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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.127 of 2011
Bhabani Sankar Panda Applicant
Vs
UOI & Ors. Respondents
.....

Order dated - 19-07-2011.

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

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Applicant while working as a Member of the State Civil Service superannuated from service on attaining the age of retirement of 58 years on 31.10.2010. Thereafter, he has filed this OA seeking the following relief:

- “8.1. That direction may be issued to the respondents to include the name of the applicant in the list of appointment in IAS cadre of Orissa;
- 8.2. That direction may be issued to the respondent no.1 to give appointment to the applicant to IAS cadre for the year 2006-A with all consequential benefits w.e.f. 24.02.2011 (Annexure-A/2);
- 83. And further be pleased to pass any other order/orders, as it would deem fit and proper to complete relief to the applicant.”

2. No counter has been filed by the Government of India, Respondent No.1 despite appearance of Mr. U.B.Mohapatra, Learned SSC for the Union of India, service of notice and adequate opportunity being granted to him. However, Respondent Nos.2&3

have filed their counter objecting to the stand of the Applicant. Despite opportunity no rejoinder has been filed by the Applicant to the counter filed by the Respondent Nos.2&3. However, by filing MA No. 461 of 2011 the Applicant has prayed direction to the Respondent No.1 to give effect to the order under Annexure-A/3 dated 10.11.2006 as per the decision of this Tribunal dated 27th July,2009 in OA No.269 of 2009 (Surendra Prasad Mishra v UOI and others) and dated 13th Augustu,2010 in OA No.443 of 2008(Lingaraj Khadenga v Union of India and others). Respective parties have reiterated the stand taken in their pleadings and having heard them at length perused the materials placed on record.

3. Mr. G.C.Nayak, Learned GA representing the Respondent Nos. 2 & 3 submitted that in accordance with the provisions of IAS (Appointment by Promotion) Regulation, 1955, self contained proposal for filling up of the vacancies in the IAS for the year 2007, 2008, 2009 and 2010 was forwarded to the Respondent No.1 for necessary consideration. The Selection Committee was held on 01-11-2010 for considering eligible SCS Officer for promotion to Indian Administrative Service of Orissa Cadre. The Selection Committee considered the SCS Officers against the vacancies year wise. The name of the applicant was placed at Sl.No.8 of the select

list of 2006-A. Regulation 9(1) of the IAS (Appointment by Promotion) Regulations, 1955 provides for appointment of Members of the SCS to IAS cadre of the state. After retirement, a Government Servant ceased to be a Member of the State Civil Service and jural relation of master and servant no more exists thereafter. The applicant was no more in service when the Selection Committee Meeting was held and considered the case of the Applicant. There is no provision in the IAS (Appointment by Promotion) Regulation, 1955 to appoint one SCS Officer to the IAS cadre of Orissa who has already retired from State Service and as such, the Applicant has no locus standi to claim promotion to IAS cadre. However, it was stated that as his name was included in the select list of 2006 -A, the Government of Orissa/Respondent Nos.2&3 recommended his name for appointment to IAS vide letter No. AIS.I-10/2011-1086/AIS.I dated 14.01.2011 (Annexure-R-2/1). As regards S/Shri Surendra Kumar Mishra and Lingaraj Khadenga it was contended by them that they were promoted to IAS based on the orders passed by this Tribunal in OA NO. 269/2009 and 443/2008. As such no illegality has been committed by promoting S/Shri Mishra and Khadenga. Hence he has prayed to dismiss this OA.

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4. Learned Counsel appearing for the Applicant rebutted the aforesaid contentions by stating that though Shri Mishra was in service by the time he approached this Tribunal and direction was issued by this Tribunal, Shri Khadenga approached this Tribunal after his retirement and direction was issued by this Tribunal to consider the case of the applicant in the light of the decision rendered by this Tribunal in the case of Shri Mishra. As such, the plea that as the applicant retired from service he was not entitled to the promotion is not sustainable. Further contention of the applicant is that as per Regulation 5(1) of the IAS (Appointment by Promotion) Regulations, 1955, Selection Committee ought to have met every year and prepared a list of such members of the State Civil Service as are held by them to be suitable for promotion to the Service. Had the Committee met at the right time the applicant could have got the benefit of the recommendation. As such the delay in holding the meeting in accordance with the provision being not attributable to the applicant, the retirement should not stand on his way to get the benefit of the notification recommending the name of the applicant to IAS. Hence Learned Counsel for the Applicant has prayed for the relief claimed in this OA.

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5. It is seen that relying on the decision in the case of Surendra Prasad Mishra in OA No. 269 of 2009, Shri Khandenga approached this Tribunal, in OA No.443 of 2008 even after his retirement from service and this Tribunal directed to consider the case of Shri Khadenga for his promotion to IAS in the light of the order passed in the case of Shri Mishra. Relevant portion of the order dated 13th August, 2010 in the case of Shri Khadenga (supra) is extracted herein below:

“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/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 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

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days from the date of receipt of copy of this order.
Ordered accordingly."

6. We have perused the case of Shri Khadenga vis-à-vis the case of the Applicant and we find no difference/distinction between them. Hence, Respondents are hereby directed to consider/reconsider the case of the applicant for promotion to IAS retrospectively keeping in mind the earlier decisions of this Tribunal in the cases of Shri Mishra and Shri Khadenga (surpa) 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.

7. In the result, with the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.PATNAIK)
Member (Judicial)


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