

10

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.580 OF 2000  
Cuttack this the 31<sup>st</sup> day of October:/2002

Narayan Mallik

...

Applicant(s)

-VERSUS-

Union of India & Others

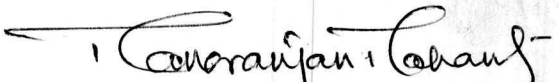
...

Respondent(s)

FOR INSTRUCTIONS

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

  
(B.N. SOM)  
VICE-CHAIRMAN

  
(M.R. MOHANTY) 31/10/2002  
MEMBER (JUDICIAL)

U  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.580 OF 2000  
Cuttack this the 31<sup>st</sup> day of October /2002

CORAM:

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

AND

THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...

Sri Narayan Mallik, 56 years,  
S/o. Late A. Mallik, Manikguda, PO-Manikaguda,  
Khurda - a Member of the O.P.S. I, Addl.S.P.,  
Vig. Berhampur Division, Berhampur, Dist-Ganjam

...

Applicant

By the Advocates

M/s. Aswini K. Mishra  
B.B. Acharya  
J. Sengupta  
P.R.J. Dash  
D.K. Panda  
G. Sinha  
C. Mohanty

- VERSUS -

1. Union of India represented through  
Secretary to Govt. of India, Ministry  
of Personnel, New Delhi
2. State of Orissa represented through  
Secretary to Govt. of Orissa,  
G.A. Department, Bhubaneswar
3. State of Orissa represented through  
Secretary to Government of Orissa,  
Home Department, Bhubaneswar
4. Union Public Service Commission through  
its Secretary, Dholpur House, New Delhi
5. M.C. Mohanty, Supdt. of Police, Vigilance, Sambalpur
6. B.B. Naik, Supdt. of Police, Deogarh

...

Respondents

By the Advocates

Mr. S.B. Jena, A.S.C.  
(Central) (Res. 1 & 4)  
Mr. K.C. Mohanty,  
Govt. Advocate  
(Res. 2 and 3)

----

J  
6


O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL) : Applicant, a Member of Orissa Police Service, was due to be considered for the post of Indian Police Service. But since he was not so considered, he filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for redressal of his grievances.

2. Applicant's date of birth being 4.11.1944, he attained 54 years of his age on 4.11.1998. He completed eight years of his services on 28.2.1998. Under the pre-amended I.P.S.(Appointment by Promotion) Regulations, 1955, the Applicant was available for being considered for promotion to I.P.S. cadre till 31.3.1998. However, under the amended I.P.S.(Appointment by Promotion) Regulation, 1955 (which came into force w.e.f. 1.1.1998) the Applicant was not available to be considered after 1.1.1998. In the aforesaid premises, the Selection Committee which met in September, 1998 (which was considering the officers for the vacancies of the year 1997 and also of the year 1998) did not consider the Applicant; because, by that time the Applicant had already crossed 54 years of his age.

3. It is the case of the Respondents that the Applicant was not available to be considered for the year 1997; because, he had not completed eight years of services and that he was not available to be considered for the vacancies of the year 1998; for he was more than 54 years of his age.

4. In order to repeal the aforesaid stand of the



Respondents, Shri A.K.Mishra, the learned counsel for the Applicant has taken refuse under the decision of the Hon'ble Supreme Court of India rendered in the cases of Y.V.Rangaiiah and Ors. vs. J.Srenivasa Rao & Ors. and P. Mahendran & Ors. State of Karnataka & Ors. (Reported in AIR 1983 SC 852 and AIR 1990 SC 405, respectively)

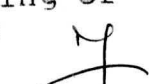
wherein it has pointedly been held that the law governing the field during the time of vacancies is to be followed in order to fill up the said vacancies and that amendment of the aforesaid Regulations, during inter agnum, would not affect the recruitment.

5. On the face of the aforesaid judicial dictums of the Apex Court of India, we examined the relevant portion of the old Regulations and that of the new(amended) Regulations. The relevant portion of the Regulation, as it stood before amendment, reads as under :-

5(3) "The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of April of theyear in which it meets ;

Provided that a member of the State Police Service whose name appears in the select list in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee, even if he has in the meanwhile attained the age of 54 years.

Provided further that a member of the State Police Service who has attained the age of fiftyfour years on the first day of April of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of April of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years".



The aforesaid Regulations were amended by Indian Police Service (Appointment by Promotion) Amendment Regulations, 1997. The relevant portion of the said amending Regulations, 1997, reads as follows :-

"3(i)               xx               xx               xx               xx

(ii) in sub-regulation (2) and in sub-regulation (3) for the word "April", wherever it occurs, the word "January" shall be substituted;

(iii) in sub-regulation(3), for the first proviso the following proviso shall be substituted, namely :-

"Provided that a member of the State Police Service whose name appears in the select list in force immediately before the date of the meeting of the Committee and who has not been appointed to in the select list shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty four years".

6. The aforesaid Rule position goes to show that previously April to March was being considered as the Recruiting Year and, after mid-session amendment, the vacancy years are being considered from January to December. It is also apparent from a plain reading of the second proviso to the amended Regulation 5(3), referred to above, that the rule makers being conscious of the fact that midway amendment to the Regulation (the amendment was notified on 31.12.1997) changing the date of eligibility in terms of age is likely to adversely affect some of the officers for no fault of theirs in case of delay in holding of the meeting of the Selection Committee, offered relief to this group of officers by amending the said Regulation by providing that "if he was eligible for consideration on

7

the first day of April of the year or of any of the years immediately preceding the year in which such meeting is held, but could not be considered as no meeting of the Committee was held during such preceding year or years". It is to be noted here that the applicant would have been eligible for consideration for promotion during the year 1998 as he had completed eight years of service on 28.2.1998 and his date of birth was 4th November, 1944, had Regulation 5(3) not been amended in December, 1997.

7. Applicant, having been qualified, both on the point of eight years of experience and being below 54 years of age, he was entitled to be considered for the vacancies of the year 1997 ; as mid-session amendment of Regulation was not to affect him. That apart, a plain reading of the relevant portion of the Regulation, as extracted above, goes to show that the rule making authorities were conscious of an aforesaid situation; as discussed in the foregoing paragraph.

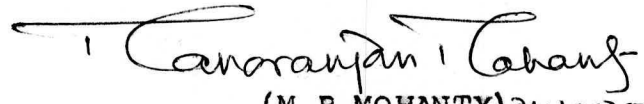
8. The Committee met on 16.09.1998 to consider the vacancies for the year 1997 and also for the year 1998. For the reason of the aforesaid provisions of the Regulations, the Committee ought to have considered the applicant as against the vacancy of the year 1997; as the vacancies of the year 1997 were to be considered in accordance with pre-amended provisions of the Regulations.

9. In the aforesaid premises, this Original Application is disposed of with direction to Respondents to hold a review D.P.C. for the vacancies of the year

7  
6

1997 and to consider the case of the Applicant. Since the Applicant is going to retire shortly, the Respondents should consider the case of the Applicant in a review D.P.C. during this November, 2002. There shall, however, be no order as to costs.

  
( B.N. SOM )  
VICE-CHAIRMAN

  
(M.R. MOHANTY) 31.10.2002  
MEMBER (JUDICIAL)

Biy/