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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.228 of 2003  
Cuttack, this the ~~28~~ day of May, 2008

C O R A M:-

THE HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)  
AND  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

Baidyanath Jena, aged about 63 years son of Late Nilakantha Maharatha, At-Plot No. 336/C, Sector-6, C.D.A., Cuttack-14.

.... Applicant

By legal practitioner - M/s. B.S.Tripathy, M.K.Rath, J.Pati,  
S.Mohapatra, Counsel.

-V e r s u s-

1. Union of India represented through the Secretary, Ministry of Home Affairs, New Delhi.
2. State of Orissa, represented through the Secretary, General Administration Department, Bhubaneswar, Dist. Khurda.
3. The Principal Secretary to Government of Orissa, Home Department, Bhubaneswar, Dist. Khurda.

.... Respondents

By Legal practitioner - Mr. U.B.Mohapatra, SSC  
Mr.A.K.Bose, GA.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):

The Applicant was appointed as Deputy Superintendent of Police in OPS cadre on 08.12.1966 vide Home Department Notification No. 24450/P dated 04.10.1966. Subsequently, he was appointed to the Indian

Police Service by way of promotion on 01.12.1984 vide Government of India, Ministry of Home Affairs Notification No. I/14013/17/84-IPS dated 01.12.1984 and retired on reaching the age of superannuation on 31.05.2000 (A/N). Earlier he had filed OA No. 394 of 1994 seeking direction to the Respondents to give him the benefit of the years of service rendered in officiating capacity in the Indian Police Service especially in respect of Senior Time Scale with retrospective effect and selection grade from the date it is due to the applicant along with all consequential service benefits. The said matter was dismissed by this Tribunal in order dated 25<sup>th</sup> May, 2000. Simultaneously, by filing Original Application No. 507 of 1994 he had pointed out that though his name was in the zone of consideration but for the adverse remarks for 1974-75 he was not empanelled by the Selection Committee for the years 1974-75 and 1975-76 and had accordingly, prayed for direction to the Respondents to consider his case for promotion to Indian Police Service (IPS) with retrospective effect along with all consequential service benefits. The said OA was dismissed by this Tribunal in order dated 8<sup>th</sup> May, 2000. Now he has filed the present O.A. citing Annexure-A/4 dated 06.05.1999 under which adverse remarks recorded in the ACRs for the periods 1974-75, 1975-76 and

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1989-90 have been expunged but in spite of several representations his case has not been considered for promotion retrospectively when his juniors were promoted to IPS cadre. Hence, in this OA, he has sought the following relief:-

- "A. To pass appropriate orders directing the respondents to consider the case of the applicant with retrospective effect and give him the financial benefits. (sic)
- B. To pass appropriate orders directing the Respondents to provide all the service and consequential benefits due to the Applicant.
- C. To pass such further order/orders as are deemed fit and proper in the facts and circumstances of the case and allow the OA with costs.

2. Two separate counters have been filed by two Respondents namely Respondent No.2 and Respondent No.3 but no counter has been filed by Respondent No.1. Respondent No.3, opposed the prayers of applicant both on merit as also on the question of maintainability being hit by the principles of *res judicata*. Similarly, Respondent No.2 has opposed the prayer of the applicant stating that though the case of the applicant was duly considered by the Selection Committee, he was not found fit prior to the date of recommendation. When his case was not recommended by the selection committee, he cannot claim any benefit at par with others.

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3. Heard Mr. B.S.Tripathy, Learned Counsel for the Applicant, Mr.A.K.Bose, Learned State Government Advocate and Mr. U.B.Mohapatra, Learned Senior Standing Counsel for the Union of India appearing for Respondent No.1 and perused the documents placed on record including rules on the subject.

4. Relying on the averments made in the pleadings, Learned Counsel for the Applicant has argued that the action of the Respondents is not sustainable as there was no reason assigned as to why the committee did not find the applicant suitable for all these years starting from 1975 to 1982 and that though the applicant was included in the select list since 1981 he was promoted to IPS cadre only in the year 1984 as because of the adverse remarks. Since the adverse remarks have been expunged, his case ought to have been considered by the Respondents for his retrospective promotion. This was strongly objected by the Learned Counsel for the Respondents on the ground that when this Tribunal after taking note of all the grounds, had dismissed the prayer of ante-dating his date of promotion to IPS cadre, and no appeal/writ/review was preferred by applicant against the said order, the Applicant is estopped under law to take the same plea once again in the

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present OA. As regards the expunction of adverse remarks, he has argued that according to applicant the adverse CCRs of the applicant were expunged 6.05.1999 but he has approached this Tribunal only on 27.01.2003 without any application for condonation of delay or explanation and the explanation given that he has been making consecutive representation is of no answer to save the limitation as provided under section 21 of the Administrative Tribunals Act, 1985. Hence, Learned Counsel for the Respondents has prayed for dismissal of this OA.

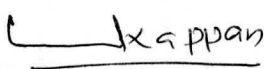
5. We have considered the rival submissions of the parties made by them with reference to the pleadings made in this Case and we find that the Applicant has not made the so called juniors as parties in this O.A. As per Rules, State cadre officers are included in the IAS/IPS according to their quota. If direction is given for inclusion of the name of the applicant when the juniors of applicant were included in the cadre, then that will be over and above the quota allotted and available in the promotional quota and in that event one has to be reverted. But it is not known as to whether they are still in service or not; especially in absence of parties. As regards merit of the matter it is seen that the grounds taken in this OA were already taken by the

Applicant in earlier OA and after taking note of the same, this Tribunal rejected the prayer of Applicant. It is also seen that the adverse CCRs pertaining to the year 1974-75, 1975-76 and 1989-90 were expunged by order dated 06.05.1999 (Annexure-4). According to Applicant he has been agitating his grievance before his authority till filing of this OA on 27<sup>th</sup> January, 2003. He has filed this OA without any petition seeking condonation of delay. It is no more *res integra* that repeated representations would not save limitation and in this connection, it would suffice to quote the decision of the Hon'ble Apex Court in the case of **State of Tamil Nadu v Seschachalam, 2007 (9) SBR 401**, That apart it has been held by the Hon'ble Apex Court in the case of U.P.Jal Nigam and Another v Jaswant Singh and Another, (2007) 1 SCC (L&S) 500 that laches and delay have been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution and when a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years.

6. Law is well settled that ordinarily Courts/Tribunal should not interfere with the decision of the selection committee unless *mala fide* or any other circumventing circumstances are pointed out by the party aggrieved. It

has been held by the Apex Court in the case of Union of India and another v A.K.Narula, (2008) 1 SCC (L&S) 656 that when the process of assessment is vitiated either on the ground of bias, *mala fides* or arbitrariness the selection calls for interference. If DPC has proceeded in a fair, impartial and reasonable manner courts/Tribunal should not interfere in the decision. Discretion has also been given to DPC to make its own assessment. Since according to the Respondents on the basis of assessment of selection committee the applicant was excluded from select panel, interference in the matter, after expiry of more than two decades would tantamount to unsettling a settled thing which is impermissible especially in absence of any such pleadings of *mala fide* or bias on the part of the members of the selection committee.

7. In the light of the discussions made above, we find no grounds to interfere in the matter both on merit as well as on the ground of law of limitation. Accordingly, this OA is dismissed by leaving the parties to bear their own costs.

  
 (JUSTICE K. THANKAPPAN)  
 MEMBER (JUDICIAL)

  
 (C.R. MOHAPATRA)  
 MEMBER (ADMN.)