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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 279 OF 1996
Cuttack this the 8th day of July 2004

Narayana Chandra Bal ... Applicant(s)

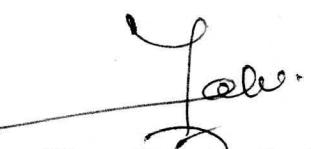
-VERSUS-

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


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 279 OF 1996
Cuttack this the 08th day of July 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER (JUDICIAL)

...

Sri Narayan Chandra Bal,
S/o. Late Kailash Chandra Bal, aged about
52 years, Village-Pamikainchi, PS-Dharmasala,
Dist-Jajpur - at present D.F.O. at Bhubaneswar

...

Applicant

By the Advocates

M/s. B.B.Rath
Biswanath Rath
B.Senapati
S.N.Mehapatra
J.N.Rath
S.K.Jethy
M.K.Panda
S.Mohanty

- VERSUS -

1. Union of India represented by the Secretary, Ministry of Environment, Paryavaran Bhavan, C.G.O. Complex, Lodi Road, New Delhi
2. The Principal Secretary to Govt. of Orissa, Forest & Environment Department, Secretariat, Bhubaneswar
3. State of Orissa through Secretary, General Administration Department, Bhubaneswar, Orissa
4. Laxmidhar Bhei, D.F.O., Jaipur K.L.Division At/PO-Jaipur, Dist-Keraput

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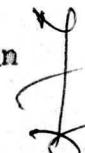
Respondents

By the Advocates

Mr.B.Dash,A.S.C.(Rs.1)
Mr.K.C.MOhanty,G.A.
(Res. 2 and 3)
M/s.A.K.Mishra,
J.Sengupta,B.B.Acharya,
P.K.Panda,P.R.J.Dash
(Rs.No. 4)
Mr.U.B.Mehapatra,A.S.C.

- - - -
O R D E R

MR.M.R.MOHANTY, MEMBER (J): Applicant, Shri Narayan



Chandra Bal, an officer in the cadre of Orissa Forest Service has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed for the following relief:

"... this Hon'ble Tribunal be graciously pleased to direct the Respondent Nos. 2 and 3 to recommend the case of the Applicant to the Central Govt., Respondent No.1 for his appointment by promotion against the 2nd, 3rd or even the 4th vacancy in the I.F.S. caused on 1.9.1995 forthwith from the date of vacancy and further direct that the Respondent No.1 accordingly issue appointment order in favour of the applicant without any further delay".

2. It is the un-disputed case of the parties that the Selection Committee met on 29.4.1994 to fill up two vacancies (one was existing and the other was the vacancy anticipated to occur on 1.12.1994, due to retirement of one Sidheswar Mohanty on 30.11.1994) of Indian Forest Service by way of promotion from among the Orissa State Forest Service Officers. In the select list prepared, the names of four officers (including that of the Applicants) viz., S/Shri Prafulla Kumar Sahoo, Purna Chandra Sarangi, H.S.Kumar and Narayan Chandra Bal (applicant herein) found place, provisionally, under Rule-5(1) of I.F.S. (Appointment by promotion) Regulations, 1966. While the name of Purna Chandra Sarangi (Sl.No.2) was included in the select list (subject to clearance of inquiries pending against him and grant of integrity certificate), the name of Shri H.S.Kumar (Sl. No.3) was included subject to clearance of inquiries pending against him. It has also been submitted by the Res.No.3 and not denied by the



Applicant that during revision of cadre strength on 4.10.1994, one more post was found to be filled up by promotion. On 7.11.1994, the select list was approved by the U.P.S.C. and, thereby, earlier two vacancies plus one more created vacancy occurred for the year 1994-95 as against the four officers in the select list/zone of consideration. It is the case of Res. No.3 that against the 1st existing vacancy, Shri P.K.Sahoo (Sl.No.1) being approved by the UPSC, was promoted to I.F.S.; while the other two vacancies were created as provisional (in terms of the proviso to Rule-5(4) of I.F.S.(Appointment by Promotion) Regulations 1966) as their integrity certificates were withheld and, in view of this, in terms of the 1st proviso to Rule-9(1) of I.F.S.(AP) Regulations, 1966; two posts were to be ~~kept~~ vacant for provisionally included officers in the select list during the period the select list remains in force, and it is, therefore, submitted that inspite of availability of two vacant posts, the same remained vacant and the applicant, being placed at Sl. No.4, could not be appointed during the validity/currency of the select list.

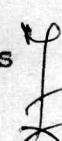
It is noted that the Respondents have neither produced any material nor have they anywhere whispered as to when the officer placed at Sl.Nos 2 and 3 were promoted/appointed to I.F.S. and/or the select list drawn against the vacancies of 1994-95 spent its force.

3. It is the case of the Applicant that he was entitled to be considered against the vacancy that had

occurred on 1.9.1995, 1.11.1995 and 1.3.1996, on retirement of S/Shri S.K.Prasad, H.K.Patnaik and N.C. Patnaik, respectively. This, the Respondents have denied by submitting that the select list dated 29.4.1994 lost its validity, as the Committee met on 24.2.1995 (in terms of provision to Regulation 7(4) of the I.F.S.(A P) Regulations, 1966) whereas per contra they have stated that the select list for the year 1995-96, which was to be prepared in its meeting but could not be held due to restraint order passed by the Tribunal on 3.4.1995. However, they have submitted that on 14.3.1996, the Selection Committee that met for considering the grant of promotion (to S.F.S. officers) as against eight anticipated vacancies, wherein the case of the applicant was considered but not selected and that it is in the year 17.11.1997, the applicant was promoted to I.F.S.

4. The main thrust of the case is that whether the second selection committee having practically met on 14.3.1996, the earlier select list gets invalidated and/or nullified by 25.2.1995; in the face of the submission made by the Respondents that on 25.2.1995 even though the said selection committee met it could not prepare the select list as the said meeting was deferred and admittedly when three officers (as mentioned above) retired on superannuation and, thereby, three more vacancies were created on or after 25.2.1995 and before 14.3.1996.

5. In order to arrive at a definite conclusion, we had in our order dated 14.11.2002, directed the Respondents to produce the minutes of the D.P.C. meetings



held on 24.2.1995 and 14.3.1996. We had to, in our order dated 27.8.2002 sought clarification from the learned Govt. Advocate for the State of Orissa to satisfy the Tribunal on the points (i) as to why sealed cover procedure was not followed in respect of the officers against whom the disciplinary proceedings were pending and (ii) as to why, in the absence of integrity certificates, cases of officers were not considered for promotion to I.F.S. We note to our utter dismay that we have not been provided with any information in this regard. It is also surprising that the minutes of the DPC meetings held on 24.2.1995 have not been produced on the ground that the same is available with the UPSC and that, despite best efforts, Res. No.3 has not been able to make the same available. In addition to this, it is shocking to mention that the State Government of Orissa has filed attested xerox copies of the minutes of the meeting of the Selection Committee held on 14.3.1996, though it is expected that originals of the records in so far as matter of this nature is concerned, should have been adduced by the State. Thus, we are to observe that the approach and attitude of the Respondents are wide of the mark.

6. We have heard the learned counsel for the parties and perused the materials available on record.

7. The learned counsel for the applicant brought to our notice Rule-7(4) of the Regulations, 1966, which speaks as under :

" The Select List shall ordinarily be in

force until its review and revision, effected under sub-regulation(4) of Regulation, 5, is approved under sub-regulation(1), or, as the case may be, finally approved under sub-regulation(2)"

Provided that no appointment to the service under regulation 9 shall be made after the meeting of fresh committee to draw up a fresh list under regulation 5 is held".

It is in this background, the learned counsel for the Applicant strenuously urged that the select committee stated to have been met on 25.2.1995 having been deferred (without preparation of fresh select list) it cannot be construed that the said meeting was held as per regulation 5 and, therefore, the select list drawn on 29.4.1994 (in which the name of the Applicant was found place at Sl.No.4) was valid till 14.3.1996; when practically the select committee met and, under the circumstances, the applicant is fortified by the provision of Rule-7(4) (as quoted above) and, therefore, the Respondents were duty bound to honour the select list dated 29.4.1994 for the purpose of giving preference to the applicant against the anticipated vacancies; which caused on 1.09.1995 and 1.11.1995, due to retirement of S/Shri S.K.Prasad and H.K.Patnaik. This piece of argument has not been effectively refuted by the Respondents; who have adopted a subterfuge method by saying that the selection committee (although met on 25.2.1995) was deferred and, therefore, the vacancies, if any, having occurred after 25.2.1995, the claim of the Applicant is null and void. We are not convinced by this submission of the Respondents; which

in our considered view is de hers the rules. When the rule is specific and conspicuous under the proviso to Rule-7(4), the attempt of the Respondents to topsyturvy the issue in the garb of a select committee meeting (stated to have been held on 25.2.1995); does not rest upon any law or logic and, accordingly, we are at one that it was held only for the subjective purpose and that it had not attained any objectivity, and, in the circumstances, the plea of the Respondents that the select committee meeting having been held on 25.2.1995 the earlier select list (that was drawn on 29.4.1994) get nullified is out of place/preposterous/not acceptable.

8. Before, we part with this case, we would like to observe the manner in which the Respondents have dealt with this case is mere in a nature of creating confusion worst confounded. This apart, sincerity and truthfulness shewn by the Respondents in this case in assisting the Tribunal to come to a definite and satisfactory conclusion are having a snub value, which cannot be lost sight of, for the reason of not providing the required assistance/clarification, as per our direction, referred to above. It is mere sarcastic to note that while the State Government of Orissa, by filing a Memo dated 12.12.2002, stated that attested xerox copies of the minutes of the meeting of the Selection Committee held on 14.3.1996 have been filed, no such document has been annexed thereto. We express our concern over this state of affairs and accordingly, we warn the Respondents to be more careful, cautious and vigilant (particularly when certain materials/clarification is

is required for judicial scrutiny) in their way of approach.

9. For the reasons discussed above, we have no hesitation to hold that the select list for the year 1994-95 that was drawn on 29.04.94 (wherein the name of the Applicant found place at Sl. No. 4) was in force until 14.3.1996; when the next selection committee practically met to draw up the fresh select list as per relevant rules. In this view of the matter, as observed earlier, two vacancies having occurred on 1.9.1995 and 1.11.1995 (due to retirement of S/Shri S. K. Prasad and H. K. Patnaik respectively) i.e. prior to 14.3.1996, the case of the Applicant ought to have been considered against one of the said vacancies, particularly the 1st vacancy.

10. Having regard to what has been discussed above, we direct the Respondents-Department to consider the case of the Applicant for promotion to I.P.S. cadre from out of the select list dated 29.4.1994 against the 1st anticipated vacancy that had occurred w.e.f. 1.9.1995, as referred to above. The necessary follow-up action shall be completed within a period of 120 days from the date of receipt of a copy of this order. The O.A. is accordingly disposed of. No costs.

Sub
(B. N. SOM)
Vice-Chairman

Palu
(M. R. MOHANTY)
Member (Judicial)