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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.168 of 2006
Cuttack, this the 21st day of April, 2009

Sudarsan Nayak 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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O.A.No.168 of 2006
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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)

Sudarsan Nayak, aged about 53 years, son of Narahari Nayak of VIC-10/1, Unit No.1, Bapuji Nagar, Bhubaneswar-751 009 at present working as Registrar of Co-operative Societies under the Government of Orissa, Heads of the Department Building, 7th Floor, Bhubaneswar, Dist. Khurda.

Advocate for Applicant. :M/s.M.R.Mohapatra,
R.P.Kar.

.....Applicant
S.K.Prusty,

-Vs-

1. Union of India represented by Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi-110 001.
2. State of Orissa represented by the Special Secretary to Government of Orissa, General Administration Department, Secretariat, Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.A.K.Bose (Respondent No.2)
Mr.U.B.Mohapatra(Respondent No.1)

O R D E R

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

Factual back-drop leading to filing this Original Application is that the Government of India in exercise of the powers conferred under sub rule (2) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 8 of the Indian Administrative Service (Appointment by Selection) Regulations, 1957 and Rule 3 of the Indian Administrative Service (Probation) Rules, 1954, appointed the Applicant (Sudarsan

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Nayak), a member of the Non-State Civil Service of the State to the Indian Administrative Service on probation vide Notification under Annexure-1 dated 10th December, 1999 and he was assigned the year of allotment as 1994 vide letter under Annexure-2 dated 6th January, 2000. Being aggrieved by the allotment year of 1994, he made representation/appeal dated 21.07.2000 requesting ante-dating his year of allotment to 1993 instead of 1994. Alleging no action on his representation/appeal, he approached this Tribunal in OA No.286 of 2003. The said OA was disposed of on 25.2.2005 by directing the Respondent No.1 to consider and dispose of the representation/Appeal of the Applicant dated 21.07.2000. The said request for ante-dating his year of allotment to 1993 was rejected by the Government of India in memorandum dated 20.01.2006 and communicated by the Government of Orissa in letter dated 13.02.2006. Hence this OA seeking the following reliefs:

- “(a) Issue appropriate direction quoting Annexure-5 as contrary to the provisions of IAS (Regulation of Seniority) Rules, 1987;
- (b) Issue appropriate direction for orders directing Respondent No.1 to take into consideration of the entire period of continuous service rendered by the applicant from 28.06.1978 for the purpose of giving higher weightage as per rule 3 (3) (iii) of the IAS (Regulation of Seniority) Rules, 1986;
- (c) Issue appropriate direction or order directing the Respondent No.1 to declare the post of Legal Asst. re-designated as Assistant Law Officer as equivalent to the post of Deputy Collector from the view point of importance and functional and shall be taken into consideration for the purpose of fixing the allotment year of the Applicant;
- (d) Issue appropriate direction and quash Annexure-5 and 6 as the issuance of the memorandum is not sustainable in law.”


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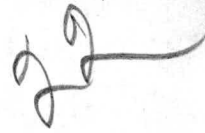
2. Respondent No. 1 (Union of India, represented through Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi) and Respondent No.2 (State of Orissa represented by Special Secretary to Government of Orissa, General Administrative Department, Secretariat, Bhubaneswar) have filed their counter separately. The contentions of the Respondents in both the counters are that initially on 28.06.1978, the Applicant joined as Legal Assistant (Rs.500-15-590-EB-20-710-25-760-30-790-35-875/- revised to Rs.1120-2245/- w.e.f. 01.01.1985). The post of Legal Assistant was declared specially gazetted w.e.f. 01.12.1981. Thereafter, the post of Legal Assistant was re-designated as Assistant Law Officer w.e.f. 30.07.1988 without any change in status and scale of pay applicable to the said post. The Applicant was promoted to the post of Junior Law Officer w.e.f. 30.09.1985 carrying scale of pay of Rs.525-25-600-EB-30-780-35-850-EB-40-1010-45-1100/- which was subsequently revised to Rs.1975-2975/- retrospectively w.e.f. 01.01.1985. The post of Junior Law Officer was re-designated as Law Officer vide Law Department Notification No.20810 dated 24.12.1985. But the Law Officers were conferred with the status of Class-II (which is equivalent to the post of Deputy Collector) w.e.f. 02.04.1988 vide Law Department Resolution No.4925 dated 02.04.1988 (Annexure-R-2/1). The Applicant was promoted to the rank of Under Secretary to Government (Senior Class-I) w.e.f. 12.11.1987, Deputy Secretary to Government (Senior Class-I) w.e.f. 26.11.1990 and Joint Secretary to Government w.e.f. 19.11.1996. The Applicant was appointed to IAS w.e.f. 10.12.1999 under Rule 8(2) of the IAS (Recruitment) Rules,

1954 read with Regulation 8(1) of the IAS (Appointment by Selection) Regulations, 1997, and was assigned the year of allotment as 1994 as per the provisions of the IAS (Regulation of Seniority) Amendment Rules, 1997. As per Rule 3(3) (iii) (a) continuous service rendered by the Applicant in a post equivalent to the post of Deputy Collector or a higher post will be counted. The Law Officer of the Government of Orissa was conferred with the status of Class II w.e.f. 2.04.1988 and as such the service of Applicant is countable only w.e.f. 2.4.1988 which comes to 10 years, 8 months till 31.12.1998. After giving four years weightage the year of allotment should be 1995 i.e. 1999 minus 4 years. But wrongly the year of allotment of the Applicant was fixed as 1994. Since this was an inadvertent error, while considering the representation, the Respondent No.1 could come to know that the applicant was erroneously shown a recruitment of 1994 instead of 1995. Accordingly, the error was corrected by assigning the year of allotment to the applicant as 1995 and the representation of the Applicant was rejected and communicated to him. It has further been averred that as there has been no injustice caused in the decision making process of the matter, interference in the matter would tantamount to perpetuating the error which is not warranted under law. They have therefore, prayed that this OA being devoid of any merit is liable to be dismissed.

3. Arguments advanced by the Learned Counsel appearing for both sides were heard and materials placed on record were perused.

4. The main thrust of the argument of the Applicant in support of the prayers is that Respondent No.1 changed/advanced the year of allotment of the Applicant IAS cadre from 1994 to 1995 in a wrong interpretation of the provisions of Rule 3 (3) (iii) of IAS (Regulation of Seniority) Rules, 1987. In this connection, he has pointed out that appointment to IAS under the provisions is made from amongst various services like Engineering, Health, Education, Finance, Co-operation etc. and, therefore, the rule making authority consciously did not use the service rendered in Class II but specifically provided that "continuous service rendered in a post equivalent to the post of Deputy Collector or a higher post will be counted" which is also misnomer in the Orissa context. According to him the qualification for recruitment and the duties and responsibilities discharged by the Assistant Law Officer is higher than the post of Deputy Collector. It is contended that in Government of Orissa Service the post and services were divided into categories of Group 'A', 'B', 'C' & 'D' respectively. The post of Legal Assistant re-designated as Assistant Law Officer and grouped along with Class II State Service which comes under employees of Group B meaning thereby the post and services are by and large equivalent in relation to importance, function and even scale of pay. It has been contended by the Learned Counsel for the Applicant that prior to the appointment to IAS, the applicant had completed 3 years of service in the post of Joint Secretary to Government but on appointment to IAS he was appointed as Deputy Secretary to Govt. of School and Mass Education Department of the Government of Orissa. Prior to his appointment to





IAS he had also rendered 12 years of service in Class I post. The executives vested with the power, as has been held by the Hon'ble Apex Court in the case of **Syed Khalid Razvi**, 1993 SCC (Supp.) 575, to relax any provisions of the rules which caused undue hardship due to unforeseen or unmerited circumstances and, as such in relaxation of the provisions contained in AIS (Conditions of Service Residuary Matters) Rules, 1960, the past service rendered by the Applicant ought to have been taken into consideration by the Respondent No.1 while assigning the year allotment to the Applicant and having not done so, great injustice was caused to the Applicant which needs rectification. Further contention of the Learned Counsel for the Applicant is that it is fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice and that a settled thing should not be unsettled after long lapse of time; whereas the Respondent No.1 reversed/changed the year of allotment assigned to him after six years without putting him any notice to have his say and, therefore, accordingly, to the Learned Counsel for the Applicant the impugned order is liable to be annulled. Further stand of the Applicant is that he served the Government of Orissa in Class-I posts since 12.11.1987 in various ranks viz; Under Secretary from 12.11.1987 to 2.5.1990, Deputy Secretary from 26.11.1990 to 19.11.1996 and Joint Secretary from 20.11.1996 to 31.12.1997 till he became IAS. The Respondent No.1 ought to have taken into



consideration this period of service while assigning him the year of allotment in IAS. The next contention of the Applicant is that the representation of the Applicant was rejected by changing the year of allotment detrimental to his interest with oblique motive and the oblique motive according to the Applicant is as to why the applicant took the shelter of this Tribunal. In view of the above, he has sincerely prayed for allowing the prayers made in this OA.

Per-contra, Learned Counsel appearing for the Respondents by drawing our attention to the provisions of Rule 3(3) (iii) (a) has contended that absolutely there has been no wrong in the decision making process of the matter thereby changing the year of allotment of the applicant from 1994 to 1995. It was perfectly done in accordance with rules which provide that continuous service rendered by the Applicant in a post equivalent to the post of Deputy Collector or a higher post will be counted. The Law Officer of the Government of Orissa was conferred with the status of Class II w.e.f. 2.04.1988 and as such the service of Applicant is countable only w.e.f. 2.4.1988 which comes to 10 years, 8 months till 31.12.1988. After giving four years weightage the year of allotment should be 1995 i.e. 1999 minus 4 years. Executives have the power to rectify its mistake at any point of time. According to the Learned Counsel for the Respondents that the post of Legal Assistant re-designated as Assistant Law Officer is not equivalent to the post of Deputy Collector. The post of Legal Assistant was declared Specially Gazetted vide Government of Orissa in GA Department letter dated 20.11.1981. It does not mean that mere declaration of specially gazetted, the post is made equivalent to the

post of Deputy Collector, Class II. However, subsequently the State Government in Law Department have changed the designation of the post of Legal Assistant to that of Assistant Law Officer vide order dated 30.07.1988 by specifically providing therein that there shall not be any change in the status and scale of pay applicable to the said post after re-designation. As such the contention of the Applicant that the qualification for recruitment and the duties and responsibilities charged by the Assistant Law Officer is higher than that of the Deputy Collector is based on conjecture, surmises and misnomer. The Applicant was appointed to the IAS on 10.12.1999 and was assigned the year of allotment of 1994 taking into account his service in the State as Legal Assistant (re-designated as Assistant Law Officer) w.e.f. 01.12.1981, the date from which this post was declared specially gazetted. But the post of Legal Assistant held by the Applicant as on 28.06.1978 could not be considered equivalent to Deputy Collector's post as this post was declared specially gazetted only on 1.12.1981. Accordingly, the Respondents' counsel opposed the contentions advanced by Learned Counsel for the Applicant and prays for dismissal of this OA.

5. Before expressing opinion on the merits of the arguments advanced by respective counsel, it is worthwhile to extract the provision of Rule 3(3)(iii) of Indian Administrative Service (Regulation of Seniority) Rules, 1987 which reads as under:

“3(3)(iii) -The year of allotment of an officer appointed by selection shall be determined with reference to the year in which the meeting of the committee to make the selection to prepare the Select List, on the basis of which he was appointed to the Service was held and with regard to the



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continuous service rendered by him in a post equivalent to the post of Deputy Director or a higher post, up to the 31st day of December of the year immediately before the year in which the meeting of the committee to make the selection was held to prepare the Select List on the basis of which he was appointed to the service in the following manner.

- (a) For the service rendered by him up to 21 years, he shall be given a weightage of one year for every completed three years of service subject to a minimum of four years.
- (b) He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years referred to in sub clause (a) subject to a maximum of three years.

Explanation: for the purpose of calculation of the weightage under this clause, the fractions, if any, shall be ignored.

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier Select Lit.

Provided further that he shall not be allotted a year earlier than the year of allotment assigned to an officer already appointed to the service in accordance with sub rule (1) of Rule 8 of the Recruitment Rules, whose length of Class I continuous service in the State Civil Service is equal to or more than the length of Class I continuous service of the former in connection with the affairs of the state.

Explanation: The length of the relevant Class-I continuous service in either case shall be with reference to the 31st day of December of the year immediately before the year in which the meeting of the Committee to make selection was held to prepare the Select List on the basis of which appointments were made in the respective cases."

6. It is noticed that the Respondent No.1 in the counter filed in OA No. 286/2006 has affirmed as under:

"for the fixation of year of allotment of the Applicant his service in the State from 1.12.1981 was taken into account because on this date the post held by him as Legal Assistant (re-designated as Assistant Law Officer) was declared specially gazetted. The post of Legal Assistant held by the Applicant as on

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28.06.1978 could not be considered equivalent to Deputy Collector's post as this post was declared specially gazetted only on 1.12.1981."

While assigning the year of allotment to IAS as 1994, Respondent No.1 has obviously taken decision on the basis of information furnished by the State Government prior to the convening of the relevant Selection Committee. The Gazete Notification which is being quoted at Annexure-R/1 dated 02.04.1988 reads as under:

"The question of conferring Class II status on the Law Officers and Research Officers of the Law Department was under the consideration of Government for some time past. The Government after careful consideration have been pleased to confer Class-II status on the posts of law officers and Research officers of the Law Department within the meaning of Orissa CS (CC&A) Rules, 1962."

7. It is thus seen from the above notification that when the case of the Applicant was processed and considered by the State Government, the above notification did exist. Notwithstanding the said provision the State Government had processed and submitted the case to the Selection Committee. It is further noted that this notification is in respect of conferment of Class II status of Law Officers and Research Officers of Law Department. There is no whisper on the question of equivalence to the post of Deputy Collector or a higher post as referred to under Rule 3(3)(iii) of the IAS (Regulation of Seniority)/Amendment Rules, 1997. It is on the basis of the notification under which the service of the applicant was treated as specially gazetted w.e.f. 01.12.1981 that the service weightage was calculated and allotment year was fixed by the Respondent No.1 as 1994. Therefore, the claim of the Applicant to reckon his service from 28.6.1978 as gazetted has been rightly rejected being legally

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untenable. It is further seen that the applicant had held the post of Under Secretary to the Government of Orissa during 12.11.1987 to 02.05.1990 and Deputy Secretary from 26.11.1990 to 19.11.1996 and further after the assignment of allotment as 1994 vide order dated 06.01.2000 the Applicant has been confirmed in the IAS cadre w.e.f. 10.12.2000. His position in so far as it relates to the direct recruits of 1994 cannot be changed after such a distance of time. It would amount to unsettling a settled thing after a lapse of more than six years, which would be prejudicial to his career prospect.

8. In view of the above, we are of the firm opinion that the allotment year of 1994 in respect of the Applicant cannot be disturbed. At the same time, we are not inclined to grant the Applicant any allotment year prior to 1994. We hereby quash the order under Annexure-A/5 and A/6 reversing/changing the years of allotment of the Applicant from 1994 to 1995.

9. In the result, this Original Application is allowed in part and is accordingly disposed of by leaving the parties to bear their own costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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