

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

**ORIGINAL APPLICATION NO. 238 OF 1995
Cuttack, this the 24th day of August, 2001**

Bijay Kumar Sharma ... Applicant

Vrs.

Chairman, Union Public Service
Commission 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)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.8.2001

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CORAM:

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

.....
Bijay Kumar Sharma, aged about 32 years, son of Shri
Vinay Kumar Sharma, S.P., Khurda, At/PO-Bhubaneswar,
District-Khurda....
Applicant

Advocates for applicant - M/s B.K.Sharma
I.Mohanty
P.Mohapatra
L.Pradhan
A.Mohanty
G.Das

Vrs.

1. Chairman, Union Public Service Commission, Dholpur House, New Delhi-110 001.
2. Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
3. Director, Sardar Vallabh Bhai Patel National Police Academy, Shivrampalli, Hyderabad-52.
4. Secretary, Department of Home, Government of Orissa, At/PO-Secretariat Building, Bhubaneswar, District-Khurda.
5. Mr.P.K.Gary, IPS, C/o Chief Secretary, Karnataka, At-Bangalore.
6. Mr.A.K.Shukla, IPS
C/o Chief Secretary, Manipur, At-Imphal.
7. Mr.Pradeep Kapur, IPS, SP,Cuttack,
Dist.Cuttack,Orissa.
8. Mr.S.K.Srivastava, IPS,.
C/o Chief Secretary, Madhya Pradesh
at Bhopal.
9. Mr.R.P.Thakur, IPS, C/o Chief Secretary, Andhra Pradesh, At-Hyderabad.
10. Mr.Ajoy Kumar, IPS, C/o Chief Secretary, at Patna
11. Mr.K.N.Tiwari, IPS,C/o Chief Secretary, Madhya Pradesh, At-Bhopal.

J.Som.

12. Mr.A.K.Jha, IPS,
S.P., Karimganj, Assam.
13. Mr.T.N.Mohan, IPS of AGMU Cadre, C/o Secretary,
Ministry of Home Affairs, Government of India, North
Block, New Delhi.
14. Mr.A.Hemachandran, IPS, C/o Chief Secretary, Kerala,
At-Thirunananthapuram.
15. Mr.R.K.Sahay, IPS,C/o Director, NCRB, East Block-7,
R.K.Puram, NewDelhi-66.
16. Mr.S.P.Vaid, IPS, C/o Chief Secretary, J&K,
At-Srinagar.
17. Mr.Jawed Akhter, IPS
C/o Chief Secretary, Uttar Pradesh,
At-Lucknow.
18. Mr.J.Chakravarty,IPS, Assistant Director, C/o
Director, SVBPN Police Academy, Shivrampalli,
Hyderabad-52.
19. Mr.Prabhakar Aloka, IPS, c/o Chief Secretary, Andhra
Pradesh at Hyderabad.
20. Mr.S.R.Mardi, IPS, c/o Chief Secretary, Himachal
Pradesh at Shimla.... Respondents

Advocates for respondents - Mr.S.B.Jena,ACGSC
for R-1 & 2
Mr.K.C.Mohanty, Government
Advocate for Respondent 4
&
M/s GAR Dora
V.Narasingh
for R-7

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S. Som.
The petitioner in this case is a direct recruit Indian Police Service officer of 1986 batch belonging to Orissa Cadre. In this O.A. he has prayed for a declaration that his seniority in the all India Civil list should be just below serial no.1539 and above respondent nos.5 to 20 on the grounds urged in the O.A. Union of India (respondent no.2) have filed counter opposing the prayer of the applicant. Amongst the private respondents, respondent no.7 Shri Pradeep Kapur, another IPS officer of 1986 batch belonging to Orissa Cadre, has also filed counter opposing the prayer of the applicant. No rejoinder has been filed.

2. We have heard Shri I.Mohanty assisted by Shri B.K.Sharma, the learned counsel for the applicant, Shri GAR Dora, the learned counsel for respondent no.7, Shri K.C.Mohanty, the learned Government Advocate for the State Government, and Shri S.B.Jena, the learned Additional Standing Counsel for Union Public Service Commission (respondent no.1) and Union of India (respondent no.2). The learned counsel for the petitioner has filed written note of submission which has also been taken note of.

3. The scope of controversy in the present application falls within a small compass. Seniority of direct recruit IPS officers is determined in accordance with Rule 4 of Indian Police Service (Regulation of Seniority) Rules,1954 (hereinafter referred to as "Seniority Rules") and Rule 10 of Indian Police Service (Probation) Rules,1954 (hereinafter referred to as "Probation Rules"). Under Rule 4 of the Seniority Rules, interse seniority of direct recruit IPS officers with the same year of allotment is fixed in order of merit which is determined in accordance with the aggregate marks obtained by each officer (a) at the competitive examination, (b) in respect of the officer's record in the Academy, and (c) at the Probationers Final Examination. Under Rule 10 of the Probation Rules it is provided that the Central Government shall prepare a list of all probationers who are appointed to the Service on the results of the same competitive examination and such list shall be arranged in order of merit, which shall be determined in accordance with the aggregate of marks

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obtained by each probationer at the competitive examination, in respect of his record in the Lal Bahadur Shastri National Academy of Administration and the National Police Academy, and at the final examination. The present controversy is regarding the probationers final examination in which the applicant cleared all papers except paper on Constitution, Evidence Act and Special Laws. In this paper, against the total marks of 125, he got 39 marks and 40% being the pass marks, failed. He again took the examination and got 58½ marks out of 125 and cleared the paper. The applicant's grievance is that while calculating his total marks in the probationers final examination, his failed marks of 39 were not taken into account and his aggregate marks in probationers final examination were taken as 782½, omitting 39 marks. It has been submitted by the learned counsel for the petitioner that the Probation Rules were amended on 23.6.1989 in which it was laid down for the first time in the proviso that in determining such order of merit no account shall be taken of marks awarded to a probationer in any subject in which he has failed to satisfy the Director, Sardar Vallabhbhai Patel National Police Academy. The applicant has stated that this amendment having been brought in for the first time in June 1989, 39 marks obtained by him in the above paper should have been taken into account even though he had failed in that paper. The learned counsel for the petitioner did not press that the marks obtained by him in the subsequent examination in which he had passed should be taken into account. If 39 marks are taken into account, naturally his total aggregate marks will go up and in the context of that he has come up in this petition with the prayer referred to earlier.

4. Union of India in their counter have pointed out that the seniority of the applicant has been correctly fixed. His marks have been correctly taken into account and on that ground they have opposed the prayer of the applicant.

5. From the above recital of pleadings of the parties, it is clear that the sole point of controversy in this case is whether the 39 marks secured by the applicant in the paper in which he had failed should have been taken into account while aggregating his marks in the probationers final examination. Union of India have pointed out that this provision about not taking into account the marks in the paper in which a probationer had failed was all along there in the Rules much before the petitioner joined service. Due to oversight or inadvertence this proviso was not printed in the Sixth Edition of the Manual. They have stated that this proviso was never deleted. The applicant has also not filed any gazette notification amending this existing provision and deleting this proviso. Along with their counter Union of India have filed extract of page 46 of All India Services Manual, Fifth Edition, corrected upto 1.1.1984, i.e., a date prior to the petitioner taking the examination and joining the service, and we find that in this, under Rule 10 of the Probation Rules, the proviso was already there and it says that in determining the order of merit no account shall be taken of marks awarded to a probationer in any subject in which he had failed to satisfy Director, Sardar Vallabhbhai Patel National Police Academy. From this, it is clear that even before the applicant joined service, this proviso was there and his marks in the subject in which he had failed have not

rightly been taken into account. In the Seniority Rules also there is a proviso which lays down that in determining such order of merit, no account shall be taken of marks awarded in any subject in which an officer has failed to satisfy the Director, National Police Academy. From the above, it is clear that on the basis of rules which were existing at the time the petitioner joined the Service, marks in a subject in which he had failed, have not been taken into account and therefore, 39 marks have been rightly excluded in his case.

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

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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VICE-CHAIRMAN

24th
CAT/Cutt.Bench/ August, 2001/AN/PS