

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No. 899 of 2005

Cuttack, this the 4th day of December, 2008

Prafulla Chandra Mishra Respondents
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

13. Whether it be referred to the reporters or not?
14. 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)

Prafulla Chandra Mishra, aged about 57 years, S/o.Late Somanath Mishra, Permanent resident of Village/PO/PS-Sarankul, Dist. Nayagarh, at present working as Special Principal Secretary, Home Department, Government of Orissa, Orissa Secretariat, Bhubaneswar.

.....Applicant

Legal practitioner : M/s.Rajjeet Roy, A.K.Appat, Counsel
- Versus -

1. Union of India, through its Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. State of Orissa, represented by Principal Secretary, Home Department, Orissa Secretariat, Bhubaneswar, Dist. Khurda.
3. Shri Bidya Bhusan Mohanti, IPS, at present posted as Chairman-cum-Managing Director, Orissa Police Housing and Welfare Corporation Limited, Bhubaneswar, Dist. Khurda.

....Respondents

Legal Practitioner :Mr. U.B.Mohapatra, SSC
Mr.A.K.Bose, GA,
M/s. Ramakanta Mohanty, Debakanta Mohanty, A.P.Bose, M.R.Dash, S.Mohanty, S.N.Biswal and Sumitra Mohanty (For Respondent No.3).

O R D E R

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

Applicant is an IPS Officer of 1970 batch. Being aggrieved by the Notification No.IPS/I-34/05/45053/IPS dated 27.09.2005 posting the Respondent No.3, who is a 1976 batch IPS Officer, as Chairman cum Managing Director, Orissa Police Housing and Welfare Corporation Limited, Bhubaneswar after his promotion vide GA Notification No. AIS-II-1/2005-

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24964/AIS.I dated 14.09.2005 to the rank of Director General and Inspector General of Police, the Applicant has approached this Tribunal in the present Original Application filed U/s.19 of the A.T.Act, 1985 seeking the following relief:

- "a) Issue Notice to the Respondents;
- b) Direct to the Respondent No.2 to produce the records constituting the Screening Committee and proceedings of the Screening Committee with recommendations of Respondents No.3 for promotion;
- c) Stay operation of impugned Notification No.IPS/I-34/05-45053/IPS dated 27.9.2005 of the Home Department, Government of Orissa (Annexure-5)
- d) Direct to the Respondent Nos.1 and 2 to declare the applicant to have been promoted from the date the Respondent No.3 is promoted and to allow him all service benefits from that date."

2. By way of interim order, the Applicant has prayed for stay of the order under Annexure-5 pending final decision on this OA and as it reveals, this Tribunal while directing notice to the Respondents vide order dated 21.11.2005, it was ordered that promotion and appointment of Respondent No.3 shall abide by the outcome of this OA.

3. Respondent Nos. 1 & 2 by filing counter separately, have opposed the prayers of the Applicant. No counter has been filed by Respondent No.3.

4. Heard Learned Counsel for both sides and perused the materials placed on record.

5. According to the Respondents, as per the Rules, promotion is effected only when one is free from criminal/disciplinary proceedings. As by the time the selection committee met, both criminal and disciplinary proceedings were pending against the Applicant, Respondent No.3 was

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considered and promoted and is accordingly given the posting under Annexure-5. It is the contention of the Applicant that criminal case is unnecessarily delayed and when departmental proceedings have been stayed by this Tribunal in another case filed by him, there was no impediment not to consider and promote him over the Respondent No.3.

6. Applicant has neither prayed for quashing the Notification No. of the GA Department No. AIS-II-1/2005-24964/AIS.I dated 14.09.2005 promoting the Applicant to the higher post nor has prayed for quashing of the notification No. IPS/I-34/05/45053/IPS dated 27.09.2005 (Annexure-5) posting the Respondent No.3 as Chairman cum Managing Director, Orissa Police Housing and Welfare Corporation Limited, Bhubaneswar. Applicant has also not availed of the opportunity of making appeal against the order of supersession as also posting either prior to filing this OA or thereafter. However, we see no justifiable reason to interfere in the matter when according to the Respondents pendency of Criminal as well as Disciplinary proceedings were the reason of non-promotion of the Applicant. Further it is seen that the departmental proceedings in question, initiated vide Annexure-A/I have not been challenged nor is there any stay in that proceedings. However, it is noted that so far as prayer in (a) & (c) prayed for by Applicant have already been met. So far as prayer in para (b) is concerned we may note that we are not inclined to call for records in view of exhaustive counter filed by Respondents. So far as the prayer in para (d) above, is concerned, we may observe that in absence of specific challenge of the notification of promotion of Respondent No.3, after exhausting the remedies, it would be unjust for this Tribunal to direct to the Respondent Nos.1 and 2 to declare the

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applicant to have been promoted from the date the Respondent No.3 is promoted and to allow him all service benefits from that date.

7. In view of the discussions made above, we find no merit in this OA. Accordingly, this OA stands dismissed. No costs.

L. Kappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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