

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.503 OF 2001
Cuttack this the 30th day of Nov. 2004

Suresh Ch. Mantri ... Applicant(s)

- VERSUS -

Union of India & Ors. ... 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 ? ✓

Seal
30/11/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Seal
(B.N. SOR)
VICE-CHAIRMAN

10

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CORAM:

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

Shri Suresh Ch. Mantri, aged about 53 years,
son of late Krushna Ch. Mantri - at present
Registrar, Coop. Societies, Orissa, Bhubaneswar
Dist-Khurda

By the Advocates	Applicant
	M/s.P. Acharya S.R.Pati P.K.Ray M.R.Mohanty

- VERSUS -

1. Union of India represented through the Secretary to Government, Department of Personnel and Training, New Delhi
2. State of Orissa represented through the Chief Secretary to Government of Orissa, Bhubaneswar, Dist-Khurda
3. Shri Raghunath Mishra, I.A.S.(Retd.), at present residing at Plot No.BJ-23, BJB Nagar, Bhubaneswar, Dist-Khurda

By the Advocates	Respondents
	Mr.U.B.Mohapatra SSC (Res.No. 2) Mr.T.Dash, G.A.(R.2) M/s.K.C.Kanungo S.Bhera R.N.Singh (Res. No. 3)

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Shri Suresh Ch. Mantri) an officer of Indian Administrative Service of Orissa Cadre has filed this Original Application being aggrieved by the action of the Respondents-Department in assigning him 1989 as his Year of Allotment in terms of proviso to Rule 3(3)(ii) of the I.A.S.(Regulation of Seniority) Rules, 1987 (in short Rules 1987) instead of 1988. His grievance

is that his representation against the aforesaid order made to the Chief Secretary to the Government of Orissa having been rejected vide order bearing No.14179 dated 28.4.2001, he has approached this Tribunal challenging the legality and propriety of the decision of the State Government with regard to Year of Allotment, which is of paramount consideration for his future promotion as well as service benefits. It is in this background, the applicant has prayed for the following reliefs:

- " i) To quash the rejection order dated 28.4.2001 of the Govt. of Orissa vide Annexure-7;
- ii) To quash the order dt.10.6.1997 of the Govt. of India fixing the year of allotment as 1989; and
- iii) To direct the Respondent Nos.1 and 2 to treat the applicant as appointed to I.A.S. cadre on 5.12.1996 (the date on which the person immediately above him in the select list was appointed and the applicant was deprived of such appointment because of usurpation of vacancy by Sri R.N. Mishra, Respondent no.3, who was given extension of service) by declaring the extension of service of respondent no.3 as null and void and at the most treating him as on 'Reemployment', and in the alternative, the applicant may be treated to have been appointed to I.A.S. cadre with effect 5.12.96 against the 50th vacancy available then; and to refix year of allotment of the applicant as 1988 accordingly".

2. The brief facts leading to the filing of this O.A. are that the name of the applicant was included in the select list for promotion to I.A.S. for the year 1995-96 putting his name at Sl. No.8 of 9 selected State Civil Service Officers. Out of this, 7 officers were given promotion to I.A.S. in the year 1996 itself and their

year of allotment was assigned as 1988. Respondent No.3 (Shri Raghunath Mishra) who was due to retire from service on 30.6.1996 was granted extension of service on public grounds for six months from 1.7.1996 to 31.12.1996. It is the further case of the applicant that he was posted as Collector and Dist.Magistrate, Jajpur and the State Govt. in the General Administration Department vide its Office order No.32079 dated 18.12.1996 had declared that the post of Collector, Jajpur held by the applicant is equivalent in status and responsibility to the post of Dist.Magistrate and Collector, provided in the I.A.S. cadre of the State (Annexure-6). The grievance of the applicant is that had the State Government not granted extension to Res. No.3, there would have been vacancy in the cadre during 1996 against which he could have been accommodated. It has been alleged by the applicant that extension granted to Res. No.3 was against the Govt. order dated 18.5.1975, which postulated that extension/reemployment should not be resorted to as such action led to denial of service benefits to the next person. Further the decision to grant extension of service to Res. No.3 had not had the approval of the cadre controlling authority as per the procedure laid down in this regard. He has also alleged that notwithstanding the grant of extension of service to Res.No.3, one cadre post was available to be filled up under promotion quota against which he could have been accommodated. His regret is that the Respondents did not offer the vacant post for being filled up on some vague ground. Referring to the letter dated 24.12.1996 of the Govt. of Orissa addressed to the Joint Secretary

to the Government of India, Department of Personnel & Training (Annexure-3), the applicant has submitted that it was admitted that out of 50 posts under promotion quota 49 officers including six non-State Civil Service Officers were in position. It was further stated that only one vacancy which was available was under selection quota, i.e., non-States Civil Services Officers quota, and therefore, the next two vacancies in the promotion quota would occur from 1.1.1992 after the retirement of two State Civil Service Officers and this how his year of appointment was shifted to 1997, resulting in year of allotment being 1989. With these submissions the applicant has approached this Tribunal for redressal of his grievance.

3. The Respondents have opposed the O.A. on the ground of limitation, and that the applicant had not filed any application for condonation of delay. He, in fact, had approached the Tribunal after lapse of four years of rejecting his representation by the Government vide its order dated 9.12.1996. The applicant filed another representation dated 9.6.2000 on the self-same ground, but the same was rejected by the State Government on 28.4.2001. As the representation of the applicant had already been rejected in December, 1996, by filing another representation on the self-same ground, he could not have the benefit of extended period of limitation. They have assailed that the applicant is guilty of suppression of facts for which the O.A. should be dismissed.

4. Referring to the case of Ramesh Chand Sharma

vs. Udhamp Singh Kamal and ors (reported in AIR 1999 SC 3837) the Respondents have urged that in view of above pronouncement of the Hon'ble Apex Court, this O.A. is hit by laches and limitation.

5. In his rejoinder, the applicant has rebutted the plea of the Respondents that the O.A. is barred by limitation. He has disclosed in his rejoinder that the earlier representation dated 30.9.1996, which was rejected by Respondent No.2 by his letter dated 9.12.1996 does not have any nexus with the present O.A. inasmuch as his representation dated 30.9.1996 was submitted prior to his promotion to the I.A.S. But subsequently questioning the legality and propriety of promotion of Res. No.3, he had submitted a series of representations to the State Government of Orissa, the last representation being dated 9.6.2000, which was rejected by the General Administration Department (Res. No.2) vide his letter dated 28.4.2001, whereupon he moved this Tribunal in the instant O.A. on 12.10.2001, which was well within the prescribed period of limitation after rejection of his representation which related to fixation of year of allotment and seniority. The applicant has further pointed out that he had to approach the Tribunal as the impugned letter dated 28.4.2001 of the State Government (Annexure-7) did not disclose any reasons; nor did it refer to the rejection his earlier representation dated 30.9.1996. It has further been submitted by the applicant that as the aforesaid order made by a public authority in exercise of statutory powers having public effect and civil consequence, the Respondent/

the State Govt. of Orissa was duty bound to assign the reasons for rejecting his representation. In support of his plea, the applicant has placed reliance on the judgment of the Hon'ble Apex Court in the case of Gobardhan Dash Bhanj vs. Commissioner of Police, Bombay (reported in AIR 1952 SC 16) and in the case of Mahendra Singh Gill vs. Chief Election Commissioner of India & Ors. (reported in AIR 1978 SC 851).

6. The points made by the applicant in his rejoinder have not been controverted by the Respondents either by filing additional counter or during oral argument. The reliance placed by the Respondents in the case of Remesh Chand Sharma v. Udhamp Singh Mamal (reported in AIR 1999 SC 3837) is of no avail as in that case the Hon'ble Apex Court ruled that admission of O.A. No. 631/94 by the Tribunal on August, 6, 1996, was without merit as the application was made three years after the cause of action and the Respondent had not submitted any application under Section 21(3) of the A.T. Act for condonation of delay and having not done so, the Respondent was not permitted to take up such contention later.

7. In the present case the fact of the case is that the cause of action of the present O.A. does not arise out of the letter of rejection dated 9.12.1996 issued by the State Government, but the letter of rejection dated 28.4.2001 (Annexure-7) rejecting his prayer for refixation of year of allotment and revision in seniority. That being the unrebutted fact of the case and the issue involved in the present O.A. being the legality and validity of Annexure-7

dated 28.4.2001, by no stretch of imagination, this O.A. can be said to be barred by limitation, and therefore, the plea of the Respondents in this regard is overruled.

✓ 8. On the merit of the case, two points have been urged by the applicant. The first point is that had the State Government not granted extension of service to Res.3 he could have been inducted to I.A.S. cadre being the eighth officer in the select list during the year 1996. This point stands uncontroverted. In the counter, the State Government has not clarified the matter very clearly (at Para-4 of the counter). By drawing the dates of appointments of the officers to I.A.S., whose names found place in the select list of 1995-96, they have stated that the applicant, Shri Suresh Ch. Mantri, got appointment to I.A.S. with effect from 7.1.1997. The point made by the applicant is that his immediate senior Shri Arunodaya Swain got appointment to I.A.S. with effect from 5.12.1996. But had Res.No.3 not been granted extension Shri Surya Narayan Panda (Sl.No.3) would have got promotion with effect from 1.7.1996, Shri P.Ray from 26.8.1996, Shri Danda Nirodha Mishra from 22.10.1996, Shri Arunodaya Swain from 22.10.1996 and in the process the applicant (Shri S.C. Mantri) would have been promoted from 5.12.1996. It is thus clear that the determination of the year of allotment in respect of the applicant is directly connected with the extension of service to Shri R.N.Mishra (Res.No.3).
✓ It is evident that while granting extension of service to Res.3, the State Government of Orissa had not kept in

mind its implication on the service prospects of other officers aspiring for promotion, which has led to this problem. In the face of the instructions issued by the Department of Personnel & Administrative Reforms (vide letter dated 18.5.1978) that extension of service must be clearly in the public interest and satisfying one of the two conditions set in that letter and that no Government servant, who is on extension of service after the prescribed date of retirement should be promoted to another post during the period of extension of service, it is of no avail for the Respondents to take the position, as they have done in their counter, that the State Government reserves the right under Rule-16(2) of the AIS(DCRB) Rules, 1958 to grant extension, because, it was the State Government who should have acted within the four corners of instructions contained in that letter under Annexure-2 dated 18.5.1978 issued by the Government of India in supersession/modification of the provisions made in this regard earlier in AIS(DCRB) Rules, 1958. Further, the action of Res.No.2 was devoid of jurisdiction as the promotion of Res.3 could take place, because, he was retained in service on extension after the prescribed date of retirement. This was in clear violation of the instructions in the matter of effecting promotion to I.A.S., even if for argument's sake it is accepted that the State Government had right to grant extension of service to Res.3 under Rule-16(2) of AIS(DCRB) Rules, 1958. Viewed from this angle, we have no hesitation to hold that the said action of the State Government was de hors the rules/instructions.

9. The select list for promotion of SCS officers to I.A.S. was prepared anticipating 9 vacancies in which the

retirement vacancy caused by the retirement of Res. No.3 with effect from 30.6.1996 was anticipated. Therefore, the subsequent decision of the State Government to reduce the number of vacancies by one by the reason of granting extension of service to Res. No.3 was ~~not~~ surely not done in public interest; it might have certain individual interest. We are not impressed by the argument of the State Government that in terms of proviso under Rule-16(2) of AIS(DCRB) Rules, 1958, the State Government had been empowered to grant extension of service to any member of service for a period of six months without the approval of the Government of India. Firstly, this authority earlier available with the State Government had been circumvented by the instructions issued by the Government of India vide its letter dated 18.5.1978 (as referred to above) and, secondly, having notified the retirement vacancy of Res.3 as anticipated vacancy for the purpose of preparation of select list for the year 1996, it was not within the competency of Res.2 to deviate from the select list without due consultation with the cadre controlling authority. To that extent, the decision of the State Government in the matter of granting extension of service to Res.3 appears to be without any legal basis.

10. However, notwithstanding the decision taken with regard to continuance of Res.3 in service, an option was available with the State Government to solve ~~the~~ problem by granting promotion to the applicant from an earlier date, because, under the promotion quota, one vacancy was available to be filled up. The applicant has brought to our notice a letter written by Res. No.2 to Res.1 (Annexure-3 dated 24.12.1996) wherein it was stated

that out of 50 posts to be filled up by promotion, 49 officers including 6 SCS officers were in position as per the list enclosed. But they did not suggest promotion of the applicant against the available vacancy on the plea that the available vacancy related to selection quota of I.A.S. The learned counsel for the applicant has drawn our notice to the provision of Rule-8 of Regulation -9 of I.A.S. (Appointment by Promotion) Regulations and stated that Res. 2 had misrepresented the facts of the case to Res. No. 1 and thereby denied promotion to him. He has submitted that the plea of Res. 2 was that one vacancy available under promotion quota related to selection quota of I.A.S. is a misleading statement, because 33 1/3% of the total cadre strength was available for promotion of SCS officers to I.A.S., i.e., to the senior time-scale of I.A.S. and it did not speak of any selection quota. According to him, the argument of Res. 2 appears to be that as per Regulation 9, of the posts available under promotion quota, 15% posts were to be filled up by non-SCS officers. Contradicting this contention, he submitted that the rules do not specify that seven posts (15% of 50 posts) are to be always filled up by non-SCS officers. The fact of the matter in terms of Regulations is that out of 50 promoted officers, not more than seven should be selected from the non-SCS officers. In other words, the number could be less than seven, but never more than seven. If this meaning of the Regulation was followed by Res. 3, his case for promotion could not have been ignored.

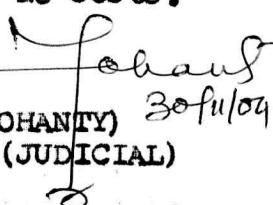
11. We have carefully considered the relevant provision of Regulation 9 specifying the composition of promotion quota to I.A.S. Undoubtedly, under promotion quota to I.A.S. two feeder groups, viz., (S.C.S.) State Civil Service/Officers and Non State Civil Service (NSCS) Officers are available. It has been admitted by Res. No.2 that the total number of promotee officers in 1996 was ✓ 49 leaving scope to induct one more promotee officer. In their letter dated 24.12.1996, to the Govt. of India, they have stated that "there is only one vacancy available now which relates to select quota of I.A.S.". We are unable to understand the meaning of this statement, as there is no mention of selection quota within the promotion in quota/ Regulation 9 of the promotion regulations. The matter has not been clarified in the counter either. However, it has also been stated in the counter that "it cannot be transferred to promotion quota". The fact of the matter is that 50 posts were under promotion quota in which there was further distribution of minimum 43 posts to be filled up by the SCS officers and not more than 7 by the non SCS officers. In other words, the number of SCS officers could be more than 43 whereas the number of Non SCS officers could not be more than seven. Hence it is clear that one post which was available in December, 1996 under the promotion quota could have been utilized by promoting a State Civil Service Officer as no non SCS officer was available in the panel.

12. From the above discussion, it is clear that the applicant had suffered double jeopardy at the hands of the

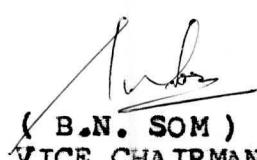
Respondents-Government. We have found no worthwhile reason either in terms of the promotion Regulations or in terms of the cadre management principles the rationale to deny the applicant promotions to I.A.S. during the year 1996 despite the fact that there was one vacancy available under promotion quota.

13. Having regard to what has been discussed above, we direct the Respondents to reconsider the representation of the applicant in the light of the observations made by us above and grant him the service benefits as due to him by assigning him the year of allotment as 1988. This exercise shall be completed within a period of 150 days from the date of receipt of this order.

In the result, this O.A. is disposed of as above. No costs.


(M.R. MOHANTY) 30/10/94

MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

BJY