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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 200 OF 1999

Cuttack, this the 15th day of February, 2001

M.V.A.Subba Rao

....Applicant

Vrs.

Union of India 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)
VICE-CHAIRMAN
15.2.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....
M.V.A.Subba Rao, aged about 58 years, son of M.M.Sastry,
presently working as Additional Secretary to the Government
of Orissa, General Administration Department, Orissa
Secretariat, Bhubaneswar, District-Khurda

..... Applicant

Advocates for applicant - M/s J.Patnaik
A.A.Das
B. Mohanty
Rajib Rath

Vrs.

1. Union of India, represented through its Secretary,
Ministry of Personnel, Public Grievances & Pension,
Government of India, New Delhi,
Pin-110 001.
2. Union Public Service Commission, represented through
its Chairman, Dholpur House, Sahajahan Road, New Delhi.
3. State of Orissa, represented through its Chief
Secretary, At-Secretariat, Bhubaneswar, Dist.Khurda.
4. Special Secretary to Government of Orissa,
G.A.Department, Secretariat Building, Bhubaneswar,
District-Khurda.

..... Respondents

Advocates for respondents-Mr.A.K.Bose
Sr.CGSC for R-1
Mr.S.B.Jena, ACGSC
for R-2
&
Mr.K.C.Mohanty for
R 3 and 4



ORDER

SOMNATH SOM, VICE-CHAIRMAN

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In this application the petitioner has
prayed for correcting the select list of the year 1993 and
treating the petitioner to have been promoted against the
vacancies of the year 1992-93 when his batch-mates were
promoted. The second prayer is for changing the year of

allotment of the applicant to Indian Administrative Service (IAS) from the year 1985 to 1984.

2. Union Public Service Commission (UPSC), respondent no.2 and State Government (respondent nos. 3 and 4) have filed counters and the applicant has filed written argument stating the same to be his rejoinder. Respondent nos. 3 and 4 have filed supplementary counter to the rejoinder of the applicant. The applicant has filed memo of written argument as second rejoinder and UPSC have filed additional reply. This matter came up for hearing on 18.1.2001 when the learned lawyers were abstaining from court work for more than a month protesting against imposition of professional tax by the State Government. The petitioner was present and he submitted that as he will be superannuating in May 2001, he wanted urgent consideration of his petition. Going by the law as laid down by the Hon'ble Supreme Court in the case of Ramon Services Pvt. Ltd. v. Subhash Kapoor and others, 2000 AIRSCW 4093, it was not possible to adjourn the matter for hearing the learned lawyers on behalf of the parties. None appeared for the respondents. We did not have the benefit of hearing the learned counsel of both sides. Union of India (respondent no.1) has not filed any counter. For the purpose of considering the present controversy it is not necessary to go into too many facts of the case because the facts necessary for determining the dispute are mostly admitted.

3. The admitted position is that the applicant joined Orissa Administrative Service(OAS), Class-II on 14.5.1965 and was promoted to OAS Class-I (Junior Branch) with effect from 12.3.1980 and to Senior Branch on 6.11.1983. On 10.12.1992 he was promoted to OAS



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Super Time Scale on the recommendation of Orissa Public Service Commission (OPSC). While getting such promotion, the applicant had superseded 21 officers of OAS Class-I Senior Branch of 1982 batch. The applicant's case was considered along with others for appointment to IAS by promotion in the meeting of the Selection Committee on 24.3.1993. In the seniority list placed before the Selection Committee in their meeting on 24.3.1993 the applicant's name was placed at the bottom against serial no.34. Shri Rabi Ratna Das and Shri Tirthabasi Sahoo were included in the select list at serial nos.3 and 4, but the applicant was not included in the select list. The applicant's case was considered in the next meeting of the Selection Committee held on 21.3.1994 and the applicant on being graded as "Outstanding", was appointed to IAS by way of promotion in the Presidential order dated 18.8.1994 (Annexure-1).



4. The grievance of the applicant is two-fold. He has specifically averred that in the seniority list, which was placed before the Selection Committee in their meeting held on 24.3.1993, his name was erroneously shown at the bottom of the list against serial no.34 whereas his name should have been shown against serial no.19. The State Government in their counter have admitted that the applicant's name was shown against serial no.34 in the seniority list placed before the Selection Committee in their meeting on 24.3.1993. In the context of the above, the first point for consideration is whether the name of the petitioner was shown in the seniority list correctly against serial no.34 or it should have been shown against serial no.19.

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5. The second grievance of the applicant is that in the Selection Committee meeting held on 24.3.1993 S/Shri Rabi Ratna Das and Tirthabasi Sahoo were graded as "Outstanding", but the applicant was not so graded even though he merited grading "Outstanding". Because of wrong grading in the meeting of the Selection Committee on 24.3.1993, he was deprived of his right to be included in the select list as officers categorised as "Outstanding" have to be included at the top of the select list according to the relevant rule.

6. UPSC (respondent no.2) in paragraph 8 of their counter have submitted that the matter of showing the name of the applicant erroneously against serial no.34 of the seniority list placed before the Selection Committee on 24.3.1993 is a subject-matter which pertains to the State Government and they would be making necessary averment in this regard. State Government while admitting that the applicant's name was shown against serial no.34, have denied that this was erroneously done. They have admitted the averment of the applicant that he was promoted to the rank of OAS(Senior Time Scale) on 10.12.1992. They have stated that the crucial date for computing seniority for promotion to IAS in the meeting of DPC held on 24.3.1993 was 1.4.1992. This was fixed by UPSC in their letter dated 13.10.1992 by which date the applicant had not been promoted to Super Time Scale in OAS. The State Government have taken the stand that going by the above direction of UPSC in their letter dated 13.10.1992 they had placed the seniority list of eligible officers as that stood on 1.4.1992, in the meeting of the Seection Committee on 24.3.1993 and the list so placed was not as per seniority



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of the officers as on 24.3.1993 when their cases were considered.

7. Faced with these pleadings, we had in our order dated 3.10.2000 directed the learned Additional Standing Counsel to produce the original letters of UPSC indicating that the crucial date of seniority would be 1.4.1992. Copies of these letters addressed and received by the State Government are in the concerned file of the General Administration Department which the learned Government Advocate had produced before us. Shri S.B.Jena, the learned Additional Standing Counsel appearing for UPSC subsequently submitted that office copies of the concerned letters in the file of UPSC are not readily available and he indicated that respondent no.2 accepts as correct the concerned letters of UPSC addressed to the State Government which are in the file.

8. Appointment to Indian Administrative Service by promotion is made under Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as "Promotion Regulations"). For the present purpose we are concerned with Regulation 5 which deals with preparation of a list of suitable officers. It is not necessary to refer to all the provisions of Regulation 5. The relevant portion of Regulation 5(2) is quoted below:

"5(2). The Committee shall consider for inclusion in the said list, the cases of members of the State Civil Services in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1);"

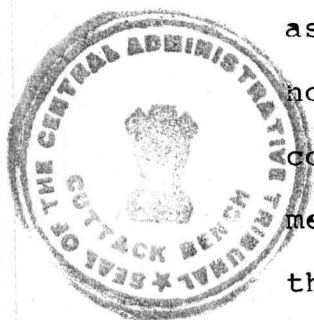
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9. In the face of the above statutory provision, the admitted position is that in the meeting of the Selection Committee held on 24.3.1993, the seniority list of eligible officers, as it stood on 1.4.1992, was placed and not the seniority list as it stood on 24.3.1993. UPSC have mentioned in their counter that the matter of showing the name of the applicant erroneously in the seniority list placed before the Selection Committee on 24.3.1993 is a subject-matter which pertains to the State Government and they would be making necessary submission in this regard. The State Government have mentioned in their counter that they had placed the seniority list as it stood on 1.4.1992 going by the direction of the UPSC in this regard. From the selection file of General Administration Department relating to Selection Committee meeting for the year 1992-93 bearing File No. AIS 46/94, we find that the concerned letter of the UPSC has been issued by the Additional Secretary, Shri S.K.Purkayastha addressed to the then Chief Secretary, Shri R.K.Rath and this letter is at 14/C of this file. Along with this letter at Annexure-II a list of information/documents required to be forwarded to the UPSC has been enclosed. In this it has been mentioned under serial no.1 that the seniority list giving particulars of State Civil Service officers who are eligible for consideration for promotion to IAS as on 1.4.1992 in the prescribed proforma should be submitted showing the initial date of appointment and date of confirmation. In this letter the date "1.4.1992" has been overwritten and that is why we had directed the learned Additional Standing Counsel appearing for the UPSC to produce the



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office copy of this letter which is in the file of the UPSC. The learned Additional Standing Counsel had reported and this has been recorded by us in the ordersheet dated 27.11.2000 that in spite of best efforts, they are unable to locate this letter. The UPSC have filed an additional reply statement in which in paragraph 3(i) they have mentioned that despite best efforts the office copy of the letter in question is not traceable in the office of UPSC and so a copy was procured from the State Government. The learned Additional Standing Counsel for UPSC has submitted, while mentioning about his inability to produce the letter from the record of UPSC that the fair copy of the letter available in the file of the State Government may be taken as correct. From this it is clear that the UPSC had directed that the seniority list of officers coming within the zone of consideration should be prepared as the seniority stood on 1.4.1992. The relevant rule, however, clearly provides that the Committee shall consider for inclusion in the said list the cases of members of the State Civil Service in the of seniority in that Service of a number which is equal to three times the number referred to in sub-regulation (1). The size of the select list was eleven and therefore, 33 names were to be considered excluding the name of a member of the State Civil Service whose name appears in the select list in force immediately before the date of meeting of the Committee. From the proceedings of the Selection Committee we find that case of one officer J.K.Jagdev was considered as coming under the first proviso to Regulation 5(3). In other words, Shri Jagdev's name was in the earlier select list, but in the meantime he had crossed 54 years of age on 1.4.1992. Thus, leaving Shri Jagdev thirty-three



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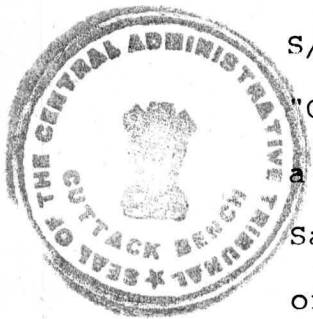
officers should have been considered and accordingly, thirty-three names were considered. In that list the applicant's name was against serial no.34 taking into account the name of Shri Jagdev. The State Government have admitted and have also mentioned that according to the revised seniority list as on 24.3.1993 the name of the applicant should have been placed against serial no.13. This has also been mentioned by the State Government in page 2 of their counter. We note that the UPSC have made no averment contesting the claim of the applicant that an erroneous seniority list was placed before the Selection Committee. Regulation 5(2) quoted by us makes it clear that the Selection Committee has to consider the names of officers in order of seniority and this seniority must be as it stood on the date of meeting of the Selection Committee, i.e., the date of consideration and not from an earlier date fixed by an executive order of the UPSC. In view of this, we have no hesitation in holding that the Selection Committee was bound to consider the officers coming within the zone of consideration in order of their seniority as it stood on that date and not on the basis of the seniority as it stood on an earlier date which in this case was 1.4.1992. It is further to be noted that neither the UPSC nor the State Government have made any averment in their counter that under the relevant statutory regulation, the seniority of officers coming within the zone of consideration as it stood on a date much prior to the date of the meeting of the Selection Committee, in this case about one year earlier, has been rightly adopted. The State Government have quoted the circular of the UPSC, and the UPSC have shifted the



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responsibility on the State Government. In consideration of all the above, the contention of the applicant that a wrong seniority list was placed before the Selection Committee in their meeting on 24.3.1993 is upheld.

10. The next question which arises for consideration is, to what relief the applicant will be entitled because of our above conclusion. This question is connected with the other grievance of the applicant that in the meeting of the Selection Committee held on 24.3.1993 he was not correctly assessed. He has stated that according to his records he merited a grading of "Outstanding", but he was rated as "Very Good". On a reference to the proceedings of the Selection Committee meeting held on 24.3.1993, we note that actually the applicant was rated as "Very Good" in that meeting. The applicant has mentioned in his OA that two other officers S/Shri Rabi Ratna Das and Tirthabasi Sahoo were graded as "Outstanding" and even though as per his C.Rs. he merited a grading equal to S/Shri Rabi Ratna Das and Tirthabasi Sahoo, he was wrongly graded as "Very Good". In respect of this contention, the UPSC have cited a large number of decisions of the Hon'ble Supreme Court laying down that it is not open for the Tribunal to re-evaluate the CRs and come to a finding regarding the grading of an officer different from the grading given by the Selection Committee. This position of law is well settled in a series of decisions of the Hon'ble Supreme Court and therefore, it is not necessary to refer to all these decisions which have been referred to in the counter of the UPSC and the relevant portions of the observations of the Hon'ble Supreme Court have also been quoted. We have,



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however, gone through each of the decisions cited, starting with Union Public Service Commission v. Hiranyalal Dev and others, AIR 1988 SC 1069, and ending with Durga Devi and another v. State of H.P. and others, 1997 SCC (L&S) 982. Before proceeding further in the matter, the stand of the State Government with regard to this grievance of the applicant requires to be noted. The relevant portion of the averment made by the State Government in their counter is quoted below:

".....In replying to above averment of the applicant it is humbly submitted that there is no provision in IAS (Appointment by Promotion) Regulations, 1955 for review of the select list of IAS made earlier in the present circumstances or situation. As such, this respondent forwarded the above application of the applicant to the UPSC, New Delhi, vide its letter No.18957 dated 21.6.99 seeking clarification whether a review selection committee can be convened to consider the suitability of the applicant for promotion to I.A.S. during the relevant year on the basis of the revised gradation list. Besides, the State Government also moved the U.P.S.C. separately vide G.A.Department letter No.32457 dated 3.11.99 and No.38141/AIS.I., dated 24.12.99 to convene a review Selection Committee to review the case of the applicant for promotion to I.A.S. with reference to the grading awarded by the Committee to Shri Rabinratna Das and Shri Tirthabasi Sahoo in their meeting held on 24.3.93. But the U.P.S.C. have rejected the proposal of the State Government stating that the Commission do not consider it necessary to review the recommendations of the Selection Committee of 24.3.93 and 21.3.94 vide their letter No.11/15/99-AIS.I., dated 28.1.2000...."



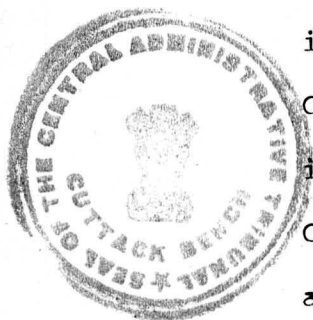
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From the above, it appears that the State Government took the stand in favour of the applicant that he has been wrongly assessed by the Selection Committee and he should have been given the same grading as S/Shri Rabi Ratna Das

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and Tirthabasi Sahoo, and on that basis, moved the UPSC for holding a Review Selection Committee meeting. To say the least, we are surprised at the stand taken by the State Government because the law as laid down by the Hon'ble Supreme Court is presumably known to the State Government. Moreover, in taking the stand that the applicant had been wrongly underassessed in the meeting of the Selection Committee held on 24.3.1993, the State Government had in effect taken the stand that four of their seniormost officers including the then Chief Secretary and Member, Board of Revenue, who were members of the Selection Committee, have not been able to assess the applicant properly. The other two officers of the State Government, who are members of the Selection Committee, were incidentally the seniormost Secretary and seniormost Commissioner. As the position of law is well settled that it is the domain of the Selection Committee to assess the CRs, we refrain from making any comments further on this aspect of the grievance of the applicant even though we have gone through the CR folders of S/Shri Rabi Ratna Das, Tirthabasi Sahoo and the applicant, moreso because of the direction which we propose to issue in the later part of this order.

11. The last question which arises for consideration is, whether in view of our finding that an erroneous seniority list was placed before the Selection Committee meeting held on 24.3.1993 the applicant is entitled to any relief. The State Government have enclosed along with their counter copy of the select list and we have also verified the same from the proceedings of the Selection Committee, which are at 115/C of the file referred



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to earlier. Of the eleven persons included in the select list, three persons J.K.Jagdev, N.N.Mitra and B.B.Jena were shown as senior to the applicant in the seniority list placed before the Selection Committee, which indicated the seniority of all the officers as on 1.4.1992. But as per the seniority of these officers as on 24.3.1993, these three officers J.K.Jagdev, N.N.Mitra and B.B.Jena have been shown as junior to the applicant. All the other eight officers included in the select list are senior to the applicant. Of these eleven, the first four, i.e., J.K.Jagdev, N.N.Mitra, Rabi Ratna Das and Tirthabasi Sahoo have been given the grading "Outstanding" and because of this, irrespective of their seniority they have been placed at the top of the select list in accordance with Regulation 5(5) of the Promotion Regulations. The other seven starting with Shri A.C.Nayak and ending with Shri Sribatsa Samal have been graded as "Very Good" like the applicant. But amongst them, Shri B.B.Jena has been included in the select list as he has been shown senior to the applicant as per the seniority as on 1.4.1992. But in accordance with the seniority as on 24.3.1993, B.B.Jena comes against serial no.25 in Annexure-R-3/1 whereas the applicant is shown against serial no.13. In other words, had the correct seniority been placed before the Selection Committee, then the applicant would have been included in the select list in place of Shri B.B.Jena, who is junior to him. It is also to be noted that in the select list Shri B.B.Jena has been given the place higher than S/Shri B.P.Choudhury, C.C.Prusty, C.R.Mishra, S.N.Padhi and Sribatsa Samal. These five officers are senior to Shri B.B.Jena as per revised seniority list as on 24.3.1993. But as these five officers



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are not before us, we are not concerned with this aspect of the matter. Thus, the conclusion is inescapable that because an erroneous seniority list was placed before the Selection Committee, the applicant could not find place in the select list whereas even with the grading "Very Good" he would have been included in the select list, had the correct seniority position been placed before the Selection Committee.

12. In view of our above findings, we direct the State Government and the UPSC to hold a Review Selection Committee meeting in which they should consider the suitability of the same thirty-four officers according to their correct seniority as on 24.3.1993 and consider the question of inclusion of the applicant in the select list for the year 1992-93. As the applicant has stated that he is going to superannuate in May 2001, this exercise should be completed within a period of thirty days from the date of receipt of copy of this order. The first prayer of the applicant is disposed of accordingly.

13. The second prayer of the applicant is for changing his year of allotment from 1985 to 1984. This will be consequential to the recommendation of the Review Selection Committee and final decision of the Government thereon and it is not necessary to pass any order in this regard at this stage. We make it clear that after the above exercise, as directed by us, is completed and if the applicant still has any subsisting grievance with regard to his year of allotment, as mentioned in this O.A., then he



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will be free to approach the Tribunal.

14. In the result, therefore, the Original Application is allowed in terms of our observation and direction above, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.2.2001

February 15, 2001/AN/PS

