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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.667 OF 1999
Cuttack this the 01st day of May/2001

Pravakar Mishra

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

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

S. N. S. M.
(SOMNATH SOMAM)
VICE-CHAIRMAN
7.5.2001

4.5.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.667 OF 1999
Cuttack this the 04th day of May/2001

CORAM:

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

Sri Pravakar Mishra, aged about 54 years,
Son of Late Achutananda Mishra,
Village-Shasan Damodarpur, PS: Puri Sadar,
Town & Dist - Puri - at present serving as
Chief Cost Accounts Officer in the office
of the Chief Conservator of Forests, (Kendu Leaves)
Orissa, Aranya Bhawan, Chandra Sekharpur
Bhubaneswar-16

... Applicant

By the Advocates

M/s .K.C.Kanungo
S.Behera
A.K.Mishra
R.N.Singh

-VERSUS-

1. Union of India represented through its Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Lok Nayak Bhawan, New Delhi
2. Secretary to Government of India, Ministry of Finance, Department of Expenditure Lok Nayak Bhawan, New Delhi
3. Special Secretary to Government, General Administration Department, Orissa Secretariat Building, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda
4. State of Orissa represented through its Commissioner-cum-Secretary to Government, Forest & Environment Department, Secretariat Building, Bhubaneswar, Dist - Khurda
5. Chief Conservator of Forests (Kendu Leaves) Orissa, Aranya Bhawan, Chandrasekharpur, Bhubaneswar-16, Dist-Khurda

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Respondents

By the Advocates

Mr. S. B. Jena, A.S.C.
Mr. K. C. Mohanty,
Govt. Advocate (State
of Orissa)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, Pravakar Mishra, who was selected by the Orissa Public Service Commissioner (OPSC) for the post of Cost Accountant (Class-I) under the Forest Department was posted as Cost Accountant w.e.f. 21.5.1977 in the Office of C.C.F. (Kendu Leaves), Orissa. That post is an isolated ex-cadre post carrying the pay scale of Rs.1150-1750/-, which was upgraded to that of Chief Cost Accounts Officer in the pay scale of Rs.1600-2000/-, and the applicant assumed the charge of that upgraded post on 6.1.1987. This pay scale was revised to Rs.2850-3900/- w.e.f. 1.1.1985 and further revised to Rs.3700-5000/- w.e.f. 1.5.1989.

2. The applicant filed this Original Application on 24.12.1999 praying for the following reliefs:-

"Either for issue of direction to Respondents to consider his case for appointment to the I.A.S. under the provisions of Sub-rule-2 of Rule-8 of the I.A.S.(Recruitment) Rules, 1954 retrospectively, for which he became eligible in the year 1990, or for issue of direction to Respondents to consider his case for promotion by creating a post in the Forest Department in the scale of Rs.18400/- - Rs.22400/-, at par with Chief Conservator of Forests (KL)/Advisor (Costs) under the Government of India, Ministry of Finance, Department of Expenditure".

3. The case of the applicant is that under sub-rule-2 of Rule-8 of I.A.S.(Recruitment) Rules, 1954 (in short Rule, 1954), a person of outstanding ability and merit serving in connection with the affairs of the State, who is not a Member of the State Civil Service of the State, but holds a Gazetted post in substantive capacity can be recommended for promotion to the I.A.S. cadre by the State Government, as against 5% quota of vacancies available in

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a year and for such appointment the officer concerned must have rendered 12 years in the Gazetted rank, of which five years in Class-I post and must be below the age of 54 years as on the 1st of April of the year of selection. Although the applicant had completed 12 years of service directly as a Senior Grade, Class-I Officer by the year 1990, his case was not recommended to the G.A. Department of the State Government (Respondent No.3) for onward transmission. In fact the G.A. Department (Res.3) in letter dated 13.10.1993 vide Annexure-8 called for the names of not more than two eligible and deserving officers of non-State Civil Services for being considered for promotion to I.A.S. by selection so as to reach on or before 30.11.1993. Though Respondent No.4 (Forest Department of the State Government) addressed letter to Respondent No.5 (CCF (KL)) in letter dated 15.11.1993 calling for the names, Respondent No.5 recommended the name of the applicant only on 30.11.1993 to Respondent No.4. In view of this late recommendation applicant's name could not be considered by Respondent No.3. The action of the authorities, according to applicant, is highly discriminatory.

It is the further case of the applicant that in view of his brilliant record, his original post of Cost Accountant was upgraded as Chief Accounts Officer in January, 1987. In response to an advertisement for filling up of the post of Deputy Director (Costs) published by the Ministry of Finance, he submitted his application on 14.7.1987, through proper channel. Respondent No.4, though forwarded his application did not furnish the up to date CCR dossiers, as a result of which his name could not be considered.

Similarly, when on 20.7.1991, an advertisement was published for the post of General Manager (Finance and Accounts) for appointment in O.S.E.B. in the scale of Rs.4800-6300/-, he applied for the post through proper channel. However, his application was not forwarded by Respondent No.4, though recommended by Respondent No.5. Same is also the case in respect of his application for appointment to the post of Director (Finance) in G.R.I.D. Corporation of Orissa, in response to an advertisement dated 16.5.1996. Again when the Chairman of the O.M.C. in letter dated 20.9.1996 wrote to Respondent No.4 seeking the services of the applicant for the post of General Manager (Finance), the applicant was not relieved in the absence of an experience hand, substituting him. Similarly his application for the post of Executive Director (Finance) in O.M.C. Ltd., in response to advertisement dated 18.1.1991 was also withheld by Res. No.4.

According to applicant, he having been directly recruited in a senior Class-I post of the State Government he is at par with Sr. I.A.S. Officers of the various Department. Bearing this in mind, the Government upgraded the post of Cost Accountant to Chief Cost Accounts Officer in the scale of Rs.1600-2000/-, which scale was enjoyed by I.F.S. officers in the rank of Conservator of Forests. This scale was subsequently revised to Rs.3700-5000/- w.e.f. 1.5.1989. By that time many contemporary I.F.S. officers, who were working in the senior time scale grade in the entry year of the applicant were promoted to the post of Conservator of Forests in the scale of Rs.4500-7500/-, which scale after the 5th Pay Commission report was revised to

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 Rs.16,400-20,000/-, whereas, applicant had been stagnating all these years in the same post of Chief Cost Accounts Officer in the scale of pay, now revised to Rs.12,000-16,5000/-.

According to recommendation of the 5th Central Pay Commission, no isolated post should be created/sanctioned in future in the Government. Posts sanctioned should always be a part of some organised cadre. If creation of a single post is indispensable, the efforts should be made to encadre such post in an organised cadre existing in some other Department/Ministry. Such an attempt needs/even at present, and the Ministries/Departments should review the isolated post with a view to encadre then in an organised cadre in the Ministry/Department, or outside it. On the basis of this recommendation, according to applicant, the Central Government decided that in the event of any Central Government posts, being left out without any allotment of revised pay scale in the report, it should be given the commensurate revised scale of pay as applicable for posts with similar entry, qualifications, duties and responsibilities duly retaining the horizontal and vertical relativity's in the organisation.

Thus, according to applicant, in the absence of any Rules prescribed for this isolated post, his case should be considered for promotion to an appropriate Grade in the scale of Rs.18,4000-22,400/- at par with Chief Conservator of Forests, now being held by one Shri Ambika Prasad Tripathy, who was working as Divisional Forest Officer (KL) on 21.5.1977, when the applicant held the post of Cost Accountant.

4. Respondent No.1 and 2, viz. the Union of India,

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represented through the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Trg. and Ministry of Finance, Department of Expenditure, though entered appearance had not filed any counter. Respondent No.5, though duly noticed had neither entered appearance nor filed any counter. Respondent Nos. 3 and 4 filed separate counters.

3. Respondent No.3, i.e., the General Administration Department of the Government of Orissa in their counter take the stand that name of the applicant was not sponsored by the Forest and Environment Department (Respondent No.4) for consideration to the I.A.S. in any year commencing from 1990. Hence question of his selection to the I.A.S. against the non-State Civil Service quota does not arise at all. Since all the vacancies belonging to non-State Civil Service quota of I.A.S. have been filled up by the candidates selected by the Selection Committee for the purpose there is no scope for the Respondents to consider the case of the applicant at this stage. Hence this Respondent opposes the relief sought for by the applicant to consider for appointing him to I.A.S. from the year 1990. Further the alternate relief prayed by the applicant for creation of a post in the scale of Rs.18,400-22,500/- and for his promotion to that scale is also opposed on the ground that such scale is admissible to I.F.S. Officers in the rank of Chief Conservator of Forests, after completion of the required number of years of service.

4. Respondent No.4 opposed the prayer of the applicant stating that the pay scale of I.F.S. Officers and their promotions are regulated by All India Services Rules and

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 Regulations, whereas the pay scale of Chief Accounts Officers and their promotions are regulated by the State Government Rules. Hence the post of Chief Cost Accounts Officers cannot be compared with I.F.S. and other cadre officers. I.A.S., I.F.S., I.P.S. and other All India Services officers are governed by specific statute and the persons joining in such services are required to undergo various recruitment tests and appropriate training. Hence comparison of case of the applicant with that of all India Services Officers is totally out of place. Mere fact that the work of Cost Accounts Officer can be managed by Conservator of Forests would not mean that the applicant would be eligible to pay scale as prescribed for I.F.S. officers.

7. In the rejoinder filed to these two counters, the applicant reiterated the facts mentioned in the Original Application in an argumentative form.

8. We have heard Shri K.C.Kanungo, the learned counsel for the applicant, Shri K.C.Mohanty, learned Government Advocate appearing for Respondent Nos. 3 and 4 and Shri S.B. Jena, learned Addl. Standing Counsel for Respondent Nos. 1 and 2. Also perused the records.

9. There is no dispute that the name of the applicant was not forwarded to Respondent No.3 at any time to be considered for selection to the I.A.S. as against the quota for non-State Civil Service Officers, holding Gazetted Posts. In order to be considered for recommendation under Rule-8 (2) of the I.A.S. (Recruitment) Rules, 1954, such non-State Civil Service Member/Officer must be a person of outstanding ability and must not have completed 54 years of age as on 1st

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April of the year when such vacancy/vacancies arise. This application was filed on 24.12.1999 and the applicant gives out his age to be 54 years. It is not clear whether he had completed 54 years by then and/or would be completing 54 years of age shortly thereafter. Be that as it may, the specific case made out in the counter filed by Respondent that as No.3 on 9.5.2000 no vacancy as against the quota for non-State Civil Service did exist and all the vacancies belonging to that quota had since been filled up and as such there is no scope for Respondent No.3 to consider the case of the applicant at this stage. In view of this statutory provisions, question of directing Respondents, specifically, Respondent No.3 to consider the case of the applicant for appointment to I.A.S. and that too retrospectively w.e.f. year 1990 would not at all arise. The prayer of the applicant in this regard cannot be acceded and therefore, the same fails.

10. As regards alternate prayer the applicant is an employee under the State Government in the scale of Rs.12,000 For -16,500/- creation of a post for him in the scale of Rs.18,400- 22,400/- at par with the Chief Conservator of Forests in the Forests Department of the State Government and/or Advisor (Costs) under the Government of India in the Ministry of Finance, Department of Expenditure, this Tribunal has no jurisdiction to give a direction to the State Government of Orissa to consider for creation of such a post, because, the applicant is still an officer working under the State Government and the post, which he wants to be created is a post under the Forest Department of the Government of Orissa. This Tribunal has nothing to do with the service conditions

of officers working under the State Government. Hence this prayer is outside the purview of this Tribunal and therefore, the same cannot be entertained.

11. So far as creation of a post carrying the pay scale of Rs.18,400-22,400/- under the Government of India, we observe that job evaluation for the purpose of granting higher pay is a matter to be decided by the Executive Government, as has been held by the Apex Court in the case of Union of India vs. Makhan Chandra Ray reported in 1997 (4) Supreme 287. Hence, the Tribunal should not assume the role of a recommending authority in the matter of this nature. The applicant, if so advised, may move the appropriate authority for creation of a post carrying that scale of pay.

12. In the result, we do not see any merit in this Original Application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
4.5.01
4.5.2001

4.5.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//