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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.405 OF 2004
CUTTACK THIS THE 22nd DAY OF Sept' 2005

Pradeep Kumar Panda

Applicant(s)

-VERSUS-

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

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

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

2/09/05

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

ORIGINAL APPLICATION NO.405 OF 2004

Cuttack this the 22nd day of Sept 2005

CORAM:

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

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Pradeep Kumar Panda, aged about 56 years, S/o.Sri Bidyanath Panda, resident of Village-Jhadeswar Kadei, PO-Uchapada, Dist-Cuttack – at present serving as Collector & District Magistrate, Kendrapara

Applicant

By the Advocates :

M/s.S.K.Das

S.S.Swain

R.Subudhi

-VERSUS-

1. Union of India represented through the Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, (Department of Personnel & Training) North Block, New Delhi-110001
2. State of Orissa represented through the Chief Secretary to Government of Orissa, Bhubaneswar, Dist-Khurda
3. Union Public Service Commission represented through it's Secretary, Dholpur House, Sahajahan Road, New Delhi

Respondents



By the Advocates :

Mr.U.B.Mohapatra,SSC
Mr.B.Dash, A.S.C.

ORDER

MR.B.N.SOM, VICE-CHAIRMAN: Shri P.K.Panda, an officer of the State Civil Services, Orissa, presently serving as Collector and District Magistrate, Kendrapara, has filed this Original Application being aggrieved by the illegal action of the Respondents refusing to consider his case for recruitment by promotion to the Indian Administrative Service (in short I.A.S.) for the year 2002 in place of Shri S.N.Sethi, who prematurely had passed away on 27.8.2003, after his name was included in the list of suitable officers prepared by the Selection Committee under Regulation 5 of the I.A.S. (Appointment by Promotion) Regulation 1955, but before the same was approved by the Union Public Service Commission (U.P.S.C.) under Regulation 7. He has prayed for the following relief:

- " (a) to admit this application;
- (b) to call for the records of the Selection Committee and the recommendation of the State Government, the recommendation of the Central Government and the relevant record from the Union Public Service Commission containing the representation dated 09.09.2003 Annexure-1;





(c) after hearing the parties direct the respondents to consider the applicant's case for promotion to the Indian Administrative Service for the year 2002, and

(d) pass such other order (s) as may be deemed fit and proper in the facts and circumstances of the case".

2. The case of the applicant in short is that the Respondents determined eight vacancies under promotion quota of I.A.S. for the year 2002, for which a list of 8 officers belonging to the State Civil Services was prepared as per Rule 4(2)(b) read with Rule 9 of the Indian Administrative Service (Recruitment) Rules, 1955. The Selection Committee held its meeting on 13.8.2003. The allegation of the applicant is that the Selection Committee did not act in terms of Rule 5(1) to the extent that the meeting of the Selection Committee for preparing the panel for the year 2002 was held only on 13.8.2004. The list of eight officers prepared by the Committee contained the name of one Shri S.Sethi, who, however, prematurely expired on 27.8.2003 before that list could be approved by the U.P.S.C. under Regulation 7(2). The applicant being immediately junior to said late Sethi in the seniority list, submitted a representation dated 9.9.2003 to the Respondent No.3 for inclusion of his name in the list

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of officers suitable for promotion to I.A.S. A copy of this representation was also submitted to Respondent No.2(State Government). In the meantime, the Government of India had issued notification dated 22.1.2004 appointing seven officers of the State Civil Services against the vacancies of the year 2002 under Rule 8(1) of the I.A.S. Recruitment Rules 1954 read with Regulation 9(1) of the I.A.S. (Appointment by Promotion) Regulation, 1955. As the 8th vacancy in the State cadre of I.A.S. for the year 2002 remained vacant, the applicant has approached the Tribunal to direct the Respondents to consider his case against the said vacancy.

3. The Respondents have opposed the O.A. by filing counters separately. The thrust of the submission of the Respondents is that the applicant was duly considered by the Selection Committee being in the zone of consideration, but his name could not be included on the basis of merit and seniority parameters set by the Select Committee for this purpose. With reference to his specific request to consider his case against the vacancy that had occurred on account of the death of Shri S.Sethi, the Respondents have stated that as per the advice of the Govt.

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of India, the slot of an expired officer cannot be filled up by the next officer as this would be beyond the permissible size of the Select List. Res. No.2 has also submitted that after considering the representation of the applicant, the State Government had forwarded the same to the UP.S.C. vide its letter dated 24.9.2003 for taking an appropriate decision, in response to which the UPSC vide their letter dated 25.11.2003 communicated that the Commission had approved the recommendations of the Selection Committee which met on 13.8.2003 without any modification, holding that "the slot of an expired officer could not be filled up by the next officer as that would be beyond permissible size of the Select List of 2002".

4. From the above facts as submitted by the Respondents in their counter, it is clear that the representation of the applicant was considered by the Respondents and that the decision of the Commission under Regulation 7(2) has been communicated both to Res. 1 and 2. In his pleadings and during oral submission, it has been submitted by the learned counsel for the applicant that the Commission are empowered under Regulation 7(2) "to make any change in the list received from the

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State Government, and therefore, the Commission ought to have made the change as suggested by the applicant in his representation dated 9.9.2003. We have perused the provisions of Regulation 7(2) as also the reason assigned by Res.1 (Annexure-R/3) and Res.3 (Annexure/R2/1) for not acceding to the request of the applicant in his representation dated 9.9.2003. The Respondents have stated that acceptance of the prayer made by the applicant would have resulted in preparation of a list of nine officers for the year 2002 whereas as per Rule 4(2)(b) of I.A.S. Recruitment Rules read with Regulations 5(1) of the I.A.S. (Appointment by Promotion) 1955, the maximum size of the select list for the year 2002 could not have been more than eight. We had also during oral argument made anxious query with the learned counsel for the applicant as to whether under the I.A.S. (Appointment By Promotion) Regulations 1955, there is any provision for review of a select list on account of death of an officer, whose name was included in the select list before the said select list could be considered by the Commission or whether there is any provision in the Rules/Regulations for carrying out substitution in a select list after its preparation on account of death or any such unforeseen

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eventuality. We received no affirmation to our query. Viewed from this angle, we do not find any merit to accede to the prayer of the applicant that the UPSC ought to have changed/modified the select list on account of the death of Shri S.Sethi, whose name was in the select list.

For the reasons discussed above, the O.A. fails. No costs.

Yours
21/09/05

(M.R.MOHANTY)
MEMBER(JUDICIAL)

Subba

(B.N.SOM)
VICE-CHAIRMAN