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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**ORIGINAL APPLICATION NO.362 OF 2008**

Cuttack this the **22<sup>nd</sup>** day of March, 2011

Dr.Jugal Kishore Satapathy...Applicant

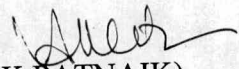
-VERSUS-

Union of India & Ors....Respondents

**FOR INSTRUCTIONS**

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T., PB ?

(C.R.MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(A.K.PATNAIK)  
JUDICIAL MEMBER

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**ORIGINAL APPLICATION NO.362 OF 2008**

Cuttack this the 22<sup>nd</sup> day of March, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Dr.Jugal Kishore Satapathy, aged about 63 years, son of late Trilochan Satapathy, Jagannathpur Sasan, PS-Jagannathprasad, Dist-Ganjam, now at : A/7-Phase II, Krishna Garden Complex, Barabari, Bhubaneswar-30

...Applicant

By the Advocates: M/s.A.K.Mishra, J.Sengupta, D.K.Panda, G.Sinha, A.Mishra, S.Mishra

-VERSUS-

1. Union of India through its Secretary, Ministry of Personnel, Department of Personnel and Training, PG & Pension, New Delhi
  2. Union Public Service Commission through its Secretary, Dholpur House, New Delhi
  3. State of Orissa through Special Secretary to Govt., G.A.Department, Bhubaneswar
  4. Biswambara Mishra, I.A.S. (Retd.),131/Mahavirnagar, Road No.3, Jharpada, Bhubaneswar
  5. Ratindranath Padhi, I.A.S. (Retd.), Pratapnagari, behind Maruti Show Room, Dist-Cuttack
- ...Respondents

By the Advocates: Mr.U.B.Mohapatra, SSC(Res. 1 & 2), Mr.B.Dash, Mr.A.K.Bose, G.A.(State)

...

**ORDER**

**HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:**

1. The present Original Application is an off shoot of earlier litigation by the applicant before this Tribunal in O.A.No.20/2004 disposed of on 27.1.2005. The applicant in O.A.No.20/04 had sought the following relief:

- a) "Under the circumstances, it is humbly prayed that the Hon'ble Court may be pleased to direct the Opp.Parties to consider the case of the petitioner for promotion to I.A.S. Cadre retrospectively on the basis of revised seniority w.e.f. 1994-95 and further also direct the Opp.parties to consider the case of the petitioner in each year subsequent thereof i.e., for the years 1995-96, 1996-97 and 1997-98 till the petitioner attained the age of 54 years.
- b) And direct even to consider the case of the petitioner when the OPs 4 and 5 were promoted i.e., w.e.f. 7.8.97 and 2.12.98.
- c) And further direct that the petitioner is entitled to all service benefits and financial benefits retrospectively".

2. This Tribunal disposed of the said Original Application by directing as under:

"6.The only prayer made by the applicant in this O.A. is that the State Government having refixed his seniority and having given him the consequential service benefits including the arrears of pay and allowances, they are also obliged to carry out review of the select list for promotion to IAS, when Shri Biswambar Mishra, an officer, junior to the applicant was considered/promoted to IAS, notwithstanding the fact that he had retired from service. If in any review meeting his case is recommended for inclusion in the select list, his pay has to be notionally fixed which will entitle him to higher pensionary benefit.

7. Having regard to the submissions made by the Ld.Counsel for the applicant, we disposed of this O.A. with a direction to the Respondents to consider the case of the applicant in terms of the IAS (Appointment by Promotion & Regulation) Rules, and the law laid down in this regard. With the above direction this O.A. is disposed of. No costs".

3. The above direction of the Tribunal having not been complied with, the applicant moved this Tribunal in Contempt Petition No.41/06 and in the mean time, the Respondent-Department having issued order dated 7.9.2006 (Annexure-A/13 to the present O.A.) in compliance with the order of this Tribunal in O.A.No.20/04, the Contempt Petition No.41/06 was dropped vide order dated 30.7.2008 of this Tribunal.

4. Under the aforesaid background, the applicant has moved this Tribunal in the instant Original Application challenging the legality and validity of the order dated 7.9.2006 (Annexure-A/13) issued by the Government of India (Respondent No.1), seeking the following relief:



“...to direct the OPs to promote the petitioner retrospectively when juniors of the petitioners (OPs 4 and 5) were promoted to the I.A.S. Cadre i.e., from 29.1.99 and 30.12.97.

And further the Hon'ble Tribunal may be pleased to direct the Ops to act upon the recommendation of the review selection committee and the recommendation of the UPSC in which the petitioner was recommended for promotion including the name of the petitioner at Sl.No.1A below the name of Lokanath Mishra and above the name of Biswambar Mishra in the Select list prepared on 20.3.97 for promotion to I.A.S. cadre and further be pleased to direct the OPs to pay the petitioner all his arrear and financial benefits retrospectively. And allow the application with costs”.

5. A short counter has been filed only by the Respondent No.2, viz., Union Public Service Commission, wherein, precisely it has been submitted that in compliance with the order dated 27.1.2005 of this Tribunal in O.A.No.20/04, the name of the applicant was duly considered by the Review Selection Committee (in short RSC) in its meeting held on 25.07.2005 in which the name of the Applicant was considered & also recommended for appointment to IAS against the Select List of 1996-97. It has also been submitted in that counter that the Commission approved the recommendation of R.S.C. on 16.1.2006. According to Respondent No.2, appointment of officers included in the Select List to the I.A.S. comes under the purview of the Central Government.
6. Since Respondent No.1, viz., Union of India/Central Government have not filed any counter despite opportunity, in the fitness of things, it would be profitable to quote hereunder, the relevant portion of Annexure-A/13 dated 7.9.2006, containing the consideration of the case of the applicant by the Central Government for appointment to I.A.S. cadre under I.A.S. (Appointment by Promotion) Regulations, 1955 (to be referred to hereinafter Regulations, 1955) and the reasons of declination to his appointment to I.A.S. cadre, which runs thus:

“And whereas the Committee recommended that Sh.Satpathy (DoB 02.03.1944) may be included at Sl.No.1-A below the name of Sh.Lokanath Mishra (S.No.1) and above the name of Sh.Biswambhar Mishra (S.No.2) in the Select List prepared on 20.03.1997 for promotion to IAS of Orissa cadre:

And whereas the occasion for appointment of Sh.Satpathy to IAS cadre of Orissa arose on 16.01.2006 when the minutes of the RSCM were approved by the Commission in terms of the relevant provisions of the Promotion Regulations;

And whereas it was observed that Sh.Satpathy retired from State Civil Service on attaining the age of superannuation on 31.03.2002 and he also crossed the age of 60 years on 31.03.2004 which is the age of retirement for members of All India Service;

And whereas Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955 lays down only for appointment of Members of the SCS to I.A.S. cadre of the State;

And whereas after his retirement Sh.Satpathy ceased to be a member of the State Civil Service and as such had thereafter no jural relation with the State Government;

Now therefore keeping in view the fact that the occasion for appointment of Sh.J.K.Satpathy to IAS cadre of Orissa against the Select List vacancies of 1996-97 arose only on 16.01.2006 when the Review Select List was approved by the Commission by which time he ceased to be a member of the State Civil Service and as such he cannot be appointed to IAS cadre of Orissa in terms of Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955.

It is ordered accordingly”.

7. Incidentally, it may be mentioned that neither the State of Orissa (Respondent No.3) nor any of the Private Respondent Nos. 4 and 5 has filed counter affidavits.
8. Applicant has not filed any rejoinder to the counter affidavit filed by the U.P.S.C.
9. We have heard Shri A.K.Mishra, learned counsel for the applicant, Shri U.B.Mohapatra, learned SSC for the Union of India, Shri B.Dash, learned counsel for UPSC, Shri A.K.Bose, learned Govt.Advocate for the State of Orissa and Shri N.Patra, learned counsel appearing on behalf of the private Res.Nos. 4 and 5. We have also gone through the entire records including the previous O.A.No.20/2004 and given our anxious consideration to the arguments advanced at the Bar.
10. Before bringing the matter to trice, we would like to indicate that vide order dated 14.11.2008 while directing notice to Respondents of the O.A., notice on Misc.Application No.631/08 seeking condonation of delay was also directed to be issued to Respondents requiring

them to have their say in the matter. As noted above, since the only Respondent, viz., UPSC has filed a short counter, this Tribunal has not been able to avail of the benefit of going through the objection to the Misc.Application seeking condonation of delay by the applicant. Be that as it may, the present Original Application having been filed on 12.9.2008 suffers delay of about just more than one year, the impugned order at (Annexure-A/13) having been issued by the Union of India/Central Government on 7.9.2006.

11. Since no objection in this regard has been filed by the Respondents, we have gone through the Misc.Application No.381/08 filed by the applicant seeking condonation of delay. The sole ground urged in the said Misc.Application, as it reveals, is that the applicant could come to know for the first time, of the impugned order dated 7.9.2006 (Annexure-A/13) when it was produced by the Respondents during the pendency of the Contempt Petition No.41/06, for which he could not approach this Tribunal within the period of limitation as prescribed under Section 21 of the A.T.Act, 1985 and therefore, soon after closure of the C.P.41/06 by the order of this Tribunal on 30.7.2008, the present Original Application was filed.

12. We are convinced with the grounds urged by the applicant in support of the condonation of delay accordingly, the delay in filing the present O.A. is condoned, thus disposing of M.A. 381/06.

13. As regards the consideration of the Original Application on merit, it is worthwhile to reduce it to writing that Annexures-A/1 to A/10 to the present Original Application should be set apart inasmuch as those annexure were already taken note of and considered by this Tribunal having formed part of the records in earlier O.A.No.20/2004 and in case of our so doing, it would be hit by the principles of constructive res judicata.

14. In support of his claim, the sole ground as urged by the applicant is that the Respondents having not considered his case in its proper perspective, the impugned order at Annexure-A/13 suffers from non-application of mind and hence, the same is liable to be struck down.



1. We have considered the submissions made by the learned counsel for the parties. Having regard to the facts and circumstances of the case, the following issues need determination.

- i) Whether the Respondents, particularly, the Union of India/Central Government have considered the approval of the Commission on the recommendation of the Review Selection Committee in its proper perspective.
- ii) Whether the action of the Union of India/Central Government in not appointing the applicant to IAS cadre is intra-vires the Regulations, 1955.

16. In order to decide the aforesaid issues, it is worthwhile to mention herein that the U.P.S.C. (Respondent No.2), has submitted in its counter that the Review Selection Committee in short R.S.C. had considered and recommended the name of the applicant for appointment to I.A.S. against the Select List of 1996-97, which was also approved by the U.P.S.C. on 16.1.2006. It is also an admitted fact that the R.S.C. had also recommended the name of the applicant for being included at Sl.No.1-A below the name of Shri Loknath Mishra (Sl.No.1) and above Shri Biswambhar Mishra (Sl.No.2) in the Select List prepared on 20.3.1997 for promotion to I.A.S. of Orissa cadre. From the above, it is amply clear that there was no faltering on behalf of either the R.S.C. or the U.P.S.C. for appointment of the applicant to I.A.S. with effect from the date the applicant's immediate junior Shri Biswmbhar Mishra (Respondent No.4) was so appointed against the Select List prepared on 20.03.1997. Viewed from this, there ought not to have been any angle of declination on the part of the Union of India/Central Government to appoint the applicant to I.A.S. cadre. But what weighed in the minds of the Central Government, as it appears on a plain reading of Annexure-A/13 is that the occasion for appointment of the applicant to I.A.S. cadre of Orissa against the Select List Vacancies 1996-97 having arisen only on 16.1.2006 when the Revised Select List was approved by the U.P.S.C., by which time the applicant had ceased to be a member of State Civil Service as he had already retired from service on attaining the age of superannuation on 31.3.2002 and also crossed the age of 60 years on 31.3.2004 which is the age of retirement for members of All India Service.

17 We have considered the above ground urged by the Union of India/Central Government in the impugned order at Annexure-A/13 in the light of the decision of this Tribunal in O.A.No.20/2004. This Tribunal, in order dated 27.1.2005 though had taken note of the fact that the applicant had already retired from service, yet, directed that **“if in any review meeting his name is recommended for inclusion in the Select List, his pay has to be notionally fixed which will entitle him to higher pensionary benefit”**. This direction of the Tribunal holds good as on date. In the circumstances, the Respondents, particularly, the Union of India/Central Government could not have arrogated the powers of an appellate authority over the orders of the Tribunal with a view of doing something out of its own whims and fancies. In this context it is needless to mention that in a matter of supersession when the Court/Tribunal directs consideration from the date the junior was so appointed and/or promoted, it is implied that such consideration for appointment and/or promotion would have had the retrospective application at par with one's junior. In the backdrop of the above laid down proposition, the decision of the Union of India/Central Government vide impugned order at Annexure-A/3 that the occasion for appointment of the applicant to I.A.S. cadre of Orissa against the select List vacancies of 1996-97 arose only on 16.1.2006 when the Review Selection List was approved by the Commission seems to be unjustified, absurd and shows lack of due application of mind in order to circumvent of the orders of this Tribunal in Original Application No. 20/04. The occasion to appoint the applicant to I.A.S. cadre against the Select List of 1996-97, in our considered view, could have arisen only when Shri Biswambhar Mishra (Respondent No.4) who is junior to applicant was appointed to I.A.S. cadre of Orissa and certainly not at a later date which has no nexus at all with the appointment of applicant's junior to I.A.S. cadre as aforesaid. Therefore, by no stretch of imagination, it could be said that the applicant had no jural relation with the Respondents in the matter of equality of status at par with his juniors and in the circumstances, the Respondents, particularly, the Union of India/Central Government have not considered in letter and spirit the order of this Tribunal in O.A.No.20/04.



18. The next issue to be determined is whether the action of the Union of India/Central Government in not appointing the applicant to I.A.S. cadre of Orissa is intra vires the Regulations, 1955. In this connection, Regulation-10 of Regulations, 1955 reads as under:

“10. Power of Central Government not to appoint in certain cases: Notwithstanding anything contained in these Regulations [xxx] Central Government may not appoint any person whose name appears in the Select List, if it is of opinion it is not necessary or expedient so to do in the public interest:

Provided that no such decision shall be taken by the Central Government without consulting Union Public Service Commission”.

19. Perusal of Regulation 10 as quoted above, makes it clear that the decision of Union of India/Central Government not to appoint the applicant to I.A.S. cadre of Orissa is unilateral and stretching of powers, as such a course of action ought to have been resorted, firstly, for the reasons to be recorded in writing by it that it was not necessary or expedient to so do in public interest and secondly, that too in consultation with the U.P.S.C. Viewed from this angle, it cannot be said that the Union of India/Central Government have acted in accordance with Regulation-10 of Regulations, 1955.

20. Having regard to what has been discussed above, we answer the issues as under:

- i) Respondents, particularly, the Union of India/Central Government have not considered the approval of the UPSC on the recommendations of the RSC in its proper perspective.
- ii) The action of the Union of India/Central Government in not appointing the applicant to IAS cadre is not intra vires the Regulations, 1955.

21. In consequence of our findings as above, we have no hesitation to quash the impugned order dated 7.9.2006 (Annexure-A/13) issued by the Union of India/Central Government and accordingly, the same is quashed and set aside. In the circumstances, we make the following orders –

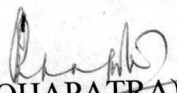
- i) Respondent No.1, viz., Union of India/Central Government is directed to issue necessary orders for appointment to IAS cadre of Orissa in accordance with the approval of the U.P.S.C. on the recommendations made by the R.S.C. against the Select List Vacancies of 1996-97, having due regard to his seniority over Shri Biswambhar Mishra, as if

the applicant had been so considered along with Shri Biswambhar Mishra for appointment to I.A.S. cadre of Orissa.

- ii) In the event the applicant is appointed to IAS cadre with effect from the date his junior Shri Biswambhar Mishra was so appointed, his pay shall be notionally fixed till the date of his retirement as such.
- iii) Consequentially, the applicant shall be entitled to receive the revised and enhanced pension.

22. The above exercise shall be completed within a period of 120 (one hundred & twenty days) of the date of receipt of this order.

23. In the result, the O.A. is allowed to the extent indicated above. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(A.K. PATNAIK)  
JUDICIAL MEMBER

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