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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NOS.350, 351, 352 & 353 OF 2001
Cuttack this the 29th day of August/03

IN O.A.No.350/01 Babulal Agrawal ... Applicant(s)

-VERSUS-

Union of India & Ors.... Respondent(s)

IN O.A.No.351/01 Ramachandra Pattnaik ... Applicant(s)

-VERSUS-

Union of India & Ors.... Respondent(s)

IN O.A.No.352/01 Balukeswar Sahoo ... Applicant(s)

-VERSUS-

Union of India & Ors.... Respondent(s)

IN O.A.No.353/01 Balabhadra Patra ... Applicant(s)

-VERSUS-

Union of India & Ors.... 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

29/08/2003

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS.350, 351, 352 & 353 OF 2001
Cuttack this the 29th day of August/2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M.R.MOHANTY, MEMBER(JUDICIAL)

...

IN O.A.350/2001

Babulal Agrawal, aged about 70 yrs.,
Son of Rameswardas Agrawal,
resident of Plot No.N/2/138, I.R.C.Village,
Nayapali, Bhubaneswar, Dist-Khurda

... Applicant

IN O.A.351/2001

Rama Chandra Pattnaik, aged about 69 years,
Son of Late Laxmidhar Pattnaik,
resident of Plot No.N/2/100, I.R.C.Village,
Nayapali, Bhubaneswar,
Dist- Khurda

... Applicant

IN O.A.352/2001

Balukeswar Sahoo, aged about 69 years,
Son of Late Kanduri Charan Sahoo,
resident of Plot No. N 2/46, I.R.C.Village,
Nayapali, Bhubaneswar, Dist-Khurda

... Applicant

IN O.A.353/2001

Balabhadra Patra, aged about 70 years,
Son of Late Bipra Charan Patra,
resident of Plot No.159, Saheednagar,
PO-Saheednagar, Bhubaneswar, Dist-Khurda

... Applicant

By the Advocates M/s. B. Rout
S.Rout
G.N.Misra
J.R.Rout
M.R.Rout

- VERSUS -

IN ALL THE O.As

1. Union of India represented through the Secretary to Government of India, Department of Personnel and Training, Ministry of Personnel, Pension and Public Grievances, Govt. of India, North Block, New Delhi - 1

2. Chief Secretary to Government of Orissa, At : Orissa Secretariat, PO-Bhubaneswar, Dist-Khurda

3. Special Secretary to Government, General Administration Department, Government of Orissa, At: Orissa Secretariat, PO-Bhubaneswar, Dist - Khurda

... Respondents

By the Advocates

Mr.K.C.Mohanty, Govt.Advocate (Res. No.2 & 3)

Mr.A.K.Bose, SSC (Res. No.1)

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: All these four Original Applications having arisen out of a common cause of action and the points to be determined by us being one and the same, this common order will govern all those four cases mentioned above. For the sake of convenience, we may as well deal with O.A. No.350/2001, which will be the guiding factor in respect of rest of the other three Original Applications.

2. Applicant, Shri Babulal Agrawal in O.A.No.350 of 2001 and others (i.e., S/Shri R.C.Pattnaik, B.K.Sahoo and Balabhadra Patra, applicants in O.A.Nos.351, 352 and 353 of 2001 respectively, who are retired I.A.S. officers belonging to Orissa Cadre) have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, seeking directions to Respondents-Department to appoint

them in Junior Administrative Grade (in short J.A.G.) of Indian Administrative Service (in short I.A.S.) either from 1.1.1990 or from 1.7.1990 and to grant all consequential service benefits, within a specified period. Their representations made in this regard to the Respondents-Department having been rejected, they have moved this Tribunal in all the four Original Applications for redressal of their grievances.

2. The facts in brief are that the applicant (Babulal Agrawal) was promoted to I.A.S. on 26.07.1985 and was assigned 1981 as his Year of Allotment. He was also confirmed w.e.f. 27.07.1986. The applicant retired from service w.e.f. 30.07.1990. After his promotion to I.A.S., on the recommendation of the 4th Central Pay Commission, the Government had introduced a new pay scale (i.e. Rs.3950-125-4700-150-5000/-) called Junior Administrative Grade (in short J.A.G.). For the purpose of promotion to J.A.G., the Government of India, vide its letter dated 31.3.1987 (Annexure-2) laid down that an officer would be allowed J.A.G. on 1st of July of each year in which he completed 9 years of service. However, with regard to officers appointed to the service by promotion/ selection, it was further laid down that the date of computing their eligibility to J.A.G. on completion of nine years would be the 1st day following the month in which the officer would complete the prescribed numbers of years of service. It was also laid down in that instruction that this grade was non-functional and would be admissible, without any screening, to all the officers in the Senior Time Scale, who had completed 9 years of service on the

said date. In the case of the applicant, as he had completed nine years of service on 26.7.1990 and retired from service on superannuation on 31.7.1990, he was not granted promotion to J.A.G. before his retirement because of the rule condition prescribed for promotion to J.A.G. in their letter dated 31.3.1987. The Government of India by their further letter No.11030/22/87-EIS(II) dated 6.7.1987, clarified that for computation of nine years of service, under Para-4 of the letter dated 31.3.1987 the concerned officer woule be given an option to count the period either from the month following the month in which he was appointed to service or from the month following the month he started officiating continuously in a cadre post immediately preceeding his appointment to the service. It was in March, 1999 that the applicant submitted a representation to Respondent No.2 having come across Govt. of India letter No.1130/22/91 dated 16.03.1993(issued by Respondent No.1) laying down the revised rules regarding promotion to J.A.G. By virtue of this new instruction, the members of the I.A.S. (both direct recruits and promotees) were allowed promotion to J.A.G. from 1st January of the year in which they would complete nine years of service, thus removing anomaly and hardship to the affected officers (Para-3 of the letter). By issuing this letter, Res. No.1 superseded the earlier instructions contained in its letters dated 31.3.1987 and 6.7.1987. The applicant, on the strength of this revised instruction approached Respondent No.2 to give him the benefit of J.A.G. from 01.01.1990, which was denied to him earlier and to re-fix his pay and other retirement benefit accordingly. The applicant had also

submitted a copy of this representation to Respondent No.1. In response to this, Respondent No.1, vide his letter dated 1.11.2000 informed the applicant that his representation had been considered by the Government, but it was not possible to accede to his request as their letter dated 16.3.1993 had no retrospective application. Aggrieved by the rejection of his representation the applicant has approached this Tribunal, inter alia alleging that denial of promotion to him to J.A.G. is discriminatory. He has also submitted the following arguments in support of his allegation. Firstly, that in similar such cases I.A.S. officers completing nine years of service have been given promotion to J.A.G. from the first of the month in which they have actually completed nine years of service but not from the 1st of the following month, in which the officers completed the prescribed numbers of years of service. He has referred to cases of promotion of S/Shri Biharilal Patnaik, M.M.Rath, S.K.Mukherjee and Parsuram Behera to J.A.G. Secondly, that the letters of Government of India at Annexures-2 and 3 have resulted in creating anomaly and discrimination, and provisions made in different paragraphs created ambiguity and confusion. Such as, the instructions contained in Para-3(b) of the letter at Annexure-2 dated 31.3.1987 contradicts the instructions contained in Para-4 of that letter in the matter of appointment of I.A.S. officers to J.A.G. Thirdly, that classification of the members of I.A.S. as direct recruits and promotees creates unreasonable classification which does not stand the scrutiny of law. He, therefore, has submitted that while the executive

authority is at liberty to frame rules/issue instructions, such rules should not offend the basic principles of equity and reasonableness with a group, as laid down in the Constitution. The intention of issuing rules/instructions should be rational. Fourthly, he has alleged that the Respondent Nos. 1 and 2 have not applied the instructions issued vide Annexure-2 uniformly to all the officers for promotion to J.A.G. Referring to the facts of the case in O.A.No.229/2000 filed by one Shri Biharilal Patnaik, he submitted that the State Government (Res. 2 and 3) in their counter have conceded that the principle laid down in Para-3(b) of Annexure-2 was applicable in the matter of entry to J.A.G. of the members of I.A.S. Shri Biharilal Patnaik, who was appointed in the I.A.S. from 1st August, 1982, was granted J.A.G. w.e.f. 1.7.1987 on the ground "as the year of allotment of the applicant is 1978, he was allowed J.A.G. w.e.f. 1st July, 1987". This view was supported by the Union Government in their counter. The applicant has, therefore, pointed out that whereas in the case of Shri Biharilal Patnaik, the Respondents had allowed J.A.G. from 1st July of the year in which he had completed nine years of service, the same benefit was denied to him although he completed nine years of service on 26.7.1990, his year of allotment being 1981. Fifthly, that in recognition of the fact that there were certain anomalies/ discrepancies in the matter of granting promotion to J.A.G. to promotee/direct recruit members of I.A.S., Respondent No.1 have revised those instructions w.e.f. 16.3.1993. There is, therefore, no reason why the Respondents should not allow him promotion to J.A.G. from 1.07.1990 in order

to remove anomaly. Finally, he has submitted that the rejection of his representation by the Respondents on the ground that their letter dated 16.3.1993 had no retrospective application was unreasonable, because in that circular of 1993 (Annexure-5) there is no contemplation of the date from which the instructions are to be applied nor there was any stipulation that past cases are not to be reopened. He has pointed out that in Para-5 of 1993 circular (Annexure-5) it is mentioned that the instructions contained in letters dated 31.3.1987 and 6.7.1987 may be deemed to have been superseded to the extent indicated in that letter. In other words, the circulars of 1987 has not been totally superseded but that the correction of the cut off date for computation of nine years of service only has been carried out. In these circumstances, he has argued, those two circulars have remained in force with modification of the cut off date from 1st July to 1st January, and therefore, his case can be reopened. He further argued that it is clearly indicated in the letter dated 16.3.1993 that due to fixing the cut off date as 1st July or 1st of the following month, anomalies had occurred leading to discontentment and discrimination and therefore, to remove anomaly and to give justice to one and all the cut off date has been taken to 1st January and not that by issuing the letter dated 16.3.1993, the Respondents have superseded their earlier circulars dated 31.3.1987 and 6.7.1987 starting a new era. With the above submissions, the applicant has prayed for direction to be issued to Respondents to appoint him to J.A.G. of I.A.S. w.e.f. 01.01.1990 or from 01.07.1990 and to grant all financial

benefits to him in consequence of his appointment to J.A.G. including the pensionary benefits.

3. Respondents have contested the application by submitting separate counters. Respondent Nos. 2 and 3 have opposed the application on the following grounds.

Admitting the facts of the case they have stated that in the amended I.A.S.(Pay) Rules, 1954, carried out in pursuance of the recommendations of the 4th Central Pay Commission it was provided that the I.A.S. officers would become eligible for appointment to J.A.G. on completion of nine years of service calculated from their year of allotment. As per the instructions issued by the Government of India vide Annexure-2 dated 31.3.1987 the crucial date with effect from which J.A.G. ... to be allowed was fixed from the 1st of July of the relevant year in which the concerned officer completed nine years of service. But in respect of State Civil Services Officers appointed to I.A.S., under the provisions of I.A.S. (Appointment by Promotion) Regulations, 1955, the crucial date was fixed as either 1st day of the month following the month in which such an officer was appointed to I.A.S. or from the 1st day of the month following the month in which he started officilating continuously in a cadre post immediately preceeding his appointment to the service. In this case, as per the instructions issued by the Government of India dated 6.7.1987, the applicant would have been eligible for appointment to J.A.G. w.e.f. 1.8.1990, but the applicant having retired from service with effect from 31.7.1990, the benefit of J.A.G. was not allowed to him. Hence, they have submitted that this O.A. is liable to be

rejected. With regard to allegation that the State Government of Orissa had applied instructions in the case of appointment of Shri Bihariral Patnaik to J.A.G. from 1st July, 1987, they have stated that they had committed an error in submitting the date of appointment of Shri Patnaik in the counter, which they had corrected subsequently by placing the correct date of appointment of Shri Patnaik before the Hon'ble Tribunal; and that O.A.229/02 filed by Shri Patnaik was rejected by the Tribunal in their order dated 14.8.2001, on the ground that the Government of India circulars have had only prospective effect. They have also repudiated the submissions of the applicant that the instructions contained in letter dated 16.3.1993 permitted opening of past cases. Referring to letter issued by Respondent No.1 dated 17.3.1994, they have pointed out that it was clarified by issuing that letter that since all financial sanctions had only prospective application, unless specified otherwise, the instructions contained in their letter dated 16.3.1993 would have only prospective effect and therefore, the same would not cover the past cases where J.A.G. had already been disallowed. In the circumstances they have opposed allowing him the revised salary in the J.A.G. and consequential refixation of pension based on revised pay.

Respondent No.1 in its counter have contested the averments made in this O.A. It has submitted that the applicant's year of allotment being 1981 he was eligible for J.A.G. with effect from 1.8.1990. In so far as applicants, viz., S/Shri R.C.Pattnaik, Balukeswar Sahoo and Balabhadra Patra in O.A.Nos. 351, 352 and 352 of 2001, respectively

are concerned, it has been submitted by Res. No.1 as under.

	Name	Year of Allotment	Date of eligibility
1.	R.C.Pattnaik	1981	1.1.1990
2.	Balukeswar Sahoo	1981	1.1.1990
3.	Balabhadra Patra	1979	1.1.1988

Res. No.1 further submitted that all these three officers were eligible for promotion to J.A.G. as per the prescribed guidelines before their retirement on superannuation from service. However, in case of the applicant, Shri Babulal Agrawal (in O.A.350/01) he was not eligible for promotion to J. A. G. before his retirement. Res. No.1 has, however, stated that as the applicant was senior to Shri R. C. Patnaik and others, (in relaxation of relevant instructions) he is entitled to be promoted to J. A. G. with effect from 01. 01. 1990 at par with his junior (S/Shri R.C. Pattnaik and Balukeswar Sahoo). Res.No.1 has further disclosed that the State Government of Orissa (Respondent No.2) had also been advised by them accordingly by virtue of letter dated 6.11.2001.

4. We have heard Shri B. Rout, learned counsel for the applicants, Shri K.C.Mohanty, learned Govt.Advocate appearing on behalf of the State of Orissa and Shri A.K. Bose, learned Senior Standing Counsel appearing on behalf of the Union of India in all the four OAs. We have also perused the records placed before us. On the basis of the submission made by Respondent No.1, the relief sought by

the applicant in this O.A. stands hall-marked. As they have disclosed that the Central Government have decided to relax the relevant instructions and decided to allow J.A.G. pay scale to the applicant with effect from the same date, i.e., 1.1.1990, when he became entitled to that grade, we hold that the relief sought by the applicant has been met in full. We, therefore, direct the State Government of Orissa to take further necessary action for revising the pay of the applicant accordingly. We note with regret that although Res. No.2 was advised by Res. No.1 vide its letter No.22012/19/01-AIS(II) dated 6.11.2001, no action was taken by Res. No.2 to redress the grievance of the applicant. Had they taken immediate action, on the advice of Respondent No.1, this litigation could have been avoided.

5. Before parting with this case, we would like to make few observations for the Respondents to take note of in the matter of laying down instructions for implementation of pay rules.

One of the allegations made by the applicant is that Para-4 of the Govt. of India letter dated 31.3.1997 is discriminatory and had resulted in an unreasonable classification among the members of the I.A.S. We have carefully examined the matter with reference to the instructions contained in Para-3(b) and Para-4 of the letter dated 31.3.1997 and found, in that letter the Government had made two sets of Rules for promotion to J.A.G. of I.A.S. (Para-3(b) in respect of direct recruit I.A.S. and Para-4 in respect of promotee officers). It hardly needs to be explained that all members of a service

are equal, irrespective of the source through which they are recruited to it. We are unable to appreciate as to how the members of the I.A.S. could be seen in two different compartments and two different sets of rules could be prescribed for promotion to the same scale. This differenciation was definitely unreasonable, discriminatory and bad both in law and in practice. Although the effect of rules/instructions contained in Para-4 of Annexure-2 dated 31.3.1987 has been negatived by issuing instructions vide letter dated 16.3.1993 (Annexure-5) but we are of the view that Para-4 being bad both in law and practice should be deleted from the statute book as the same is ultra vires of the provisions of Article 14 of the Constitution. We order accordingly.

With the above direction and observation, all these four Original Applications are disposed of, leaving the parties to bear their own costs.

29/08/2003

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE_CHAIRMAN

Bjy