

17

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 629 & 630 of 1999
Cuttack, this the ^{30th} day of Nov. ,2004

IN O.A. NO. 629/99

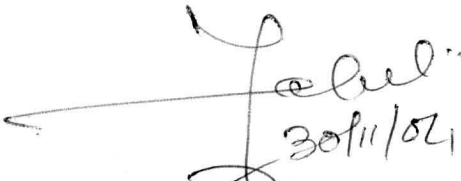
Bishnu Prasad Mohapatra	Applicant
	Vrs.	
Union of India & Others	Respondents

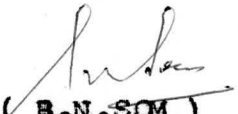
IN O.A. NO. 630/99

Surendra Nath Swain & Others	Applicant
	Vrs.	
Union of India & Others	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ? ^{ys}
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ^{ys}


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

48

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 629 & 630 of 1999
Cuttack, this the day of Nov. , 2004
30th

CORAM :

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HONIBLE SHRI M.R.MOHANTY, MEMBER (J)

IN O.A. NO. 629/99

Bishnu Prasad Mohapatra, IPS, S/o. Late Shri Sreeharsha Mohapatra Age about 50 years, Village/Town : Buguda, P.S. Buguda, Dist-Ganjam, Orissa At present posted as Superintendent of Police (Signals) Orissa, Cuttack Or.No.D/85, B.J.B. flat, B.J.B. Nagar, Bhubaneswar.

..... Applicant

By the Advocates

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M/s. Pitamber Acharya,
A.Patnaik, S.R.Pati

Vrs.

1. Union of India represented through the Secretary to Govt., Ministry of Home Affairs, North Block, New Delhi-1.
2. Chief Secretary to Govt. of Orissa, State Secretariat, Bhubaneswar, Dist-Khurda.
3. State of Orissa represented through the Principal Secretary to Government, Deptt. of Home, State Secretariat Building, Bhubaneswar, Dist-Khurda.
4. State of Orissa represented through the Principal Secretary to Government, Deptt. of General Administration Orissa, Bhubaneswar.

..... Respondents

By the Advocates

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Mr. A.K.Bose (SSC), M/s.
B.B.Acharya, J.Sengupta,
B.K.Panda, P.R.J.Dash, G.
Sinha, C.Mohanty (for R-5)
Mr. T.Dash (state)

IN O.A. NO. 630/99

1. Surendra Nath Swain, I.P.S. S/o. Late Sudhakar Swain,
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aged about 55 years, DIG of Police (Technical), Orissa, Cuttack.

2. Gouranga Kinkar Das, IPS, S/o. Purusotam Das, aged about 55 years, DIG of Police Central Range, Cuttack.
3. Harihar Panda, IPS, S/o. Late Braja Bihari Panda, aged about 53 years, General Manager, Vigilance and Security Orissa Forest Development Corporation, BBSR.
4. Anup Kumar Pattnaik, IPS, S/o. Late Manas Rangan Pattnaik, Aged about 47 years, DIG (Administration) Orissa, Cuttack.
5. Manmohan Praharaj, IPS, S/o. Bhabani Shankar Praharaj, aged about 45 years, DIG of Police, (Bhubaneswar Range), BBSR.
6. Asutosh Mishra, IPS, S/o. Late P. Mishra, Aged about 53 years, DIG of Police, (Vigilance), Orissa, Cuttack.
7. Dhaneswar Pati, IPS, S/o. Padmolochan Pati, Aged about 58 years, DIG of Police, (Human Rights and Social Justice) Orissa, Cuttack.

..... Applicants

By the Advocates

.....

M/s. Pitamber Acharya,
A. Pattnaik, S.R. Pati.

Vrs.

1. Union of India represented through the Secretary to Govt., Ministry of Home Affairs, North Block, New Delhi.
2. Chief Secretary to Govt. of Orissa, State Secretariat, Bhubaneswar, Dist-Khurda.
3. State of Orissa represented through the Principal Secretary to Govt., Deptt. of Home, State Secretariat, Building, Bhubaneswar, Dist-Khurda.
4. State of Orissa represented through the Principal Secretary to Govt. Department of General Administration, Orissa, Bhubaneswar.
5. Shri Gopabandhu Biswal, At present posted as DIG of Police, State Armed Police, Buxi Bazar, Cuttack.
6. The Director General and Inspector General of Police, Orissa, Cuttack.
7. Union Public Service Commission represented through the Secretary New Delhi-11.

..... Respondents

By the Advocates

.....

Mr. A.K. Bose, M/s. A.K.
Mishra, B.B. Acharya, J.
Sengupta, D.K. Panda, P.R.
J. Dash, G. Sinha, T. Dash
(state).

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20

ORDER

SHRI B.N.SOMJI VICE-CHAIRMAN

Since both the O.A. Nos. 629 & 630 of 1999 pertain to common question of facts and law, we dispose of both the O.As. through this common order.

2. For the sake of convenience, we may as well refer to O.A. No. 629/99, which has been filed by Shri Bishnu Prasad Mohapatra, challenging the notification dated 18.12.98, issued by Respondent No.1, appointing Respondent No.5 to Indian Police Service (in short IPS) on probation under regulation 9(1) of the Indian Police Service (appointment by promotion) Regulation 1955 and also prayed for quashing the impugned order dated 16.12.01 promoting the said Respondent No.5 to the rank of DIG, Police against the ex-cadre post created in G.A. department vide letter dated 15.7.99.

2. The grievance of the applicant is that the order dated 18.12.98, passed by the Ministry of Home Affairs, Government of India is illegal and arbitrary in manner, violating the statutory rules governing the field of promotion relating to the cadre of Indian Police Service. His case is that the Respondent No.5 was recruited as an Assistant Commandant, Government of Orissa Military Police Service on 13.11.72. Prior to his appointment as an Assistant Commandant, he rendered military service for the period

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from 20.1.64 to 1.4.70 and that service was accepted for fixation of pay, seniority and pension in his civil employment. Respondent No.5, being aggrieved by non-consideration of his case for promotion to IPS filed Writ-petition, 2414 of 1982 before the hon'ble High Court of Orissa which was subsequently, transferred to the Tribunal as T.A.No. 1 of 1989, contesting his position in the seniority list and prayed for an upward revision of his seniority position and for considering him for promotion to IPS. The said application was disposed of by this Tribunal vide its order dated 24.12.91, interalia directing as follows :

" In our opinion non-consideration of the case of petitioner for promotion w.e.f. 1st day of 1977 to 1980 is an illegally committed and, therefore, the case of the petitioner should be considered for promotion w.e.f. 1st Jan'1977 in respect of each year beginning therefrom till Jan'1980. To make it more explicit we would say that the case of the petitioner should be considered for the year 1977 and in case he is found to be unsuitable his case should be considered for the year 1978 and if still found to be unsuitable his case should also be considered for the year 1979 and if still found unsuitable the petitioner should be considered for vacancy, if any, till the selection committee had met within 4th Nov'1980. Thereafter, the case of the petitioner does not deserve consideration because the posts of Assistant Commandants having been bifurcated forming a separate cadre w.e.f. 5th Nov'1980."

This judgment was carried in appeal before the Apex Court

82 ✓

by the State of Orissa along with two others in SLP(C) No. 7491/92 which was dismissed in limine vide order dated 3.3.92. Notwithstanding this, two aggrieved officers belonging to IPS cadre (promotion quota) filed two review petitions before the Tribunal to review the decision dated 24.12.91. The Review Petition was allowed by the Tribunal on the ground that relevant order of the State Government dated 14.7.47 excluding the post of Assistant Commandant from the Orissa Police Service Cadre was not kept in view by the Tribunal while passing the order dated 24.12.91. The order dated 24.6.94 passed in review petition was challenged by Respondent No.5 by filing a SLP before the Apex Court and the same was disposed of by order dated 21.4.98 with observation that although, according to the applicant, certain documents through produced before the Tribunal were not noticed by the Tribunal in deciding the main matter, even so, once the judgment of the Tribunal has attained finality, it cannot be re-opened after a Special Leave Petition against that judgment has been dismissed. The Apex Court, however, gave liberty to the interested parties to challenge the judgment by filing separate applications before the Tribunal to persuade the Tribunal either to refer the question to a larger Bench or if Tribunal refer to its earlier decision, to file an appeal from the Tribunal's judgment and have the Tribunal's judgment set aside in appeal.

3. In pursuance of the above observation of the

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Apex Court the applicant by filing this application seeks to question the eligibility of Respondent No.5 for consideration for promotion from State Police Service to IPS cadre.

4. The main challenge in this O.A. is that the order of the State Government declaring the deem date of joining of Respondent No.5 as 15.3.67 is erroneous, that while giving certain benefits of past military service for the purpose of pay, pension and seniority, Respondent Nos. 1 to 3 had no power to declare the period of military service as equivalent to that of the post of Deputy Superintendent of Police. As the petitioner admittedly having joined the post of Assistant Commandant on 15.11.72 could not have eight years of continuous service as Assistant Commandant on either 1977 or before 15.11.80 in terms of the Sub Regulation 2 of Regulation 5 of 1955, he submits that by no means the petitioner could have been found eligible on or before 15.11.80 for promotion to IPS because of non-fulfilling of the statutory requirement as contemplated in Sub Rule 2 of Regulation 5. He has also stated that the post of Assistant Commandant Military Police could not have been treated as equivalent to Deputy Superintendent of Police as the role and function of these two post holders are totally different. It has also been alleged that though some criminal cases were pending against Respondent No.5 the review selection committee considered the case of

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24

Respondent No.5 for promotion, as a result many officers belonging to all India service cadre have been superseded.

5. The application has been opposed by the Respondents. Respondent No.1 in his counter has stated that prior ^{to} of 1947 there was only the cadre of Deputy Superintendent of Police (DSP) and the each post used to be filled up by promotion of Inspectors of Police and Sergeant Majors (RI) as per Orissa Police Manual, and that there was no separate cadre of Assistant Commandants (ACs) prior to 1947. The cadre of Assistant Commandants carrying the same pay and allowances as those of DSP was created from 14.7.47 after which Sergeant Majors were eligible for promotion to the post of Assistant Commandant and the Inspector of Police in the general rank to DSP. Respondent No.5 was an Ex-Emergency Commissioned Officer and was appointed as Assistant Commandant of Orissa Military Service w.e.f. 13.11.72. They have admitted that taking his military service into account the Government of Orissa counted his past service towards fixation of his pay, seniority and pension and the deemed date of his appointment as Assistant Commandant was fixed as 15.3.67. It has also been disclosed by the Respondent No.3 that from time to time up to 5.11.80 the Assistant Commandants (ACs) and the Deputy Superintendent of Police (DSP), formed two separate cadres in the state police service. The strength of DSPs and ACs were shown together under the cadre strength for the purpose of convenience since the strength of ACs was small in the

9

beginning. In course of time, when the number of ACs increased, separate cadre consisting of Deputy Commandants and Assistant Commandants were formed w.e.f. 5.11.30. Aggrieved by the fact that he was not considered for promotion to the IPS because only DSP in Orissa Police Force were eligible for promotion to the IPS, Respondent No.5 filed a Writ Petition in the High Court of Orissa, which was later on transferred to Central Administrative Tribunal, Cuttack Bench into T.A. No.1 of 1989. The Tribunal decided the matter and allowed relief sought by the Respondent No.5, consequent upon which, he was ultimately promoted to the IPS cadre. Respondent No.3 in its counter has reiterated that the applicant had completed eight years of eligible service for consideration for promotion to the IPS cadre from the recruitment year 1977. It has further been submitted that the appeal against the decision of the Tribunal before the Apex Court having been not successful, there appears to be no ground for the applicant to challenge the promotion of the Respondent No.5 as illegal in-as-much-as the dictum of the Apex Court is a law within the meaning of Article-141 of the Constitution of India and is binding on all. They have also submitted that since the decision of the Tribunal has been confirmed by the Hon'ble Supreme Court and thus has attained finality, there is no scope for the applicant to agitate the matter once again, over the same facts and as such the averments of the

26

applicant are against the principle of law and not maintainable. Further, they have referred to the observation of the Supreme Court dated 21.4.98 in Civil Appeal No. 3451-3455 of 1996 as follows :

" ----- the two applicants in review application No. 16/93 were no where within the zone of consideration for promotion to IPS. One of the applicants joined the police service only 1974 and was not eligible for further promotion till 1982. The other applicant though eligible for promotion, who was on account of his rank in the seniority list, not within the zone of consideration at at anytime prior to 5.11.90. ----- therefore, they could not have been made parties in T.A. No. 1/89. At that point of time, these applicants had a chance of promotion in future. This does not confer any legal right on these applicants and they can not be considered as parties aggrieved by the impugned judgment. A person, not directly affected can not be considered to be an aggrieved party."

6. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

7. Private Respondent No.5 has also filed a counter opposing the application. The Respondent No.5 have made two thrust points in his reply. First is that his promotion to IPS is no longer res-integra on the ground that his application in T.A. No. 1/89 was allowed by the Tribunal and the SLP filed against him was dismissed by the Supreme Court and thus the matter has reached a finality. In para-7

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of his counter, he has listed the various observations made by the Hon'ble Supreme Court with regard to the finality of the issue in question. He has also relied on the decision of the Apex Court, dated 21.4.98, as referred to above, and has stressed that the applicant has no locus-standi to agitate the matter before us.

8. From the above discussion, the moot question that arises is whether the applicant in this O.A. can be called an aggrieved party to challenge the selection and appointment of Respondent No.5 to IPS. From a perusal of the list of IPS officers of Orissa cadre, we find that name of Respondent No.5 appears at Sl. No.35 of the civil list showing his year of allotment to SPS(State Police Service) 1974, date of appointment to IPS 18.12.93 whereas the name of the applicant appears at Sl.No. 99 with the year of allotment to SPS shown as 1990 and the date of appointment to IPS 26.12.96. From these facts, it is clear that the rights and privileges of the applicant either in SPS ^{or} in IPS have not in any way been affected by the selection and promotion of Respondent No.5 and therefore, he can hardly be considered as an aggrieved party. We, therefore, see much force in the argument of Respondent Nos. 5, 3 and 4 that no legal right has been conferred on the applicant, to be able to assail the service benefit granted to Respondent No.5; as a party aggrieved. In this view of the matter, the applicant having no locus-standi to challenge

the appointment of Respondent No.5 to IPS, we see no merit in this case, which is accordingly, disposed of. No costs.

Label
30/11/04

(M.R.MOHANTY)
MEMBER (JUDICIAL)

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(B.N.SOM)
VICE-CHAIRMAN

RK/SD