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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.715 of 2010
Cuttack, this the 05th day of September, 2011

M.Rajamani 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?


(A.K.PATNAIK)
MEMBER (JUDICIAL)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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O.A No. 715 of 2010
Cuttack, this the 5th day of September, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

M.Rajamani aged about 52 years, S/o.Late O.Muthuchamy posted under GA Department, Orissa Secretariat, Government of Orissa, Bhubaneswar at present on Extraordinary Leave.

.....Applicant

By legal practitioner: M/s.B.Mohanty,S.Pattnaik,
B.S.Rayaguru, Counsel.

-Versus-

1. Union of India represented through its Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-110 001.
2. State of Orissa represented through its Chief Secretary to Government of Orissa, At/Po. Secretariat, Building, Bhubaneswar, Dist. Khurda.
3. The Special Secretary, General Administration Department, Government of Orissa, At/Po. Secretariat Building, Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC & Mr.G.C.Nayak, GA

ORDER

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

The Applicant, Sri M.Rajamani an IAS Officer of 1982

batch has filed this Original Application seeking the following

reliefs:

"(i) To allow this Original Application;

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- (ii) to expunge the observations made by the Screening Committee in its meeting dated 24-09-2009 and 30-01-2010 wherein it had been stated that the disciplinary proceedings were still pending in respect of the Applicant, though they had been set aside by this Hon'ble Tribunal by its order dated 29-09-2005;
- (iii) grant promotion to the Applicant to the rank of Principal Secretary, Government of Orissa by opening the "sealed Cover" and grant him all consequential benefits from the date his immediate junior Shri A.P.Padhi, IAS, belonging to 1983 batch was promoted to the rank of Principal Secretary, Government of Orissa;
- (iv) grant all benefits including back wages and perquisites and other similar entitlements along with all consequential benefits from the date of his immediate junior Shri A.P.Padhi, IAS belonging to 1983 batch was promoted to the rank of Principal Secretary, Government of Orissa;
- (v) Any other relief to which the Applicant is entitled to and as this Hon'ble Tribunal deems fit and proper to grant such relief as the case may be."

2. Despite due notice and grant of adequate time no counter has been filed by the Union of India, Respondent No.1. However, counter has been filed by the State of Orissa represented by Chief Secretary and Special Secretary in General Administration Department/Respondent Nos.2&3 in which it has been stated that the prayer which the Applicant has sought to be granted by this Tribunal is not acceptable. Their stand is that the Applicant joined as a Member of the Indian Administrative Service w.e.f. 01-09-1982 and was allotted to 1982 batch of Orissa

cadre of IAS. For certain omission and commission allegedly committed by him during his incumbency as Chairman, Bhubaneswar Development Authority (BDA), disciplinary proceeding was initiated against him vide Memorandum dated 19-08-2002. He challenged the said proceedings before this Tribunal in OA No.180 of 2003. This Tribunal vide order dated 29.9.2005 quashed the disciplinary proceedings initiated against him vide Memorandum dated 19-08-2002. The said order of this Tribunal dated 29.9.2005 in OA No. 180 of 2003 was challenged by the Respondents before the Hon'ble High Court of Orissa in **WP (C) No. 15176 of 2006**. Due to pendency of the said Writ Petition before the Hon'ble High Court of Orissa, the Disciplinary Proceedings have been treated to be pending against him. Accordingly, the findings of the Screening Committee which met on 24.09.2009 and 30.01.2010 in respect of the applicant have been kept in "sealed cover" till final disposal of the Disciplinary Proceedings.

Further it has been averred by Respondents that disciplinary proceedings were initiated against the applicant and Shri Bijay Kumar Dhal, IAS who was working as Additional Secretary to Government and ex officio Director of Estate, GA Department for the same charges. While the applicant was the

Chairman of the DP & BP Committee, Shri Dhal, IAS was the member of the DP & BP Committee. On careful consideration of the case of Shri Dhal, the State Government dropped the disciplinary proceedings started against Shri Dhal for the self same charge and after closure of the disciplinary proceedings Shri Dhal was allowed promotion to Super time Scale in IAS retrospectively as his case was kept in the sealed cover due to pendency of the DP. But as the responsibility of the applicant was greater than that of Shri Bijay Kumar Dhal, IAS no order dropping the proceedings was passed by the State Government and due to pendency of the Writ Petition the disciplinary proceedings initiated against the Applicant though quashed by this Tribunal has not yet been finalized. Therefore, though his case was considered by the Screening Committee on various occasions, the findings of the Screening Committee have been kept in a 'sealed cover' from time to time and the same shall be given effect to after conclusion of the proceedings.

3. The Applicant has filed rejoinder in which it has been stated that the Respondent Nos.2&3 have filed Writ Petition bearing WP (C) No. 15176 of 2006 before the Hon'ble High Court of Orissa against the order of this Tribunal dated 29.9.2005 in OA No.180 of 2003; which has neither been admitted nor any notice

has been issued to him. Hence it has been averred that merely because of filing of Writ Petition in 2006 (five years back) the order of this Tribunal does not automatically get stayed and as such, he should not have been denied the benefit of promotion when such benefit was extended to his junior.

4. Learned Counsel appearing for the parties have reiterated the stand taken in their respective pleadings and having heard them at length, perused the materials placed on record.

5. We observe from the counter that on self same grounds, Disciplinary Proceedings were initiated against the Applicant and Shri Bijay Kumar Dhal, IAS, whereas the disciplinary proceedings initiated against Shri Dhal, IAS has been dropped and he has been granted all benefits including promotion retrospectively. This is not in dispute. Similarly, it is not in dispute that the Applicant challenged the disciplinary proceedings initiated against the applicant in OA No. 180 of 2003 and this Tribunal vide order dated 29.9.2005 quashed the said proceedings and that till date the said order of this Tribunal has not been stayed, set aside by any higher forum or reviewed by this Tribunal on any Review Application filed by the Respondent Nos. 2&3. The Writ Petition is still pending before the Hon'ble High Court of Orissa and no stay order is available against the order of this

18 Tribunal as ascertained and apprised by the Learned Government Advocate appearing for the Respondent Nos.2&3. Therefore, after the order of this Tribunal dated 29.9.2005 there are no disciplinary proceedings pending against the applicant in the eyes of law. The Learned GA appearing for the Respondent Nos. 2& 3 was not able to produce any document supported by law that filing of Writ Petition is enough not to comply with the order of this Tribunal. As this Tribunal quashed the disciplinary proceedings, in the eyes of law there is no proceeding as long as the said order is not stayed or set aside. As such the contention that the findings of the Selection Committee have been kept in 'sealed cover' due to pendency of disciplinary proceedings can not be an acceptable proposition. Rather the said action of the Respondents would amount to clear case of miscarriage of justice caused to the applicant in the decision making process of selection. Hence we hereby direct the Respondent Nos.2&3 that in case the order of this Tribunal dated 29.9.2005 in OA No. 180 of 2003 still holds good, in other words has not been stayed by the Hon'ble High Court, they should open the sealed cover in which the recommendation of the Selection Commission has been kept and act upon the same by granting the relief, if other wise, the applicant is eligible and fit with retrospective effect i.e. from the

date his junior has been promoted. The entire exercise shall be completed within a period of forty five days from the date of receipt of copy of this order. However, the promotion, if any, shall be subject to the final outcome of the WP (C) No. 15176 of 2006.

7. In the result, this OA stands allowed by leaving the parties to bear their own costs.

Allet -
(A.K.PATNAIK)
Member(Judl.)

Mahtab
(C.R.MOHAPATRA)
Member (Admn.)