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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


O.A.No.443 of 2008
Cuttack, this the 13th August, 2010

Lingaraj Khadanga Applicant
-Versus-
Union of India & Others Respondents
.....

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?


(G. Shanthappa)
Member (Judicial)


(C.R. Mohapatra)
Member(Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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C O R A M
THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

Sri Lingaraj Khadenga, aged about 61 years, Son of Govinda Chandra Khadanga (OAS (Retd.)), resident of Village/Po.Barimunda, Via-Phulanakhara, Dist. Cuttack at present working as Member District Consumer Dispute Forum, Cuttack, Dist. Cuttack, Orissa.

.....Applicant

Legal practitioner: M/s.K.C.Kanungo, S.Beura, S.K.Patnaik, Counsel.

-Versus-

1. Union of India represented through the Secretary, Ministry of Personnel, Public Grievance and Pension Deptt., of Personnel & Training, North Block, New Delhi.
2. State of Orissa represented through Chief Secretary to Government of Orissa, Bhubaneswar, Dist. Khurda, Orissa.
3. Special Secretary to General Administrative Department, Government of Orissa, Secretariat Building, Bhubaneswar, Dist. Khurda, Orissa.
4. Union Public Service Commission represented through its Secretary, Dholpur House, New Delhi.
5. Sri Bijay Kumar Dhal, IAS, Vice-Chairman, Cuttack Development Authority, Arunodaya Market, Cuttack, Orissa.
6. Mayadhar Panigrahi, IAS (Retd.), Plot No.2941, Near Bhoisahi, Lewis Road, Bhubaneswar, Dist. Khurda, Orissa.
7. Rahas Bihari Nayak, IAS (Retired), R.P. 39, Pandav Nagar, Tankapani Road, Bhubaneswar, Dist. Khurda, Orissa.
8. Nityananda Mohanty, IAS (Retired), Jagannath Matha Lane, Old Town, Bhubaneswar, Dist. Khurda, Orissa.

By legal practitioner: Mr.A.K.Bose, GA(State)

Mr.U.B.Mohapatra, SSC

* Mr B. Dash (R-4)

* Corrected
vide order
Dt 8.12.2010.

ORDER
MR. C.R.MOHAPATRA, MEMBER (A)

The admitted facts of the matter are that the Applicant entered to the service of the Government of Orissa as a Member of the Orissa Administrative Service (Class-II) on 10-07-1974. Thereafter, he was promoted to the OAS Junior Class-I w.e.f. 31.05.1983. But his further promotions to the rank of OAS I (SB), OAS (SAG), OAS (SG) and OAS (S) were held up due to disciplinary proceedings drawn up against him vide Government of Orissa, Revenue Department OM No.2301/R (CS) dated 11.8.1986. After completion

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of the enquiry in the said disciplinary proceedings, the IO suggested to exonerate the Applicant from all the charges. The Disciplinary Authority i.e. the Government of Orissa, differed from the recommendations of the Inquiring Officer and decided to impose penalty i.e. stoppage of three annual increments with cumulative effect and treating the period of suspension as such. The applicant being aggrieved by the aforesaid order of punishment filed an OA No. 223/99 before the State Administrative Tribunal, Bhubaneswar challenging the order of punishment. The Tribunal in their order dated 23-11-2001 dismissed the Original Application due to lack of merit. Challenging the said order of the Tribunal, Applicant filed OJC No.16076/2001 before the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa by allowing the Writ Petition preferred by the Applicant quashed the order of the State Administrative Tribunal. Against the said order of the Hon'ble High Court allowing the Writ Petition, Government of Orissa filed SLP before the Hon'ble Supreme Court but in order dated 26.3.2007 the SLP was dismissed. Following the aforesaid orders, the Government of Orissa withdrew the order of punishment and dropped the Disciplinary Proceedings vide order dated 21-05-2007. As a result of such dropping of the proceedings the seniority position of the applicant was restored and he was kept above Respondent No.5 (Bijay Kumar Dhal) in the cadre of Orissa Administrative Service vide notification dated 18.07.2008. Meanwhile Shri Bijay Kumar Dhal was appointed to IAS from the select list of the year 2000 vide DOP&T notification No.14015/12/2000-AIS.I dated 14.03.2001. In view of the restoration of the seniority position of the applicant above Shri Dhal, by making representation the Applicant sought consideration for inclusion to IAS. As it appears the said representation of the applicant was forwarded by the Government of Orissa to UPSC with recommendation and request to convene a meeting of the Review

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Selection Committee for considering the case of the applicant for his promotion to IAS retrospectively from the year 2000. But the said request was rejected and communicated under Annxure-A/8 dated 22nd October, 2008 with the following remarks:

"I am directed to refer to your letter No. AIS.I-63/07-23506/AIS.I dated 28.8.2008 on the above captioned subject and to say that once a Select List is prepared by the Selection Committee, approved by the Commission and acted upon by the Government of India, the same cannot be reviewed as there is no provision in the IAS (Appointment by Promotion) Regulations, 1955 **for suo moto review**. As such, the request of the State Government to convene a Review Selection Committee Meeting to consider the case of Shri Lingaraj Khadanga for promotion to the IAS of Orissa Cadre retrospectively from the year 2000 when his junior Shri Bijay Kumar Dhal was considered and appointed to the IAS cannot be acceded to."

2. Though notice was duly served on the Private Respondents 5 to 8, no separate counter has been filed by them. However, separate counters have been filed by Respondents 2&3 & 4 in which it has been stated that there is no provision under the IAS (Appointment by Promotion) Regulations, 1955 for review of the decision taken by the Selection Committee. Secondly as per the IAS (Appointment by Promotion) Regulations, 1955, the Selection Committee presided over by the Chairman or a Member of the UPSC as Chairman makes selections of the State Civil Service Officers for promotion to the Indian Administrative Service on the basis of the proposal and relevant records furnished by the concerned State Government including the seniority list etc. According to Regulation 5(1) of the IAS (Appointment by Promotion) Regulation, 1955 each committee shall ordinarily meet every year and prepare a list of such members of the State Civil Services as are held by them to be suitable for promotion to the Service. The number of members of the State Civil Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall

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not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held for the posts available for them under Rule 9 of the Recruitment Rules. Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955 lays down only for appointment of members of the SCS to IAS cadre of the State. As such after ~~one's~~ ^{applicant} retirement on dated 31-10-2005, he ceased to be a member of the State Civil Service and as such he had therefore no jural relation with the State Government and hence he has no *locus standi* to claim promotion to the IAS cadre which is a completely separate service. Lastly it was submitted that there being no irregularity or illegality in the order of rejection this OA being devoid of any merit is liable to be dismissed.

3. By producing copy of the order dated 27th July, 2009 of this Tribunal in OA No. 269 of 2009 (Surendra Prasad Mishra v Union of India & Others] and the copy of the order dated 20th April, 2010 as Annexures-A/A/10 & A/11 through representation the Applicant has submitted that when in similar circumstances the case of Shri Surendra Prasad Mishra was reconsidered/reviewed, rejecting the case of the applicant on the ground that there is no provision in the Rules for such review amounts to discrimination/violation of Article 14 and 16 of the Constitution of India. To buttress his claim that reconsideration in the above circumstances is permissible he has also relied on the decision of the Hon'ble Apex Court rendered in the case of **Union Public Service Commission & Anr v A.K.Salim & Ors**, AIR 2008 SC 2673.

4. Learned Counsel for both sides have reiterated the stand taken in their respective pleadings. Having considered their submissions carefully perused the materials placed on record. The reason in the order under Annexure-A/11 dated 20th April, 2010 in declaring Shri Mishra shall be

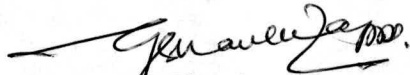
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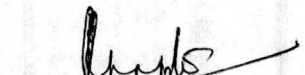
deemed to have been appointed to IAS w.e.f. 22nd January, 2004 i.e. the date on which his immediate junior Shri Jagdish Prasad Aggarwal was appointed to IAS on the basis of inclusion of his name in the Select List of 2002 as envisaged in the first paragraph of the said order is that "the selection Committee which met on 13th August, 2003 for selection of State Civil Service Officers of Orissa for inclusion in the Select List of 2002 for promotion to IAS had not considered the case of Shri Surendra Prasaad Mishra for inclusion in the said List as at that time the State Government had not included him in the eligibility list/zone of consideration as his position at that time was lower in the seniority list." Be that as it may, from the above it is conclusively established that discretion was available with the Respondents/UPSC for convening Review of the Selection to IAS. As it appears from the record, Respondents 2& 3 in letter dated 28th August, 2008 sought consideration of the case by convening a meeting of the Review Selection Committee for promotion to IAS retrospectively from the year 2000 as his name was also not included in the list sent by the State Government in view of the pendency of disciplinary proceeding against the applicant and after restoration of the seniority position of the applicant such a recommendation was sent by the Respondent No.2&3 which ought not to have been rejected when in similar circumstances the Respondents/UPSC considered and promoted Shri S.P. Mishra to IAS retrospectively in order under Annexure-A/11; ~~as~~ It is well settled law that "discretion cannot be exercised discriminatorily" as it is opposed to the rights conferred under Article 14 & 16 of the Constitution of India. On this focused question, there is no answer from either of the Official Respondents. In the circumstances, there is no option left for this Tribunal but to quash the order of rejection under Annexure-A/8 dated 22nd October, 2008 and to remit the matter back to the Respondents especially Respondent No.4

without expressing any opinion on the suitability of the Applicant with direction to consider/reconsider the case of the applicant for promotion to IAS retrospectively when Respondent No.5 was promoted to IAS in the light of the consideration given to the case of Shri S.P. Mishra in order under Annexure-A/11 dated 20th April, 2010 and communicate the decision in a reasoned order to the Applicant within a period of 45 days from the date of receipt of copy of this order. Ordered accordingly.

5. In the result, this OA stands allowed to the extent stated above.

There shall be no order as to costs.


(G. Shanthappa)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)