

13
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.657 OF 1999
Cuttack this the 29TH day of June, 2001

Gokul Chandra Nag

...

Applicant(s)

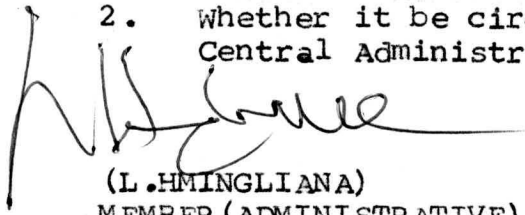
-VERSUS-

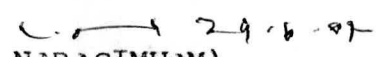
Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 44.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunal or not ?


(L. HMINGLIANA)
MEMBER (ADMINISTRATIVE)


(G. NARASIMHAM)
MEMBER (JUDICIAL)

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.657 OF 1999
Cuttack this the 29th day of June, 2001

CORAM:

THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
AND
THE HON'BLE SHRI L.HMINGLIANA, MEMBER (ADMINISTRATIVE)
...

Gokul Chandra Nag, aged about 54 years,
Son of Late Arjun Nag, At/PO-: Patrapali,
PS/Dist-Jharsuguda - at present working
as Joint Commissioner, Rail Coordination
and Joint Secretary to Government,
Transport Department, Orissa Secretariat
At/PO - Bhubaneswar, Dist - Khurda

By the Advocates

...

Applicant

M/s. R.K.Rath
N.R.Rout

-VERSUS-

1. State of Orissa through the Secretary to Government, General Administration Department, Orissa Secretariat, At/PO-Bhubaneswar, Dist - Khurda
2. Union of India, Ministry of Personnel and Training, North Block, New Delhi
3. Union Public Service Commission, Dhoolpur House represented through its Secretary, Dhoolpur House, Shahajahn Road, New Delhi-1

...

Respondents

By the Advocates

Mr.K.C.Mohanty,
Govt. Advocate
(Res. No. 1)
Mr.U.B.Mohapatra,
A.S.C.(Res.No.2)
Mr.S.B.Jena
A.S.C.(Res.No.3)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this application, claiming for selection to the Indian Administrative Service Grade, the applicant, Shri Gokul Chandra Nag, who initially joined as a Member of Orissa Administrative Service(Class-II) was promoted to the rank of O.A.S. Class-I (Sr.Branch) on

17.5.1989. In a disciplinary proceedings he was awarded punishment on 28.11.1996, reverting him to the Grade of O.A.S.I (Jr.Branch). The applicant challenged this order of punishment before the State Administrative Tribunal in Original Application No.3654/96. In order dated 18.12.1997, the Tribunal quashed this order of punishment and directed that he should be restored to the rank of O.A.S. (Class-I) with immediate effect. The State Government challenged this order of the Tribunal before the High Court of Orissa in O.J.C. No.8653/98. The High Court by order dated 23.2.1999 upheld the order of the Tribunal. Thereafter the State Government filed S.L.P.(Civil) No.7986/99 before the Supreme Court, which dismissed the S.L.P. summarily in order dated 14.7.1999. Thereafter by order dated 1.11.1999 (Annexure-7) the applicant was notionally promoted to the Super-time Scale of O.A.S. with effect from 7.3.1996.

During pendency of the disciplinary proceedings, the applicant was included in the zone of consideration for selection to the I.A.S. Grade twice for the years 1994-95 and 1995-96, but his name was not recommended by the Selection Committee and his juniors, viz., S/Shri Manoranjan Saran and Suresh Chandra Patnaik were promoted to the Grade of I.A.S. from the Grade of O.A.S.(Class-I)(Sr. Branch).

2. The grievance of the applicant is that in both the selection proceedings he was rated 'good' only because of pendency of the disciplinary proceedings and since the punishment order in the said disciplinary proceedings has been quashed and since his juniors were promoted to the Grade of I.A.S., he should also be selected and promoted to

to the Grade of I.A.S. Accordingly, he wants a direction to be issued to respondents to declare the applicant to have been promoted to the Grade of I.A.S. with effect from the date his juniors were given such promotion, with consequential service and financial benefits.

3. Though Respondent No.2., i.e. Union of India had not filed any counter, Shri U.B.Mohapatra, the learned Addl.Standing Counsel appeared for this respondent and addressed the Bench. Respondent Nos. 1 and 3 filed their counters separately.

The State of Orissa (Respondent No.1) opposed the prayer of the applicant on the ground that as per Regulation 5 of the I.A.S.(Appointment by Promotion) Regulations, 1955 (in short Regulation) the Selection Committee considered the case of the applicant along with others for appointments for the years 1994-95 and 1995-96 on promotions. By over all assessment of service records the Selection Committee rated the applicant 'good' and as such he was not included in the select list by the Committee, as officers with higher gradings were recommended for the same in accordance with the Regulation 5(5) of the said Regulation. It is not correct to say that only on account of pendency of the disciplinary proceedings the applicant was rated 'good'. His juniors, S/Shri Manoranjan Saran and Suresh Chandra Patnaik were included in the select list because of their gradings as 'outstanding'.

Respondent No.3, i.e. Union Public Service Commission opposed the prayer of the applicant by reminding this Tribunal about the legal position that when a higher

level Committee considers respective merits of the candidates through assessment of gradings for promotion Courts cannot sit over such assessment made, as an Appellate Authority. At the same time in Para-4.3 of the counter it has been mentioned that for the year 1996-97 the Committee did not consider the case of the applicant for promotion to I.A.S. as by then he had been reverted from O.S.I (Sr.Branch) to O.A.S.II (Jr.Branch), as a measure of penalty in a disciplinary proceedings.

4. We have heard Shri R.K.Rath, the learned counsel for the applicant, Shri K.C.Mohanty, learned Government Advocate appearing on behalf of Respondent No.1, Shri S.B. Jena, learned Addl.Standing Counsel appearing on behalf of Respondent No.3 and Shri U.B.Mohapatra, learned Addl. Standing Counsel appearing on behalf of Union of India (Respondent No.2).

On our earlier direction the learned Government Advocate, in a sealed cover produced the C.C.Rs of the applicant along with the proceedings of the Selection Committee Meetings held on 23.2.1995 and 9.2.1996, for our perusal. We also perused these papers.

5. By the time the Selection Committee met on 23.2.1995 and 9.2.1996, the disciplinary proceedings against the applicant was pending. There is no dispute that the applicant was in the zone of consideration ^{and} on both the occasions he was rated 'good', and because of this ^{grading} his name was not recommended to be included in the select list. We have perused the minutes of the proceedings of these two dates. For the year 1994-95, the Committee met on

23.2.1995 and considered the cases of officers to be included in the select list meant for 21 officers. 10 numbers of officers including the applicant within the zone of consider by then were facing disciplinary proceedings. Still seven of these officers have been graded 'very good'. The remaining three including the applicant were graded 'good'. The assessment was done with reference to the remarks in the Confidential Report of the officers concerned. Similarly by the time the next Meeting took place on 9.2.1996, six officers including the applicant were facing proceedings. Yet out of them three officers were graded 'very good' and three including the applicant 'good'. Even out of these three officers, against whom disciplinary proceedings were pending and graded 'very good', one was included in the select list, subject to clearance of the disciplinary proceedings. These gradings were also made with reference to the C.C.Rs. Hence there is no force in the contention advanced by Shri Rath, the learned counsel for the applicant that the applicant was graded good on these two occasions only on account of pendency of the disciplinary proceedings. His juniors, viz. Manoranjan Saran and Suresh Chandra Patnaik were found in the select list because they were graded outstanding.

6. Law is well settled that Court/Tribunal, cannot act as an Appellate Authority over the members of the Selection Committee to reassess the gradings. Since the applicant was graded 'good' and the select list on both the occasions did not contain name of any officer with this grading 'good' and the seniority list having been full and

complete with the officers graded as 'very good' and 'outstanding', we do not find any infirmity in not placing the name of the applicant in the select list on both the occasions. Hence the prayer of the applicant that he should be declared to have been promoted to the Grade of I.A.S. with effect from the date his juniors were given such promotion cannot be acceded to.

Shri Rath, the learned counsel for the applicant, however, contended that as per the admission made by the U.P.S.C. in the counter that the Committee did not consider the name of the applicant because of his reversion order dated 28.11.1996 in a disciplinary proceedings and since that order has been quashed and is non-est in the eye of law and since he was given retrospective promotion to the super time scale of O.A.S. w.e.f. 7.3.1996, his case needs reconsideration for promotion to the Grade of I.A.S. for the year 1996-97. It is true that there is no specific prayer to this effect in the Original Application. But this application filed on 22.12.1999 read as a whole would mean that since the punishment order of reversion passed in the disciplinary proceedings has been quashed, his case for promotion to the Grade of I.A.S. needs reconsideration.

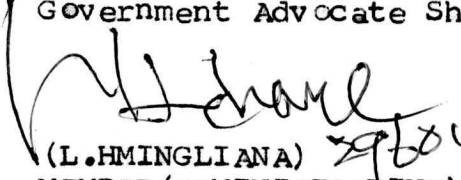
7. In the result, while disallowing the general prayers of the applicant for automatic promotion to the Grade of I.A.S. from the date his juniors were promoted, we direct the respondents to constitute a Review Selection Committee and consider the case of the applicant for promotion to the I.A.S. for the year pertaining to the year 1996-97, within a period of ^{ninety} 90 (sixty) days from the date

of receipt of this order.

Original Application is disposed of as per the direction made above, but without any order as to costs.

The CR folder of the applicant along with the minutes of the D.P.C. produced be returned to the learned

Government Advocate Shri K.C.Mohanty.


(L.HMINGLIANA)
MEMBER (ADMINISTRATIVE)

 29-6-02
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//