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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.817 of 2006
Cuttack, this the 24th day of August, 2007.

Anirudha Rout Applicant

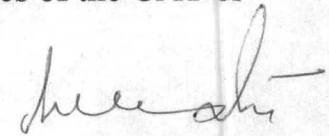
Versus

Government of India & Ors. Respondents

FOR INSTRUCTIONS

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


(N.D. Raghavan)
Vice-Chairman


(P.K. Chatterjee)
Member(Admn.)

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C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.P.K.CHATTERJEE, MEMBER (A)

Shri Anirudha Rout aged about 53 years, Son of Late Krishna Chandra Rout, at present, Director, PG & PA and Ex-Officio Joint Secretary to Government of Orissa, Bhubaneswar resident of Village Kumbhi, PS: Soro, Dist. Balasore.

..... Applicant.

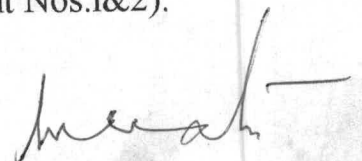
By legal practitioner: M/s. Srinivas Mohanty,
S.Routray, R.C.Pattanaik,
Advocates.

-Versus-

1. Union Government of India represented through its Secretary, Department of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), North Block, Central Secretariat, New Delhi.
2. The Government of Orissa represented through its Chief Secretary, Orissa Secretariat, Sachivalaya Marg, Bhubaneswar.
3. The Secretary, UPSC, Dholpur House, Sahajan Road, New Delhi.

...Respondents.

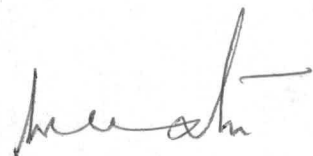
By legal practitioner: Mr.U.B.Mohapatra, SSC.
(For Respondent No.3)
Mr.A.K.Bose, GA
(For Respondent No.2)
Mr. R.C.Behera, Advocate
(For Respondent Nos.1&2).



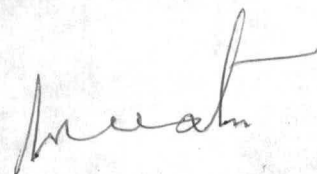
ORDER

MR.P.K.CHATTERJEE, MEMBER(A):

The Applicant is an Officer of the Orissa State Civil Service in Super Time Scale. In the year 2003 he became eligible for promotion to IAS under the provisions of Regulations 5(5) of the IAS (Appointment by Promotion) Regulations, 1955. However, no selection was held for the years 2003, 2004 and 2005 for the reasons that the Selection for 2002 and 2003 was challenged in the High Court of Orissa in various Writ Petitions filed by the aggrieved parties. The case being subjudice in the Hon'ble High Court of Orissa, no selection could be held for three years and only after the decisions of the Hon'ble High Court in the said Writ Petitions, DPC was held on 5th and 6th October, 2006. On the basis of the records of service, the Applicant was selected for appointment to IAS in the year 2005 but only provisionally for the alleged reason that disciplinary proceedings was pending against him. The same Committee which selected him for 2005 carried forward his selection to 2006 but kept it provisional for the same reason.



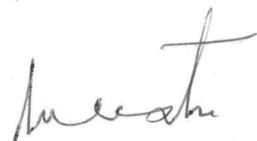
2. The Applicant has stated that he has become the victim of a conspiracy as he was being implicated in a case which is non-existent and which statedly arose 12 years before while he was working as Sub-Collector in Koraput. According to the Applicant, persons interested in blocking his promotion have concocted false allegations against him. As he saw the scope for his promotion in spite of having been selected by the Selection Committee was becoming uncertain, he approached the Orissa Administrative Tribunal in OA No. 1249 of 2006. The Tribunal vide its order dated 09.10.2006 and 27.10.2006 directed the State Government to ensure that the alleged disciplinary proceedings did not become an impediment to the promotion of the applicant to the next higher post. The Applicant further states that after the direction of the State Administrative Tribunal, Respondent No.2 should have submitted clearance certificate to the UPSC for taking further step towards appointment in the IAS. However, this was not done and the State Government was unnecessarily dragging its feet in the matter and having seen that he will be losing promotion to the IAS in spite of having been selected he has approached this Tribunal in this Original Application seeking intervention in the



matter. The relief, which he has sought for in this OA, is as follows:

“In view of the facts mentioned in Para 6 above the applicant prays for the following relief(s): Let the applicant be promoted to IAS as against the year 2005 without being biased by the disciplinary proceeding under Annexure-2 as per Rule 8(1) of IAS (Recruitment) Rules, 1954 r/w Regulation 9(1) of IAS (AP) Regulation 1955 and let the implication of the proceeding under annexure-2 be thrown aside in view of the orders passed by the learned tribunal in OA No. 1249 of 2006 dated 9.10.2006 corresponding to 27.10.2006 and let there be any order as deemed fit and proper under the circumstances of the case.”

3. The Respondents namely the UPSC and Government of Orissa have filed their replies denying the allegations. No separate counter of Respondent No.1 is on record. The UPSC in its reply has stated that it had performed its duty as per the provisions of the regulation without making any deviation. The deferred selection for four years from 2003 to 2006 were held in a meeting in October, 2006 and the select list was published year-wise. The Applicant's name figured in the select list for 2005 as a provisional selection and further in the year 2006 also as provisional. According to the UPSC they have nothing to do in the matter as



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without the State Government removing the conditionality after conclusion of the disciplinary proceedings they could not take any further step for issuing appointment order. Therefore, the UPSC had no role to play in the matter having discharged their functions strictly within the parameter of the Regulations.

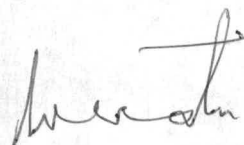
4. The State Government has given a brief narration of the case. Firstly they have given the reason for deferred selection. Secondly, they have given an explanation as to the charge sheet framed against the Applicant and the enquiry there under. They have not disputed the fact of filing Original Application before the State Administrative Tribunal and the Tribunal directing them to ensure that the disciplinary proceedings did not become an impediment for consideration of the case of Applicant. The State Government have further stated that on their part there was no violation of the orders of the State Administrative Tribunal as they have included the name of Applicant in the eligibility list which they have furnished to the UPSC. The applicant was also duly considered by the UPSC, which also selected him, provisionally first in the year 2005 and then in the year 2006. However, it is clarified by the State Government that the selection being

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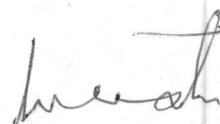
provisional subject to conclusion of disciplinary proceedings in favour of Applicant, no further step could be taken.

5. The State Government have further submitted that meanwhile there was further progress in the disciplinary proceedings. The enquiry officer gave his report of the enquiry in which he, however, recommended a lenient action to be taken against the applicant. The State Government have further stated that the competent authority in the state i.e. Special Secretary considered the report of the enquiry and in exercise of the powers conferred under Orissa Civil Service (Classification Appeal and Control) Rules, 1962, awarded the punishment of 'Censure' upon the Applicant. This being the case, the applicant having not been exonerated from the disciplinary proceedings, it was not possible for the State Government to give a clearance certificate in favour of applicant to the UPSC for further action in the matter.

6. Learned counsel for the applicant, the UPSC and State Government argued the case for final disposal. Learned Counsel for the Applicant has placed the following points before us:



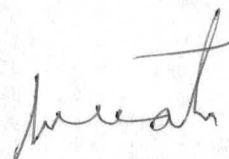
- (a) The contention of the State Government that they have followed the direction of the State Administrative Tribunal by considering his case is not correct. The intent and purport of the orders of the State Administrative Tribunal was that the pendency of the so called disciplinary proceedings should not become excuse to deny him promotion to IAS.
- (b) The contention that the Applicant having been punished with 'censure' was not to be considered suitable for promotion and no clearance certificate should be given to the UPSC was not acceptable and tenable. Learned counsel for applicant stated that punishment was given ignoring the recommendations of the enquiry officer who was of the rank of a Divisional Commissioner. Not only that punishment of 'censure' that too relating to a period of 12 years ago should not block his promotion now. In this context, learned counsel has taken the help of the order No. 749/SE dated 20.02.2007 of the State Government a copy of which was furnished to us during argument. In this order it has been stated that



punishment awarded in relation to cases which happened long ago should be related to the period of commitment of the alleged irregularity. The orders may be extracted as under:

“I am directed to invite a reference to para 11 (vii) of Memo No. 10918 (110) PRO dated 223.11.1987 and para 9(iv) of Memo No. 1199 & 1200/PRO dated 26.4.2006 issued by GA (SE) Department which provides that all punishment awarded on any delinquent Government servant duly proceeded against, whenever the punishment is one of the penalties specified in Rule 13 of the Orissa Civil Service (Classification, Appeal and Control) Rules, 1962 should be placed in the CCR/PAR of the officer concerned. But it is often seen that punishments are being awarded to delinquent officers much after the occurrence of the incidents. Doubts have arisen as to which year such penalty will relate when orders awarding the penalty are passing government have now been pleased to decide that such penalties will relate to the year in which the offence was committed irrespective of the year in which it is awarded. Accordingly, the order of punishment may be kept in the CCR/PAR of the year to which the charges relate.”

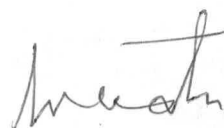
- (c) In terms of the above mentioned order, the Learned counsel stated that State Government should immediately issue clearance certificate to the UPSC to enable it to take further step.



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7. Learned Counsel for the State Government contradicted the above argument vehemently by saying that the above provision would not apply to the applicant as he was not covered by the Orissa Civil Services (Classification, Appeal and Control) Rules, 1962. Surely, the present applicant was not covered ~~by~~ by this direction of the State Government and could not be given any benefit under it. The Learned Counsel for the Applicant stated that the applicant still did not belong to IAS as his appointment letter is yet to be issued although his name was proposed in the select list. So he did not agree (this, to) His appointment was in the State Civil Services to which he still belongs. Therefore, he was covered by the Orissa Civil Services (Classification, Appeal and Control) Rules, 1962. The penalty of censure which was awarded to him for alleged irregularity committed 12 years back should relate to that period and should not come on his way for promotion.

8. Learned counsel for the State Government Mr. A.K. Bose, stated that even if it is presumed that he belongs to Orissa Civil Service and he was covered by the Orissa Civil Services (Classification, Appeal and Control) Rules, the purport of

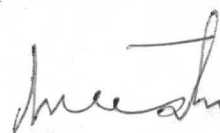


the order of the State Government dated 20.02.2007 was that the punishment would be ^g~~related~~ recorded in the CR for the year to which it relates. However, it would operate in the present and, therefore, it was not possible for the State Government to issue clearance certificate.

9. Learned Counsel for the UPSC, Shri U.B.Mohapatra stated that even if he did not want to enter into wrangle as to the application of the order dated 20.2.2007 no benefit could be extended to the applicant for the simple reason that the selection of applicant vide notification dated 17.11.2006 has expired on 31.12.2006. Learned Counsel brought to our notice the following provisions of the Recruitment Rules:

“7(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee as held with a view to prepare the list under sub-regulation (1) of regulation 5 or up to sixty days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub regulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as “unconditional”, to the Commission during the period when the select

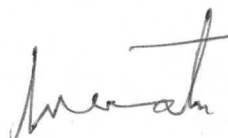


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list was in force (the Commission shall decide the matter within a period of forty five days) or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force."

10. It was stated by him that by an interpretation of the above rules no doubt remains that the validity of the select list expired on 31st December, 2006. The State Government did not furnish any clearance certificate in favour of applicant before its expiry and, therefore, it would be a futile exercise for the State Government to issue any certificate now as the UPSC would not be in a position to proceed any further in the matter.

11. The Learned Counsel for the Applicant who stated that this aspect of the matter has been taken care of by the interim orders dated 15.12.2006 of this Tribunal contradicted the above point of the learned counsel for the UPSC. Learned Counsel for the applicant has referred to the following portion of the interim order of this Tribunal dated 15.12.2006:



“However, it has been impressed by the Learned Counsel appearing for the Applicant that by the end of this month the validity of the list will be no more. Hence the applicant should be granted some interim protection. In this view of the matter, we are inclined to hold that the result of this OA shall determine the claim for promotion of Applicant.”

12. By citing the above direction of this Tribunal, Learned counsel for the applicant has vehemently argued that this should clear the deck for the applicant. The above orders of the Tribunal was passed after taking into account the apprehension expressed by applicant that the validity of the select list would soon expire and, therefore, the Tribunal should provide some protection to the Applicant. Learned counsel for the State Government as well as UPSC, however, opposed this point of the learned counsel for the applicant. Shri U.B.Mohapatra, stated that the orders of this Tribunal could not transgress the provision of the regulation which clearly stipulated that validity of the select list would be up to 31st day of December of the year in which the meeting of the selection committee was held or up to 60 days from the date of approval of the select list by the Commission, whichever is latter. Learned Counsel for the applicant also echoed this argument and stated that the State Government had already filed their objection to the

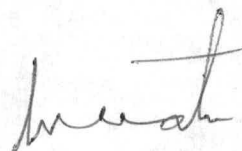
M. B. Mohapatra

granting of any interim order vide their submission dated 12.12.2006. However, in spite of their objection the above orders were passed by the Tribunal, which was not consistent with the provisions of regulations.

13. We have gone through the pleadings and having heard the learned counsel for all the parties, we have applied our mind also to the matter. Three points which are crucial in taking a decision in this OA ⁹ which are:

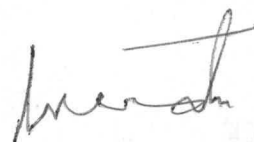
- (a) Whether the orders of the State Government dated 20.02.2007 would apply to the applicant;
- (b) Whether punishment of censure awarded to the applicant would operate in the present to affect his promotion;
- (c) Whether the orders of this Tribunal dated 15.12.2006 would enable the applicant to get respite from the provision of rule 7(4) of the regulation i.e. whether the order of the tribunal would extend the validity period of the select list.

14. The reply to (a) above is more or less clear from the arguments of both sides placed above. The applicant belongs to the State Civil Service as he is yet to be appointed in the IAS. Therefore, he would still come within the purview of the order-dated 20.02.2007.



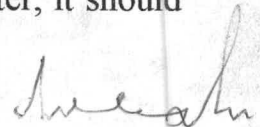
15. The answer to (b) above is, to our mind, that when the State Government in its own order provides that punishment awarded long after the commitment of alleged irregularity is not to relate to the present, the State Government would not be justified in withholding the clearance certificate on the basis of such punishment. Therefore, the punishment of censure awarded to the applicant should not be held against him now to deny him the clearance certificate for the purpose of promotion to IAS.

16. The answer regarding the point at (c) above, it becomes clear from the order of this Tribunal dated 15.12.2006 that this order was passed in the context of a clear apprehension expressed by the applicant that if some protection is not given to him immediately, the respondents would take the plea that the select list is no longer valid. While passing the above orders, therefore, this Tribunal was fully aware of the relevant provisions of the regulations of 1955. The Tribunal, however, felt that the applicant had brought the matter for its consideration before the validity of the select list expires. It was not the fault of the applicant that so little time was available between the selection and

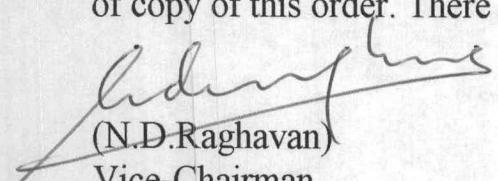


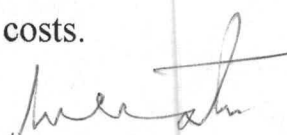
the date of 31st December i.e. the crucial date for expiry of the validity. It was a coincidence of circumstances over which the applicant has no control. The Tribunal felt that if the validity of the order which was passed on 17th November, 2006 was to expire only after 13 days there was something absurd about it. Obviously it was not possible either for the State Government or UPSC to process the matter in respect of applicant within such a short time. The entire exercise of selection, therefore, is reduced to the enactment of a farce. For such consideration, the order of the Tribunal was passed. We are of the view that such being the rationale of the order it should enable the applicant to get the extension of the validity of the select list only in so far as he is concerned. It should not come in the way of the State Government issuing a clearance certificate.

17. With the above-mentioned consideration, we are of the view that there is merit in this OA which is allowed. We direct that the State Government will ignore the punishment of censure awarded to the applicant as it would relate to the period of commitment of the alleged irregularity and it should issue a clearance certificate in favour of the applicant. Thereafter, it should



forward the same to the UPSC. On receipt of the clearance certificate, the UPSC should take further step to appoint the applicant to the IAS ignoring that as per rule its validity would have expired by 31st December 2006. The entire exercise shall be completed within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.


(N.D. Raghavan)
Vice-Chairman


(P.K. Chatterjee)
Member(Admn.)

KNM/PS.