

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 02 OF 2004
Cuttack this the 4th day of Nov./ 2004

Pramod Chandra Patnaik ... 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.

(M.R.MOHANTY)
MEMBER (JUDICIAL)

Subhas
(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

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

Sri Pramod Chandra Patnaik aged 53 years,
Son of late Gobind Chandra Patnaik
at present working as Managing Director,
Orissa Rural Housing & Development Corporation
A member of the Orissa Administrative Service
(Senior Grade in Super Time Scale) permanent
resident of At/PO-Athagarh, Dist-Cuttack

Applicant

By the Advocates

M/s .R.K.Rath
N.R.Rout

- VERSUS -

1. Union of India represented through the Secretary, Ministry of Personnel, Public Grievance and Pension, Government of India, Department of Personnel & Training, North Block, New Delhi-110 001
2. State of Orissa through the Chief Secretary to Government of Orissa, Bhubaneswar-751001, District-Khurda
3. Union Public Service Commission represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi
4. Sri Raj Kishore Jena, O.A.S., Secretary to Lokpal, Office of Lokpal, Bhubaneswar, District-Khurda
5. Sri Manoranjan Mishra, O.A.S., CBI & Ex-Officio Additional Secretary to Government, General Administration Department, Bhubaneswar, District-Khurda
6. Sri Krishna Chandra Mohapatra, O.A.S. District Magistrate & Collector, At/PO/Dist-Khurda
7. Sri Jagadish Prasad Agarwala, O.A.S. Managing Director, Orissa Smal Scale Industries Corporation, Madhupatha, Cuttack, Dist-Cuttack
8. Sri Pramod Kumar Pattnaik, O.A.S., District Magistrate and Collector, Nuapada, Dist-Nuapada
9. Sri Jyoti Prakash Das, O.A.S. District Magistrate and Collector, Jharsuguda, Dist:Jharsuguda
10. Shri Balakrishna Sahoo, O.A.S. Spefial Secretary to Orissa Public Service Commission, Cantonment Road, Cuttack, Dist-Cuttack

Respondents

By the Advocates

Mr.U.B.Mohapatra, SSC
(Res. No. 1 & 3)

Mr.T.Dash, G.A. (Rs. 2)

M/s. K.K.Jena
A.K.Biswal
A.K.Behera
(Res. No. 7)

M/s. B.K.Dash
R.C.Swain
G.R.Ray
(Res. No. 10)

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Assailing the legality, validity and propriety of notification dated 6.2.2004 (Annexure-4) wherein private Res. Nos. 4 to 10, who are the members of the State Civil Service of Orissa have been promoted to the Indian Administrative Service against the vacancies of the year 2002, applicant (Shri Pramod Chandra Patnaik) a member of the Orissa Administrative Service (Senior Grade in Super Time Scale) (in short O.A.S. (S.G. in S.T.) has filed this Original Application under Section 19 of the A.T.Act, 1985, with the following reliefs :

"...direct and declare that the Respondents 1 to 3 are bound to promote the applicant to I.A.S. ahead of the Respondents, for the year 2002, with all arrears of benefit and consequential relief, direct that the Applicant is entitled to be placed above the Respondents in terms of seniority, specifically above the Respondents 4, 5, 7 and 10, and further be pleased to hold that the Respondents 4, 5, 7 and 10 are not even entitled to be considered and recommended for I.A.S. and any recommendation made in their favour is liable to be quashed, and further be pleased to grant such other relief as may be deemed fit and necessary. And quash Annexure-4 dated 6.2.2004".

2. Respondent Nos. 2 and 3, i.e., State of Orissa through the Chief Secretary and Union Public Service Commission, respectively, have filed their counters separately contesting the prayer of the applicant. Private Respondent Nos. 7 and 10, viz., S/Shri Jagadish Prasad Agarwala and Balakrishna Sahoo have also filed their respective counter-affidavits rebutting the claim of the applicant.

3. We have heard the learned counsel for the parties at great length and also perused the materials placed before us.

4. Shorn of unnecessary details, it would suffice to reduce it to writing that recently this Bench had had the occasion to deal with a matter wherein the promotion of private Respondents (4 to 10) to the grade of Indian Administrative Service, who are also the very same private Respondents in the instant O.A., vide notification dated 6.2.2004 was under challenge under similar facts and circumstances as raised herein. Having heard that matter in detail in O.A.No. 1255/03 (Shri A.K. Dash vs. Union of India & Ors.), this Tribunal, in its order dated 3rd November, 2004, made the following observation in Para-11 of that order.

" However, certain startling facts have been brought to our notice by the applicant in his application as well as by filing an affidavit separately that some of the officers whose names find place in the select list did not enjoy blemishless service career and therefore, categorisation of some of them as 'Outstanding' has caused disappointment and disgruntlement. Undoubtedly, an

officer to be selected from the State Civil Service to the Indian Administrative Service has to be an officer of spotless service record, striding tall over his peers. He should be like Cessar's wife, beyond suspicion. Nodoubt 'to err is human'. But if because of erring in performance of official duties someone had to receive statutory punishment order, his classification as 'Outstanding' would not receive acceptance at any platform - much less in public estimation. It is, therefore, necessary that the selection procedure should be such that it will be able to scan through and detect, eliminate such unacceptable ones. We have no doubt that had the State Government developed the system of keeping punishment orders in A.C.R. folders and had laid down the procedure that all instances of bad work or conduct including punishment received should invariably be reflected in the confidential report of the officer concerned, such omission, as has been pointed out in this case could not have been taken place and this type of incongruity in categorisation of officers as 'Outstanding', although visited with punishment, could have been avoided".

5. In Para-12 of the order in the aforesaid, this Tribunal further observed as under :

" This also brings to fore another point for consideration by Res. Nos. 1 and 3 that for selection of officers from State Civil Service to Indian Administrative Service, consideration of confidential reports should not be limited to five years only. It should be atleast extended to eights years of service, i.e., the minimum period of qualifying service that a State Civil Service Officer has put in to be considered for selection. However, in case an officer is to be graded as 'Outstanding', we recommend that the ACRs in respect of such an officer should be scanned for his entire service period to see that his categorisation as 'Outstanding' can never be called in question by anyone on the

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ground once upon a time, he did not enjoy a very good service record. If the officer to be categorized as 'Outstanding' is put to such a rigorous test, it will instill greater public acceptability and lesser amount of friction and litigation".

6. Having so observed, this Tribunal directed the Respondents as under :

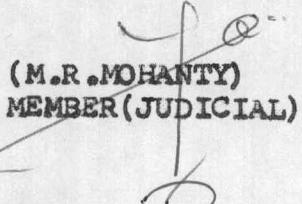
" For the reasons that we have discussed above, we direct the Respondents to convene a review meeting of the Selection Committee to consider the punishment orders passed against some of the officers in the zone of consideration and to make fresh list of officers for promotion to I.A.S. for the year 2002 in the light of the observations as made above. In effect, we hereby quash the orders of promotion of O.A.S. officers to I.A.S. as ordered on 6.2.2004 vide Annexure-10."

7. As indicated earlier, the facts and circumstances and the points to be decided in the instant O.A. being one and the same as that of the O.A.No.1255/03 disposed of on 3.11.2004 by this Tribunal, and more particularly when CRS of some of the officers although awarded punishment and/or censure were not taken into consideration by the Selection Committee, which is the main thrust of this O.A., we have no doubt to hold that the selection made by the select committee is vitiated and such is the consequence with impugned notification dated 6.2.2004 (Annexure-4) emanating therefrom.

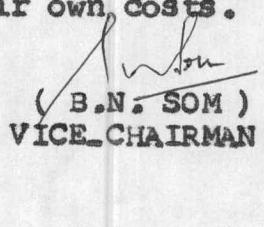
8. For the foregoing, while quashing the impugned notification dated 6.2.2004, we direct the Respondents to convene a review meeting of the Selection Committee to make

fresh list of officers for promotion to I.A.S. for the year 2002 in the light of the observations as made above and in O.A.No.1255/03.

In the result, this O.A. is disposed of as above, leaving the parties to bear their own costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)

BJY


(B.N. SOM)
VICE-CHAIRMAN