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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO.245 & 246 OF 2005

Cuttack this the 26th day of August, 2008

Sri Kulamani Rout (In OA No.245 of 2005)

Sri Rabindra Kumar Mohapatra (In OA No.246 of 2005).....

..... Applicant(s)

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench of CAT or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO.245 & 246 OF 2005

Cuttack this the ~~26th~~ day of August, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

IN O.A.NO.245 OF 2005

Sri Kulamani Rout, aged about 58 years, Son of late Udayanath Rout,
At/PO-Maniabandh, PS-Badamba, Dist-Cuttack – at present Member of
Orissa Administrative Service (Super time scale) and posted as Collector
& District Magistrate, Balesore, Govt. of Orissa, At/PO/Dist-Balasore

...Applicant

By the Advocates : Mr.K.C.Kanungo
Ms.C.Padhi

-VERSUS-

1. Union of India represented through Secretary, Ministry of
Personnel Public Grievance and Pension, Department Personnel
& Training, North Block, New Delhi-1
2. State of Orissa represented through Chief Secretary to Govt. of
Orissa, Bhubaneswar, Dist-Khurda
3. Union Public Service Commission represented through its
Secretary, Dholpur House, New Delhi

... Respondents

By the Advocates: Mr.P.R.J.Das (Res. 1)
Mr.B.Mohapatra (Res. 3)
Mr.A.K.Bose (Res.2)

IN O.A.NO.246 of 2005

Rabindra Kumar Mohapatra, aged about 57 years, Son of late Nishakar
Mohapatra, resident of Plot No.95, Dharma Vihar, Jagamara, P.S.-



Khandagiri, Bhubaneswar, Dist-Khurda - at present Member of Orissa Administrative Service (Selection grade) and posted as Managing Director, Orissa Rural Housing Development Corporation, Station Sqr., Bhubaneswar, Dist-Khurda

...Applicant

By the Advocates : Mr.K.C.Kanungo
Ms.C.Padhi

-VERSUS-

1. Union of India represented through Secretary, Ministry of Personnel Public Grievance and Pension, Department Personnel & Training, North Block, New Delhi-1
2. State of Orissa represented through Chief Secretary to Govt. of Orissa, Bhubaneswar, Dist-Khurda
3. Union Public Service Commission represented through its Secretary, Dholpur House, New Delhi

...Respondents

By the Advocates:Mr.P.R.J.Das (Res. 1)
Mr.B.Mohapatra (Res. 3)
Mr.A.K.Bose (Res.2)

ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER;

Since the question involved in both the Original Applications is one and the same and the contentions raised are also similar, these two O.As having been heard together are being disposed of by this common order.

2. Both the applicants have approached this Tribunal praying that the common respondents may be directed to take into consideration the



Service (Recruitment) Rules, 1954 (in short Rules, 1954) and Regulations, 1955. However, the applicants have not been selected for conferment of I.A.S by the Selection Committee held during the years 2001, 2002, and 2003. Hence they have approached this Tribunal claiming the relief as stated above.

5. This Tribunal heard the learned counsel appearing for the applicants and learned counsel appearing for the common respondents, viz., the Union of India as well as the State of Orissa. In course of hearing, the learned counsel appearing for the applicants raised the following common contentions. As per Regulation 5(3) of Regulations, 1955, the Selection Committee constituted shall consider the cases of the members of the State Civil Service for the purpose of recommending conferment of I.A.S. on the members of the Service in accordance with the number of vacancies allotted by the Government of India to each State Government. According to the learned counsel, for the year 2001 there were eight vacancies allotted to the State of Orissa. It is submitted by the counsel for the applicants that due to pendency of certain cases in Courts, the Selection Committee could not be convened during the year 2002. Hence, the Selection Committee met during the year 2003. However, though the names of the applicants had been considered for the vacancies allotted to the State of Orissa for the year 2001, both the applicants were not



selected for appointment to I.A.S. as they were out of the zone of selection taking into account the number of vacancies allotted to the State. So, according to the learned counsel, against the vacancies earmarked for the year 2002 the names of the applicants ought to have been considered, having they not attained the age of 54 as on 1.1.2002. It is the further submission of the learned counsel that despite non-consideration of their names in 2002, the names of the applicants ought to have been included in the list prepared for selection for the year 2003. The crux of the contentions of the learned counsel is that if the date(s) of birth of the applicants had been taken as 9.4.1948 and 26.9.1948 respectively, as on 1.1.2002 they could be within the age of 54 years and thereby their names ought to have been considered for selection by the Selection Committee for the select list of the year 2002, as the vacancies occurred or allotted were for the year 2002. Hence, non-inclusion of the names of the applicants in the select list as well as the select list of prepared by the Selection Committee in its meeting held during 2003 is irregular and illegal, the same being against the Regulation 5(3) of Regulations, 1955. The additional ground urged in O.A. 245/05 is to strike down sub-regulation (3) of Regulation 5 of Regulations, 1955 as it is in violation of Article 14 of the Constitution of India.

7. Replying to the above contentions made by the learned counsel for the applicants, both the learned counsel appearing for the Union of India



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considered in the eligibility list prepared for the year 2002 as they were within the age of 54 years, having not attained the age of 54 years as on 1.1.2002. However, their names could not be found place in the select list by the Selection Committee in view of the overall relative assessment of service records and having regard to the statutory limit of the size of the select list. Hence, the contention of the applicants that the vacancies should be spread over to the coming year or the succeeding year of the select list already prepared is not admissible and is not within the purview of the Regulations, 1955.

9. The learned counsel for the State of Orissa also by supporting the stand taken by the learned counsel appearing for the Union of India, further submitted that while determining the age of 54 years as on 1st day of January of that year for which the list is drawn up, it was on the basis of substantive vacancies of the year and if so, it could not be treated as the vacancies occurring between 1st day of January and 31st day of December of the subsequent year. The vacancies existing and anticipated vacancies are determined in advance according to the principles followed and on the basis of allotment being made by the Government of India. The counsel further submitted that the contention of the applicants that Regulation 5(3) of Regulations, 1955 provides that State Civil Service officers should not have attained the age of 54 as on 1st January of the year in which the select list is prepared is not correct.

10. With the above contentions, we have to analyse the case of the applicants and the stand taken by the Respondents. Admittedly, the names of both the applicants were considered for the vacancies earmarked for the year 2001 and because of overall relative assessment of service records and having regard to the statutory size of the select list, the Selection Committee did not consider them eligible. If so, the contention of the applicants that their age should be considered for determining whether they have completed the age of 54 years or not with reference to the year of allotment of vacancies holds no water. This being the position, the vacancies cannot be spread over to another year for the purpose of making any selection. Regulation 5(3) of Regulations, 1955 contemplates that the Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared. By these words, it can be interpreted that there is no bar to prepare select list by including the names for the next allotment year in which any member may not attain the age of 54 years. But the question is that once the allotment is made by the Government of India on the basis of the vacancies occurred and the selection is made or the list is drawn up only for that year for which the allotment is made. The applicants are concerned that their names were considered for the allotment year 2001,



they having not attained the age of 54 years. The contention of the applicants that they should also be considered for the vacancies occurred in 2002 is not in accordance with the principles followed in drawing up the select list by the Selection Committee under the provisions of Regulation 5(3) of Regulations, 1955 and that apart, Regulation 5 is also to be interpreted only in the light of the other provisions of the Regulations and on the basis of allotment of vacancies by the Central Government for each year. Hence the stand taken by the Respondents that the names of the applicants could not be considered for the vacancies allotted for the year 2002 or 2003 is based on the interpretation of the Regulations.

11. In the above circumstances, the vacancies occurred from 1st day of January to December of the calendar year shall be taken into account to determine the year-wise select list, which shall also be on the exact number of vacancies as on 1st day of January of the succeeding year. If so, the contention of the applicants is not tenable.

12. With the regard to the contention of the applicants in O.A. 245/05 to strike down sub-regulation (5) of Regulation 5 of Regulations, 1955, it has to be noted that the applicant of O.A.NO.245/05 had approached this Tribunal by filing another O.A. bearing No.1084/03 praying to enhance the age of eligibility from 54 to 56 of Orissa State Civil Service Officers



for promotion to I.A.S. by amending I.A.S. (Appointment by Promotion) Regulations, 1955. However, in the present O.A. though the idea is the same, as this Tribunal has already decided the matter, we are of the view that there is no ground made out to strike down the above provisions inasmuch as it has already been held that this Tribunal has no jurisdiction to do so and the subject matter is of the look out of the executives and unless and until it is proved that such legislation is mala fide or against the fundamental rights of the applicant, this Tribunal is not in a position to interfere in the matter or to strike down the provisions at all.

14. In view of the above discussions and reasoning, the O.As are held meritless and accordingly, the same are dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER