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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.626 of 2005
Cuttack, this the 24th day of September, 2008

Ambika Pr.Tripathy Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Ambika Prasad Tripathy, 60 years, Son of Late Bhagirathi Tripathy at present residing at Chandinichowk, PS Lalbag, Town and District Cuttack (Ex Addl.Principal CCF, Orissa.)

.....Applicant

Legal practitioner :M/s.A.K.Mishra, J.Sengupta, D.K.Panda, G.Sinha, A.Mishra, Counsel.

- Versus -

1. Union of India represented through Secretary to Government of India, Ministry of Forest and Environment, Paryabharan Bhaban, CGO Complex, Lodhi Road, New Delhi.
2. State of Orissa represented through Chief Secretary to Government of Orissa, General Administration Department, Bhubaneswar.

....Respondents

Legal Practitioner :Mr. U.B.Mohapatra, SSC
Mr.A.K.Bose, GA (State for R.2)

O R D E R

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

Applicant, a retired Indian Forest Service Officer, by filing this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 has prayed the following relief:

"8. Relief claimed:- Under the circumstances it is humbly prayed that the Hon'ble Tribunal may be pleased to direct the Ops to consider the case of the Petitioner for promotion to the rank of Addl. CCF retrospectively and further the Hon'ble Tribunal may be pleased to direct the Ops to consider the case of the petitioner for promotion to the rank of Principal CCF retrospectively on superannuation of Mr.P.Singh, IFS i.e. w.e.f. 1.7.04 And to grant such other relief/reliefs as the ends of justice will require and to allow the application."

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2. Facts and grounds upon which the Applicant seeks the afore-mentioned relief, are that while he was continuing as a State Forest Officer, he was promoted to the cadre of Indian Forest Officer w.e.f. 04.12.1978 and was given the year of allotment as 1972. Accordingly, his name was placed at Sl.No.3 of the Disposition List. By keeping one post of CCF (WL) in abeyance on 28.11.2001, Government of Orissa created one temporary and ex-cadre post of Additional Principal CCF (WL) in the scale of pay of Rs.22, 400-24,500/- with effect from the date of filling-up of the said post till 30.11.2001. The then CCF,WL who was to superannuate on 30.11.2001, was allowed promotion to the post of Addl. Principal CCF and after his superannuation the said post was not filled up though the Applicant was the next Officer to be promoted to the said post. By submitting representation on 07.07.2002, he prayed for consideration of his case for promotion to the post of Addl. Principal CCF as per the cadre review which was already implemented in other services over the years. He requested for consideration of his case to the post of Addl. Principal CCF on 01.12.2001 and on 07.07.2002. But there was no answer on his said representation. However, subsequently he was promoted to the post of Addl. Principal CCF. As the Principal CCF namely Shri P. Singh was to superannuate w.e.f. 30.06.2004, Applicant by submitting representation requested for consideration of his case for promotion to the post of Principal CCF as the applicant was to superannuate w.e.f. 31.07.2004. Though the Applicant superannuated on 31.07.2004, no consideration was given to his representation submitted on 01.07.2004 for promotion to the above post. By stating what should be the cadre strength and the power of the Government conferred under the provisions of IFS cadre Rules the Applicant stated that the action of the Respondents was not only intentional and deliberate but also was in violation of the provisions of the Rules.

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3. No counter has been filed by the Respondent No.1/Union of India. However, placing a counter on record, Respondent No.2/State of Orissa has opposed the prayer of the Applicant by stating that one post of Addl.PCCF (WL) was created by keeping one post of Chief Conservator of Forests (Wild Life) in abeyance till 30.11.2001. But the aforesaid post was not actually filled up till 30.11.2001 and therefore, considering the case of applicant for promotion after 30.11.2001 does not arise. Government of India has revised the IFS cadre schedule of Orissa during 2001 in which two posts of Additional PCCF have been en-cadred. Prior to that there was no post of Additional PCCF in the IFS cadre of Orissa. Though an ex-cadre post of Additional PCCF was created during November, 2001 for a limited period upto 30.11.2001, no Screening Committee meeting was held at that relevant time. After revision of IFS cadre schedule of Orissa necessary steps were taken to fill up the two posts of additional PCCF and the name of applicant was duly considered and the applicant was promoted to the grade of Additional PCCF vide GA Department Notification No. 12892 dated 08.05.2003. It has been averred by the Respondent No.2 that steps were taken to hold the Screening Committee meeting as per the guidelines of the Government of India, Ministry of Environment and Forests dated 18.11.2002 for considering the case of eligible officers for promotion to the PCCF but due to want of documentation the said meeting could not be held prior to the date of retirement of the Applicant on 31.07.2004. On 23.08.2004 the Screening Committee meeting was held and two officers, junior to the Applicant, were promoted to the grade of Addl. PCCF on 27.08.2004. But by that time the Applicant had retired from service on reaching the age of superannuation on 31.07.2004.

4. It has been contended by the Respondents that at the particular period 3 persons were available in the grade of Addl. PCCF but after promotion of one person to the grade of PCCF the cadre post of Addl. PCCF was reduced to two as

per the approved cadre schedule. After revision of IFS cadre schedule of Orissa during 2002 necessary administrative formalities were completed to fill up of the post of Addl.PCCF. After receipt of relevant papers the meeting of the committee was held on 24.4.2003 and the applicant was promoted to the grade of Addl.PCCF. As such, according to Respondents, the prayer of applicant that he was not considered for promotion to grade of Addl. PCCF was not at all correct.

Further contention of the Respondent No.2 is that in the revision of the IFS cadre schedule of Orissa, the Government of India encadered two posts of Addl. PCCF and provided one post of PCCF vide notification dated 13.03.2002. As per Rule 9(7) of the IFS (Pay) Rules, 1968 the State Government can appoint a member of the service to hold posts other than cadre post specified in the schedule by making a declaration that the said post is equivalent in status and responsibility to a post specified in the said schedule which carry a pay scale of Rs.24,050-650-26,000/- (pay scale of PCCF). Accordingly, as per the requirement the State Government filled up one ex-cadre post of PCCF. It has been averred that the Screening committee meeting could not be convened during 01.07.2004 to 31.07.2004 for considering the cases of eligible IFS officers to the grade of PCCF due to un-avoidable reasons such as non-availability of required documents of the officers whose cases ought to have been taken up for consideration and in the meantime on 31.07.2004 applicant retired from service on reaching the age of superannuation.

By stating so, the Respondents have refuted the stand of the Applicant of non-consideration of his case or non-consideration of his representation made by him and have stated that this Application sans any merit and as such, is liable to be dismissed.



5. We have heard Learned Counsel for both sides and perused the materials placed on record.

6. Learned Counsel for the Applicant has argued that time and again Government of India issued instructions for holding meeting of the committee for promotion periodically. The reason of non-holding of meeting being not attributable to the applicant he is entitled to the benefits which he ought to have got, had the meeting been held on time; especially when vacancy in the cadre of Principal CCF was available to be filled in. His contention is that such action of the Respondents is not only against the Rules and instructions issued by the Government from time to time but also is discriminatory and is in violation of Article 14 and 16 of the Constitution. Further contention of the Applicant is that when Applicant was eligible and vacancy was there, it was legitimately expected by the Applicant that his case would receive due consideration of the Respondents and, as such, non consideration of his case violated the doctrine of legitimate expectation and, therefore, the applicant is entitled to get the benefits retrospectively.

On the other hand, it has been pointed out by Mr. A.K. Bose, Learned Government Advocate for the State of Orissa that Respondent is not bound to convene the Screening Committee meeting at any time suitable to meet the requirements of an officer. Screening Committee Meetings are convened as and when necessity arises subject to availability of vacancies and completed mandatory documents and papers from the appropriate authority. Nobody can claim promotion at any time convenient to him. Moreover, promotion to higher posts is not a matter of right of any member of the Service. This can be allowed to the beneficiary as and when occasion arises. Accordingly, Learned Counsel for Respondents prayed for dismissal of this OA.

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7. It is trite law that no employee has any right to claim for filling up of any post at any point of time nor a selected candidate has any right to claim appointment if the Government does not want to fill up the post. In other words the Government is under no obligation to fill up all or any of the vacancies. This is the law decided by the Apex Court in the case of All India SC & ST employees association and another v. A.Arthur Jeen and others [2007] 2 SCC (L&S) 362. Respondent No.2 has given clear picture under what circumstances the Selection Committee meeting could not be held during the period in question. The Applicant has also not questioned by attributing any mala fide for not holding the meeting during the relevant time. By the time the Selection Committee Meeting was held the applicant retired from service on reaching the age of superannuation. None also can claim as a matter of right for promotion. Several factors have to be taken into consideration before holding Selection Committee. As non-holding of Selection Committee in the present case at the relevant time, was due to want of vital service records of eligible officers, we find no reason to interfere on the same. Moreover this being a policy decision and no mala fide is attributed to such non-holding of the Selection Committee by the Applicant; we refrain from interfering in the matter.

8. The plea of applicant that his non-promotion has violated the doctrine of legitimate expectation or promissory estoppel, we may state that a legitimate expectation is not the same thing as anticipation. It is distinct and different from a desire and hope. It is based on a right. Law is well settled that no employee has a right for promotion. The court by invoking any doctrine cannot ask the State to do so unless it arrives at a positive and definite finding that the State's stand is fraught with arbitrariness. No arbitrariness is discerned in the present case. Therefore, law of legitimate expectation has no application to the present case.

9. In the light of the discussions made above, we find no merit in this OA.

Accordingly this OA stands dismissed by leaving the parties to bear their own costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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