
Cuttack, this the 23rd day of August, 2001

Gopinath Mohanty

Applicant

Vrs.

State of Orissa and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to 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)

Gopinath S. Mohanty
GOPINATH S. MOHANTY
VICE-CHAIRMAN
23.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
Cuttack Bench, Cuttack.

ORIGINAL APPLICATION NO. 156 OF 1995
Cuttack, this the 23rd day of August, 2001

CORAM:

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

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Gopinath Mohanty, 47 years,
son of late Sridhar Mohanty, At/PO-Srijang, Khantapada,
Balasore at present Deputy Secretary to the Government of
Orissa, Department of Energy, Bhubaneswar

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Applicant

Advocates for applicant-M/s Aswini Ku.Mishra

S.K.Das

S.B.Jena

B.B.Acharya

J.Sengupta

Vrs.

1. State of Orissa, through its Secretary to Government of Orissa, General Administration Department, Bhubaneswar.
2. Union of India, through Secretary, Ministry of Home Affairs, Department of Personnel, New Delhi.
3. Union Public Service Commission, through Secretary, Dholpur House, New Delhi.
4. Sri Srinibas Rath, IAS, Commissioner-cum-Secretary, Department of Agriculture, Bhubaneswar.
5. Sri U.K.Misra, Officer-on-Special Duty-cum-Ex-officio Joint Secretary to Government of Orissa, G.A.Department, Bhubaneswar.
6. Rabinarayan Pani, Joint Secretary to Government of Orissa, G.A.Department, Bhubaneswar.
7. Sapneswar Baya, Deputy Secretary to Government of Orissa, Department of School & Mass Education, Bhubaneswar.
8. Digambar Mohanty, Project Officer, DRDA, Cuttack.
9. Manoranjan Saran, Secretary, State Election Commission, Samabaya Bhavan, Bhubaneswar.
10. Suresh Chandra Patnaik, Project Officer, DRDA, Keonjhar.
11. Bata krushna Das, Settlement Officer, Ganjam Major Settlement, Berhampur.
12. C.B.S.R.Rao, Collector, Bhadrak.
13. Binaya Chandra Patra, Jt.Secretary to Government of Orissa, Fisheries and A.R.D.Department, Bhubaneswar.

14. Duryodhan Naik, Joint Secretary to Government, H.U.D. Department, Bhubaneswar.
15. P.K.Tripathy, Secretary, Orissa Subordinate Staff Selection Commission, Cuttack.
16. N.K.Misra, Director of Estate, G.A. Department, Bhubaneswar.
17. D.K.Pujhari, M.D., Bhaskar Textiles, Jharsuguda,
18. Parthasarathi Guha, Joint Secretary to Government of Orissa, Revenue Department, Bhubaneswar.
19. Prasant Kumar Chand, Deputy Secretary to Government, Tribal Welfare Department, Bhubaneswar.
20. Alekh Charan Sanu, Financial Advisor, Board of Revenue, Orissa, Cuttack.
21. Purna Chandra Pal, Joint Secretary, Board of Revenue, Cuttack.
22. Srihari Nayak, Joint Secretary to Government of Orissa, Revenue Department, Bhubaneswar.
23. Bhagaban Chandra Das, Joint Secretary to Government of Orissa, Steel & Mines Department, Bhubaneswar.
24. Suryanarayan Panda, Joint Secretary to Government of Orissa, Health & Family Welfare Department, Bhubaneswar.
25. Lokanath Mishra, Dy. Secretary to Government of Orissa, Agriculture Department, Bhubaneswar.

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...Respondents

Advocates for respondents - Mr.K.C.Mohanty
Govt.Advocate for R-1.
M/s B.C.Das
S.K.Das
B.M.Patnaik
P.K.Choudhury
S.Mohanty
B.K.Sahoo
N.Patra
S.Patra
B.S.Tripathy
K.P.Misra
M.Kar
N.Sarkar

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

SJm
In this O.A. the petitioner has prayed for quashing the list of officers as prepared by the Selection Committee meeting held on 23.2.1995 for appointment to IAS by promotion and to direct State of Orissa (respondent no.1) to complete the CR of the applicant and place the same before the Selection Committee. The second aspect of the prayer is for a direction to respondent no.1 not to consider the report

of the countersigning officer for the years 1991-92 and 1992-93. The third prayer is for quashing the inclusion of Suresh Chandra Patnaik (respondent no.10) in the list in supersession of the petitioner.

2. Respondent no.1 State of Orissa have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder and respondent no.1 has filed a counter to the rejoinder. Union of India has not filed any counter. Union Public Service Commission (respondent no.3) and private respondent nos.4,5,7 to 10,15,18,19 and 22 have filed separate counters and we have perused the same. We have heard Shri A.K.Mishra, the learned counsel for the petitioner and Shri K.C.Mohanty, the learned Government Advocate for State of Orissa (respondent no.1). On our direction the learned Government Advocate has produced the CR folder of the applicant and the proceedings of the Screening Committee meeting held on 23.2.1995 and we have perused the same. For the purpose of considering the petition it is not necessary to go into too many facts of the case.

3. The petitioner is a member of Orissa Administrative Service (Senior Branch). His case was considered along with others for appointment to Indian Administrative Service by way of promotion, by the Selection Committee in their meeting held on 23.2.1995. The applicant's grievance is that from the list of officers who were supposed to have been included in the select list, as published in daily SAMAJ dated 27.2.1995, he found that his name was not included in the select list. In view of this, the applicant has come up with the prayers referred to earlier for the reasons indicated in the O.A.

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4. After going through the detailed pleadings of the parties it is clear that the first prayer of the applicant is to quash the select list. The applicant has referred to the names of the officers purportedly included in the select list, as reported in the daily SAMAJ, but from the proceedings of the meeting of the Screening Committee it is seen that the applicant's name was not included. The applicant has challenged the select list on various grounds which are discussed below.

5. The first point raised by the petitioner is that the Screening Committee considered the CR of the persons coming within the zone of consideration for the preceding five years. The applicant has stated that under sub-reg.(4) of Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the Selection Committee is required to classify the eligible officers as "Outstanding", "Very Good", "Good" and "Unfit", as the case may be, on an overall relative assessment of their service record. Because of this provision in the rule the applicant has stated that the Screening Committee should have seen the entire service record of the officers right from their joining service and not only for the preceding five years. It is further stated that the Selection Committee while discharging statutory functions under the above Regulations, cannot depart from express provision of the Regulations. State of Orissa in their counter have stated that the Selection Committee strictly followed the requirements of the Regulations and no illegality is involved in this. The applicant has not indicated as to

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the basis on which he has urged that the Selection Committee has seen only the preceding five years of service. Even if it is so, such action cannot be termed illegal. In the matter of promotion the recent performance of the officer is of greater importance than his performance at the beginning of his service career which may be decades earlier. In view of this, it cannot be said that taking into consideration the CCR for the preceding five years is violative of the statutory regulations and on that ground the select list is liable to be quashed. It is also to be noted that the Selection Committee is presided over by a Member of Union Public Service Commission and other members are senior officers of the State Government of India. Merely on the averment of the applicant in the OA it cannot be held that they have not assessed the records of the persons coming within the zone of consideration including the applicant in the manner required under the Regulations. This contention is therefore held to be without any merit and is rejected.

S. Jom
6. The second contention of the petitioner is that while preparing the select list, the Selection Committee has not given due regard to seniority and respondent no.10 S.C.Patnaik, who is much junior to the applicant, has been included in the select list ignoring the applicant. State of Orissa have pointed out that after amendment of sub-regulations (4) and (5) of regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 with effect from 3.6.1977, the role of seniority has been curtailed. The promotion is one by way of selection and therefore, the persons cannot be promoted on the principle of

seniority subject to elimination of unfit. As a matter of fact, sub-regulation(5) clearly provides that the officers, who have been assessed as "Outstanding", "Very Good" and "Good", should be arranged in each of the three categories according to their seniority. To that extent, seniority still has a role to play. But the applicant cannot be promoted on the basis of his seniority going over persons who have been given higher grading than him on evaluation of their CRs. This contention of the petitioner is also held to be without any merit and is rejected.

7. The third contention of the petitioner is that the Selection Committee was not properly constituted. Under the rules, besides the Chief Secretary, Member, Board of Revenue and others, the seniormost Secretary of the State Government is required to be a member. But instead of seniormost Secretary, Shri R.K.Bhujabal, Additional Chief Secretary was taken in as a member of the Selection Committee. It is stated that Shri Bhujabal was not holding a post of Secretary and therefore, composition of Selection Committee, which has statutory function, has been incorrectly done and the prayer has been made to quash the selection. State of Orissa in their counter have pointed out that Shri R.K.Bhujabal was the seniormost Secretary of the State Government. On the date the Selection Committee met Shri Bhujabal was holding the post of Principal Secretary-cum-Additional Chief Secretary to the State Government. Respondent no.1 has also enclosed copy of Rule 2(d) of the Orissa Government Rules of Business under which the term "Secretary" includes a Principal

Ans.

Secretary. As Shri R.K. Bhujabal was holding the post of Principal Secretary-cum-Additional Chief Secretary at the relevant time and as the term "Secretary" includes Principal Secretary, no illegality was involved in taking Shri Bhujabal as a member of the Selection Committee. This contention is also held to be without any merit and is rejected.

8. The next contention of the petitioner is that for the year 1991-92 when he was continuing as Deputy Secretary, Energy Department, his reporting officer had rated him as "outstanding", but the countersigning officer rated him as "Good". The applicant has made allegations against the countersigning officer, the then Secretary of Energy Department, who is respondent no.4 arraigned by him. Respondent no.4 has filed a counter denying the allegation of mala fide. It is not necessary for us to go into this averment because admittedly during that period the applicant was a member of the State Civil Service and therefore, any grievance with regard to his CCR has to be agitated before the Orissa State Administrative Tribunal, and this Tribunal cannot encroach upon an area which falls to be decided by the Orissa State Administrative Tribunal. In view of this, it is not necessary to consider this allegation.

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9. The last contention of the petitioner is that the Selection Committee while not including his name in the select list, has not assigned any reason. Law is well settled that the Selection Committee is not bound to record reasons for non-inclusion of a person in the select list. In view of this, the contention of the petitioner is rejected.

10. We have gone through the proceedings of the Selection Committee meeting held on 23.2.1995 and we note that the applicant was considered in that meeting and by overall relative assessment he was rated "Very Good". Only the officers, who were assessed as "Outstanding" and "Very Good" and who were senior to the applicant, were included in the panel, except respondent no.10-S.C.Patnaik who is admittedly junior to the applicant in the State Civil Service but was included in the select list. We find that while the applicant has been graded as "Very Good", respondent no.10 - S.C.Patnaik has been rated as "Outstanding" and therefore, he came within the group "Outstanding" and was included in the select list. All other officers, who were graded "Very Good" like the applicant were included in the panel because of the fact that they were senior to the applicant.

11. Law is well settled that the Tribunal cannot re-evaluate the CRs of the applicant and come to the finding different from the finding arrived at by the Selection Committee. The Hon'ble Supreme Court have held that the Selection Committee is presided over by Chairman or a Member of Union Public Service Commission as also very high officials of the State Government and Government of India and they are experts in evaluation of CRs. Even then we have gone through the CR folder of the applicant. On perusal of the CRs of the applicant for the relevant period, we do not find that the assessment of record of the applicant as "Very Good" is incorrect.

12. In consideration of all the above, we hold that the O.A. is without any merit and the same is rejected. No costs.

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(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
238,201
VICE-CHAIRMAN

CAT/Cutt. Bench/ 23rd August, 2001/AN/PS