

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 1177 OF 2002
CUTTACK THIS THE 31st DAY OF August 2005

Sridhar Panda *Applicant(s)*

-VERSUS-

Union of India & Ors. *Respondents*

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?* 75
2. *Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?* 7c

31/08/05-
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. SOM
(B.N. SOM)
VICE-CHAIRMAN

14

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.1177 of 2002
Cuttack this the 31st day of Aug 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

....

Sri Sridhar Panda, aged about 54 years, Son of late Balkrishna Panda, resident of Plot No.2964/3880, Nageswar Tangi, Bhubaneswar, Dist-Khurda, Pin-751002, at present working as D.F.O., Kenduleaves, Phulbani, Dist-Kalahandi

Applicant

By the Advocates

Dr. M.R.Panda
Mr.M.K.Nayak

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Environment and Forest, New Delhi, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi-110003
2. The Principal Chief Conservator of Forest, Orissa, Bhubaneswar, Dist-Khurda
3. Government of Orissa, represented through its Secretary, Department of Forest and Environment, Bhubanesswar, Dist-Khurda
4. Union Public Service Commission represented through its Secretary, New Delhi, At/PO-New Delhi
5. State of Orissa represented through the Special Secretary, General Administration Department, Secretariat Building, Bhubaneswar, Dist-Khurda

Respondents

By the Advocates

Mr.U.B.Mohapatra
Mr.A.N.Routray

ORDER

✓

15

ORDER

MR B.N.SOM, VICE-CHAIRMAN: This Original Application has been filed by Shri Sridhar Panda (applicant) at present working as Divisional Forest Officer (in short D.F.O.), Kendu Leaves, Phulbani, being aggrieved on account of the fact that he has not been promoted to the cadre of Indian Forest Service (in short I.F.S.) from the year 2001. He has, accordingly, made the following prayers:

- i) Order directing the respondents to produce the relevant records along with returns;
- ii) Direction directing the respondents to consider the case of the applicant in accordance with the Rules/Regulations and promoted him to the cadre of I.F.S. with retrospective effect. That is from the year 2001.
- iii) Direction directing the respondents to allow all the service benefits to the applicant as available under law.
- iv) Direction directing the Respondents to consider the case of the applicant in the ensuing selection process
- v) Pass such other order/orders as deem fit and proper in the facts and circumstances of the case".

2. The allegation made by the applicant in the Original Application is that whereas as per the I.F.S. cadre strength of Orissa as on 14 November, 1994,, the total strength consisted of 124, of which 85 nos. were to be filled up by direct recruitment and the remaining 36 by promotion, the Respondents had filled up 92 posts through direct recruitment and 30 posts through promotion method. There was thus an excess appointment of 7 persons through direct recruitment and consequently, the promotees had been deprived of six posts of I.F.S. In support of his allegation, he has enclosed the cadre schedule of I.F.S. His further allegation is that Res. Nos. 1, 3 and 4 had not only violated the cadre rules as referred to earlier, they had also not followed the Regulation 5(i) of the I.F.S. (Appointment by Promotion) Regulations in the matter of determining

4

16

the number of vacancies for preparing the select list for the year 2001. He has further averred that although there were more vacancies available in the cadre, Respondent No.1 had not considered his case in accordance with law and allowed only three candidates to be included in the select list as per the notification dated 9.5.2002. Earlier, he had submitted representation for consideration of his case as per law, but till date, the Respondents have not communicated any order to him in respect of that representation. Referring to the regulation regarding calculation of vacancies, he has alleged that the Respondents have omitted to take into account the superannuation vacancies caused due to retirement of S/Shri D.Patnaik, B.Mohapatra and S.K.Pattnaik, and, if those vacancies were taken into account, there would have been 9 posts available for the year 2000 and 12 for 2001 to be filled up and in the process, the applicant could have got an opportunity for promotion to I.F.S. cadre as his position in the merit list was 7 for the year 2000-2001. He has also called the actions of the Respondents in over prescribing direct recruitment quota at the expense of the promotee quota as illegal and unconstitutional, affecting the vested rights of the promotees and such action being violative of Article 14 of the Constitution.

3 Per contra, the Respondents have vehemently opposed the application by filing detailed reply in counter. They have taken the stand that the appointment of the persons to I.F.S. has been made as per the provisions made in the I.F.S. (Recruitment) Rules, 1966, IFS (Appointment by Competitive Examination) Regulations, 1967 and IFS (Appointment by Promotion) Regulations, 1966 and other provisions as amended from time to time. With regard to the particular case of the applicant, they have stated that his name was considered, but not included in the select list prepared by the Selection

2

17

Committee in its meeting held on 22.12.2000 for the year 2000 as there were only four vacancies in the promotion quota as on 1.1.2000. They have submitted that the Selection Committee had, in its meeting held on 10.12.2001 considered the name of the applicant, but his name could not be included both on the grounds of merit as well as on account of seniority. The number of vacancies did not cover his case and merit wise his seniors were better suited than him. It is their categorical submission that the promotions were made strictly following the provisions of I.F.S. (Appointment by Promotion) Regulations 1966. Quoting Regulation 5(i), they have submitted that "the vacancies for the number of members of the State Forest Service to be included in the list shall be determined by the Central Government in consultation with the State Government limiting to the number of substantive vacancies as on the 1st day of January of the year in which the meeting was held". The Respondents have stoutly submitted that the number of vacancies had been correctly worked out and the fact is that the name of the applicant was, on both the occasions, in the zone of consideration for inclusion in the select list, but he was way down in the seniority to be covered by the number of vacancies for promotion. They have further submitted that the applicant seems to be under the impression that coming within the zone of consideration entitles a State Forest Service Officer for promotion to I.F.S.; but it is totally misconceived a notion and without any basis. They have also denied that there has been any irregularity in maintenance of the cadre strength of I.F.S. quota-wise. In support of their statement, they have submitted that prior to 31.12.1997, the total cadre strength of I.F.S. in Orissa was 121 with 92 posts earmarked for direct recruitment and 29 posts earmarked for promotion quota. However, by the amendment of I.F.S. (Classification of Cadre Strength) Regulations, 1966 dated 31.12.1997, the

a

18

promotion quota was increased by taking into account the State deputation reserve and training reserve in addition to Central training reserve and thus, enhancing the promotion quota from 29 to 36 with effect from 1.1.1998 and decreasing the D.R. quota from 92 to 85 from the same date. At that time it was also decided by the Government of India that increase in promotion quota was to be utilized in a phased manner over a period of three years, i.e., by 2 posts in 1998, 2 in 1999 and 3 posts in 2000. By taking into account the enhanced cadre strength of the promotion quota, the substantive vacancies in the promotion quota for the year 2000 was worked out as four and for the year 2001, worked out as three. They have also clarified that over subscription of the D.R. quota did not have any effect on the promotion quota in any manner. They have, therefore, assailed the application being devoid of merit.

4. We have heard the learned counsel for the rival parties and have perused the records placed before us.

5. The controversy raised by the applicant is that the cadre strength cannot be violated; increase in cadre strength due to cadre review under Regulations 1966 cannot be implemented in a phased manner and that while determining the vacancies, incidences of superannuation of officers during the year should also be taken into account; and that the select list for the year 2000 or 2001 has not been drawn up in terms of Regulation – 5(i).

6. The learned counsel for the applicant had made extensive submission before us on all the above points and thereafter he had also submitted a list containing the names of promotee I.F.S. officers to show that under the promotion quota there has been under recruitment. By filing a Memo dated 29.7.2005, he submitted a disposition list

✓

19

showing the names of 19 State Forest Service Officers, who were given promotion to I.F.S. However, no further material was placed before us to substantiate the allegation that calculation of vacancies for preparation of select list for the year 2000 and 2001 was done in violation of Regulation 5(i).

7. We have carefully considered the contention of the applicant as also the submission of the Respondents made in opposition. The Respondents have submitted that it is futile to argue that under the Regulations, the Respondents are duty bound to give sanction of the revised strength all in one go or they do not have the power to order increase to be allotted in a phased manner. Having regard to the rival contentions, we see lot of logic in the submission made by the learned Govt. Advocate that it is the inherent power of the executive to create posts and to decide how many posts are to be created and when, to serve public intent. Keeping in view the requirement of financial prudence, we also note that the law is now well settled as the Apex Court in a catena of cases have observed that creation and abolition of posts are within the domain of the executive and no judicial intervention is called for in such matters. Thus this point is decided in favour of the Respondents.


8. The learned counsel for the Respondents submitted a memo dated 9.8.2005, along with a list which contains a list of 29 State Forest Service Officers, who had been promoted to I.F.S. as on 1.1.2000 and this list also includes the names of 19 officers, whose names appear in the list submitted by the applicant to substantiate that there is no under recruited promotion quota. With the submission of this document, the 2nd controversy also is resolved.


2

20

9. The other allegation that the Respondents did not follow the Regulations 5(i) also appears to be untenable as the Respondents, by filing separate counter reply have disclosed that there were only four substantive vacant posts for the year 2000 and three substantive post for the year 2001 after adding the increase in number of posts due to cadre review and that the vacancies were determined according to number of substantive vacancies available as on 1st January of the year 2000 and 2001 and those averments have not been called wrong by the applicant in any manner. It has also been disclosed by the Respondents that both for the years 2000 and 2001, the applicant was in the zone of consideration and was considered for promotion. The vested right of the applicant being the right to be considered for promotion and that right of his having been honoured by the Respondents as stated above, there is hardly any scope for the Tribunal to interfere in this matter. With this all the objections raised by the applicant are found to be untenable.

10. Having regard to what has been discussed above, we see no merit in this O.A., which is accordingly dismissed. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN