

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 180 OF 1998

CUTTACK THIS THE 8th DAY OF April 2004

Hrudananda Das

...

Applicant(s)

-VERSUS-

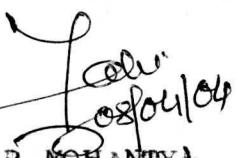
Union of India & Others


...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 74
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 74

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

12

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 180 OF 1998  
Cuttack this the 8th day of April/2004

CORAM:

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

Hrudananda Das 55 years  
S/o.D.C.Das, Narasinghpur, PS-Dharmasala  
Dist-Jajpur - at present serving as  
Addl.S.P., Vigilance Cell,  
CUTTACK

By the Advocates

... Petitioner  
M/s.A.K.Mishra  
B.B.Acharya  
J.Sengupta  
D.K.Panda  
P.R.J.Das  
C.Mohanty  
G.Sinha

- VERSUS -

1. Union of India through Secretary to Government of India, Ministry of Home Affairs, New Delhi
2. State of Orissa through Secretary to Government of Orissa, General Admn.Department, Bhubaneswar
3. State of Orissa through Secretary to Government of Orissa, Home Department, Bhubaneswar
4. Union Public Service Commission through its Secretary, Dholpur House, New Delhi

By the Advocates

... Opp.Parties  
Mr.K.C.Mohanty  
Mr.B.Dash  
Mr.U.B.Mohapatra

-----  
O R D E R

MR.B.N. SOM, VICE-CHAIRMAN: This Original Application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Hrudananda Dash (applicant)

dr

13

challenging the inaction of the Respondents in considering his case for promotion to the cadre of Indian Police Service (in short I.P.S.) (Appointment by Promotion) Regulation, 1955 (in short Regulation, 1955).

2. Briefly stated the facts of the case are that the applicant, while serving in the State Police Service (in short O.P.S.) was appointed to the rank of Deputy Superintendent of Police (in short D.S.P.) with effect from 10.12.1987. He had earlier joined Central Bureau of Investigation (in short CBI) on deputation basis in the rank of Inspector of Police. While he was continuing on deputation in the CBI, by order dated 20.9.1996 of the State Government of Orissa, he was given regular promotion on proforma basis to the grade of Deputy Superintendent of Police with effect from 1.10.1988. It is his grievance that between the period 11.3.1997 and July, 1997 he made several representations to the cadre controlling authority for considering his case for promotion to I.P.S. cadre, but without success. Aggrieved by this inaction on the part of the Respondents he has filed the present Original Application for redressal of his grievance.

3. The Respondents have contested the application by filing detailed counters. They have submitted that the applicant could not be considered for promotion to I.P.S. because he was not eligible for such consideration in terms of I.P.S. (Appointment by Promotion) Regulations

22

notified in this regard. In terms of Regulation 5(2) a State Police Service Officer. ~~is required to complete~~ eight years of continuous service in the post of D.S.P. or in any other post or posts declared thereof by the State Government on the 1st day of April of the year in which the D.P.C. meets. Admittedly, the applicant was promoted to the rank of D.S.P. in his cadre with effect from 1.10.1988 and therefore, he was not completing eight years in the rank of D.S.P. as on 1.4.1996 as per Proviso III to Regulation 5(2). His plea that he was holding the post of D.S.P. in C.B.I. with effect from 10.12.1987 should <sup>have been</sup> taken into account is not acceptable as the post of D.S.P.(CBI) has not been declared equivalent to Deputy Superintendent of Police/O.P.S. by the State Government. Further that the petitioner having his date of birth as 26.1.1943 had completed 54 years as on 1.4.1997, as a result of which the DPC which met to prepare the select list for the year 1997-98 did not consider his case. Therefore, the Respondents have submitted that the applicant was not at all eligible for consideration for promotion to the I.P.S. cadre either during 1996 or thereafter and as such the relief as sought for by him is not available.

4. We have heard the learned counsel appearing for the parties and also perused the materials available on record. Rejoinder and the additional counter filed by the applicant and respondents have also been taken note of by us.

5. In this Original Application the applicant has questioned the validity of the decision taken by the Respondents-Department in not considering him eligible to be considered for promotion by the Select Committee, which held its meeting in the year 1996 as also in the subsequent year 1997. It is not disputed that in terms of Regulation 5(2) and 5(3) two eligible conditions are to be fulfilled by each member of the State Police Service. Firstly, that he should be less than 54 years old on the 1st day of April of the year in which the D.P.C. meets and, secondly, the officer should not have less than eight years of continuous service whether officiating or substantive in the post of D.S.P. or in any other post or posts declared equivalent thereof by the State Government. In other words, a member of State Police Service to be eligible for consideration for promotion to I.P.S. should have eight years of continuous service as D.S.P. and should be below 54 years of age as on 1st day of April of the year in which the select committee meeting takes place. In the instant case, the Respondents have not disputed that in 1996 when the D.P.C. met on 1.4.1996, the applicant was less than 54 years of age, his date of birth being 26.1.1943. However, he did not possess eight years length of service as D.S.P. to be considered during the year 1996, because, his date of promotion to the rank of D.S.P. was 1.10.1988. The plea of the applicant

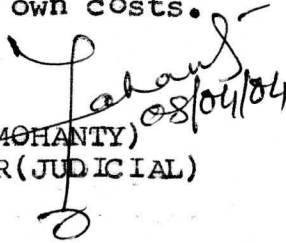
that the Respondents have wrongly ignored his service in the grade of D.S.P. in CBI which he started from 10.12.1987 and had they considered his service in the rank of D.S.P., CBI from 10.12.1987, he would have been eligible for consideration in the year 1996, is a matter which is to be decided by answering the question whether his position in the post of D.S.P. in CBI from December, 1987 could be considered for the purpose of determining his eligibility under Regulation 5(3). For the sake of clarity the 3rd provision to Regulation 5 is quoted hereunder.

"...The Committee shall not consider the cases of the Members of the State Police Service unless on the first day of April of the year in which it meets, he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government".

From a plain reading of Regulation it is clear that if the post of D.S.P., CBI was declared equivalent by the State Government to that of the D.S.P. in the State cadre, the applicant was entitled to count the period that he had spent in CBI for the purpose of accumulating eight years of continuous service in the feeder cadre for promotion to I.P.S. While the applicant has not been able to produce any such notification before us, the learned counsel for the Respondents submitted that the State Government has not made any declaration equating the post of DSP, CBI with the DSP in the State Police Service in Orissa. As the Regulation provides that it is the State Government which is competent to declare any other post equivalent to the post of DSP or State

Police Service cadre and as that authority has not so far applied its mind to this issue, we are unable to accede to the prayer of the applicant that this Tribunal could direct the Respondents to treat the post of DSP in CBI equivalent to that of D.S.P. in Orissa State Police.

6. For the discussions held above, we hold that this application is devoid of merit and accordingly, we dismiss the same, leaving the parties to bear their own costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

BJY