

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 643 OF 1999
Cuttack, this the 10th day of August, 2001

Rabinarayan Nayak

....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.*

l. l. l.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.8.2001

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)

.....

Rabinarayan Nayak, 53 years, son of late K.K.Nayak,
Satyanagar, Cuttack-12, at present serviny as DFO, KL
Division, BoudhPetitioner...

Advocates for applicant - M/s A.K.Misra
J.Sengupta
B.B.Acharya
D.K.Panda
PRJ Dash
G.Sinha

Vrs.

1. Union of India, represented through Secretary to Government of India, Ministry of Forest & Environment, Paryabharan Niayam, CGO Complex, Lodhi Road, New Delhi.
2. State of Orissa, through Special Secretary to Government of Orissa, G.A.Department, Bhubaneswar.
3. State of Orissa, through its Secretary to Government of Orissa, Forest & Environment Department, Bhubaneswar.
4. Union Public Service Commission through its Secretary, Dholpur House, New Delhi.
5. Abhiram Das, DFO K.L.Division, Keonjhar...Respondents

Advocates for respondents - Mr.K.C.Mohanty
Government
Advocate
for R.2 & 3
&
Mr.B.Dash, ACGSC
for R-1 & 4

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to respondent nos. 1 to 4 to consider the case of the petitioner for promotion to Indian Forest Service cadre in preference to respondent no.5 Abhiram Das and also for a declaration that his case should be reconsidered for promotion giving him correct position amonyst the officers within the zone of consideration for promotion to IFS.

2. State of Orissa, through Special Secretary, General Administration Department (respondent no.2) has filed counter opposing the prayers of the applicant. State of Orissa represented by Secretary, Forest & Environment Department (respondent no.3) has filed a separate counter. The applicant has filed rejoinder to both the counters and respondent no.3 has filed a reply to the rejoinder. For the purpose of considering this petition it is not necessary to go into too many facts of this case.

3. The admitted position is that the petitioner was promoted to Orissa Forest Service Class-II and is a promotee of 1978-80. Respondent no.5 is a direct recruit of 1979-81. It is also the admitted position that respondent no.5 was junior to the petitioner in OFS Class-II. In the seniority list of OFS Class-II the applicant's name appears against serial no.215 and the name of respondent no.5 appears against serial no.268. Respondent no.5 belongs to SC and because of his belonging to reserved category, he was promoted to OFS Class-I on 29.5.1992 over the head of his seniors who belong to General Category. The petitioner was promoted to OFS Class-I on 31.7.1999. Selection Committee for promotion from State Forest Service to Indian Forest Service held its meeting on 14.10.1999.

SSM · Admittedly, there were three vacancies and the zone of consideration was 12. Respondent in his letter dated 17.8.1999 forwarded names of 12 officers belonging to OFS Class-I amongst which respondent no.5 was shown against serial no.8, K.C.Hansda against serial no.9, Sudhakar Mallik against serial no.10, Abhimanyu Behera against serial no.11 and applicant against serial no.12. That is to say, the

applicant was the last person in the list of officers within the zone of consideration. Admittedly, the applicant filed representations to respondent no.3 as also respondent no.2 for fixing his seniority in OFS Class-I in accordance with the decision of the Hon'ble Supreme Court laying down that when a reserved category candidate gets promotion to higher grade earlier than his seniors in the feeder grade because of his reserved status, then the senior on getting promotion to the higher grade in his turn will get back his seniority over the reserved category candidate who had been promoted earlier. The applicant has enclosed along with his rejoinder the order dated 26.4.2000 of the Forest & Environment Department revising seniority of OFS Class-I officers on the basis of the above principle laid down by the Hon'ble Supreme Court and on the basis of the decision of the Orissa Administrative Tribunal in a case filed by Sri U.K.Singh Samanta. In this order, which has not been contested by respondent no.3 in his reply to the rejoinder, the applicant has been shown above S/Shri K.C.Hansda, Sudhakar Mallick and Abhimanyu Behera, the persons who were shown against serial nos.9,10 and 11 in the list of officers coming within the zone of consideration in which the applicant was shown against serial no.12. In the context of the above admitted facts, the applicant has come up with the prayers referred to earlier.

4. The stand taken by the respondents is that refixation of seniority has been done in order dated 26.4.2000, much after the Selection Committee meeting was held on 14.10.1999 and the Selection Committee considered the officers according to their seniority as it stood on the date of the meeting. On this ground, the respondents have

opposed the prayers of the applicant. It is also stated that the decision of the Hon'ble Supreme Court in Ajit Singh v. State of Punjab, AIR 1999 SC 3471, came on 16.9.1999 and the applicant has not mentioned the name of the case in his representation. We are unable to accept this proposition because even before the case of Ajit Singh (II), as it is commonly referred to, the Hon'ble Supreme Court in the case of Ajit Singh Jamuja v. State of Punjab, AIR 1996 SC 1189, laid down in paragraph 16 that rule of reservation gives accelerated promotion but does not give accelerated consequential seniority. It was clearly laid down in this decision that if a SC/ST candidate is promoted earlier because of rule of reservation/roster and his senior belonging to General Category is promoted later to that higher grade, the General Category candidate shall regain his seniority over such earlier promoted SC/ST candidate. This decision came on 1.3.1996. The subsequent decision in Ajit Singh(II) which came on 16.9.1999 which in any case is about a month earlier than the meeting of the Selection Committee. The Hon'ble Supreme Court clarified their earlier decision vis-a-vis several other decisions of the Hon'ble Apex Court. The fact that respondent no.3 has taken long time in refixing seniority cannot act to the prejudice to the applicant. Moreover, in the revised seniority list we find that the applicant's position vis-a-vis respondent no.5 has not been indicated. It was submitted by the learned Government Advocate that as by 26.4.2000, when the seniority in OFS Class-I was revised in accordance with the principles determined by the Hon'ble Supreme Court, Abhiram Das (respondent no.5) had already been promoted to IFS, his seniority was not shown in OFS Class-I cadre. This is also not correct. But we decline to look into this matter further

because refixation of seniority in OFS Class-I is a subject-matter for the Orissa Administrative Tribunal and we cannot encroach upon a subject which falls to be determined by Orissa Administrative Tribunal. But admittedly in the revised seniority position the applicant has been shown above K.C.Hansda, Sudhakar Mallick and Abhimanyu Behera. In view of this, it was incorrect on the part of the respondents not to refix seniority prior to holding of meeting of the Selection Committee and to place a list of officers within the zone of consideration assigning them an order of seniority which was palpably wrong. Because of the inaction of respondent nos. 2 and 3 the applicant cannot be made to suffer. In view of this, we direct the respondents that a review meeting of the Selection Committee should be held and a correct list of officers coming within the zone of consideration in accordance with their seniority should be placed before the Review Selection Committee. We also direct that the applicant should be allowed the benefit of the decisions of the Hon'ble Supreme Court in the cases referred to by us earlier. The above exercise should be completed within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

5. With the above observation and direction, the Original Application is allowed. No costs.


(G.NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SONI)
10-8-2001
VICE-CHAIRMAN