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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.403 of 2011

Gadadhar Parida .... Applicant

Vs

UOI & Ors. .... Respondents

.....

Order dated - 10-08-2011.

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 31.01.2011. Thereafter, he has filed this OA seeking the following relief:

"to quash the order of the Respondent No.1 dated 10.06.2011 (Annexure-A/6);

To direct the Respondent No.1 to promote the applicant to the Indian Administrative Service retrospectively from the date his immediate junior Sri Krishna Gopal Mohapatra was promoted to the said service i.e. from 24-02-2011 (Annexure-A/2)."

2. The Applicant filed this OA on 24<sup>th</sup> June, 2011. This was listed for consideration on the question of admission on 29.6.2011. On consideration of the rival submission of the parties notice was directed to be issued to the Respondents by speed post at the cost of the applicant returnable in four weeks. Accordingly

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the matter was directed to be listed after 30 days. This was the order passed in presence of Mr.U.B.Mohapatra, Learned SSC for the Union of India and Mr. G.C.Nayak, Learned Government Advocate for the State of Orissa who had also received copy of the OA in advance.

3. Today by producing copies of the orders of this Tribunal **dated 27<sup>th</sup> July, 2009 in OA No.269 of 2009** (Surendra Prasad Mishra V Union of India and others), **dated 13<sup>th</sup> August, 2010 in OA No. 443 of 2008** (Lingaraj Khadenga V Union of India and others) and order **dated 19.07.2011 in OA No. 127 of 2011** (Bhabani Sankar Panda V Union of India and others), Learned Senior Counsel for the Applicant stated that in view of the above orders and the letter of the Government of Orissa at Annexure-A/5, there is no need to keep the matter pending awaiting the counter of the State of Orissa and this OA may be disposed of on the basis of the counter filed by the Respondent No.1 with reference to the letter of the State of Orissa under Annexure-A/5 and the earlier orders of this Tribunal. Although this was opposed by Mr. G.C.Nayak, Learned GA appearing for the State of Orissa, we are not inclined to grant any adjournment awaiting the reply from the State of Orissa especially when it is case of the Applicant that this matter is covered by the earlier decisions of this Tribunal

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and the letter under Annexure-A/5 for the State of Orissa is the foundation of the relief claimed by the Applicant in this OA besides, no formal application seeking for time has been filed by the State of Orissa.

4. Heard Learned Counsel for both sides and perused the earlier orders of this Tribunal relied on by the Senior Counsel appearing for the Applicant with reference to the pleadings of the parties in those OAs and material placed on record.

5. In Annexure-A/5 dated 7<sup>th</sup> March, 2011 the Joint Secretary of the Government of Orissa, General Administration Department, Bhubaneswar wrote to the Secretary Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi stating that Selection Committee in its meeting held on 1<sup>st</sup> November, 2010 had prepared the Select Lists of SCS Officers for promotion to the IAS cadre of Orissa for the year 2006-A to 2009. Such Select Lists have been approved by the Union Public Service Commission on 05-01-2011 as communicated vide letter No. 6/14/2010-AIS dated 05.01.2011. According to regulation 7(4) of the IAS (Appointment by Promotion) Regulations, 1955 the Select List is valid upto 07.03.2011 i.e. 60 days from the date of approval of the Select List by the Commission. The name of Shri Gadadhar Parida (present applicant) has been included in the Select List of

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2007 (Sl.No.2) provisionally subject to clearance in the disciplinary proceedings pending against them. At the time of the Selection Committee Meeting the charges of the disciplinary proceedings against Shri Parida were framed due to the irregularities committed by him during his incumbency as MD Orissa State Handloom Co-operative Societies vide GA Deptt. Memorandum No. 10272/Gen dtd. 09.05.2006 which was communicated to the UPSC along with the proposal for convening the Selection Committee Meeting. The State Government, after careful consideration of the findings of the Inquiring Officer and the representation of Shri Parida, has been pleased to exonerate him from the charges framed in the disciplinary proceedings. In view of the above facts Shri Gadahar Parida (Sl.No.2 of the Select List of 2007) is free from disciplinary proceedings. Shri Parida has retired from the State Government on superannuation w.e.f. 31.1.2011 on attaining the age of 58 years. By stating so, a request was made to the UPSC that the name of Shri Parida (Sl.No.2 of the Select List of 2007) may be made unconditional and final in terms of proviso to Regulation 7(4) of the IAS (Appointment by Promotion) Regulations, 1955. Copy of the said letter was also forwarded to the Government of India, Department of Personnel and Training, New Delhi/Respondent No.1 for necessary action.

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6. It appears, this letter was forwarded by the UPSC/Respondent No.2 to the Government of India/Respondent No.1 who in letter under Annexure-A/6 dated 10<sup>th</sup> June, 2011 has informed the Respondent No.2 that the date of birth of the applicant is 22.1.1953. Thus he has retired from State Civil Service on 31.1.2011 after attaining the age of superannuation. In terms of provisions of Regulation 9(1) of IAS (Appointment by Promotion) Regulations, 1955 he cannot be appointed to IAS as he has ceased to be member of the Service. Being aggrieved by the communication under Annexure-A/6 of the Government of India/Respondent No.1, the applicant has approached this Tribunal in the present OA with the aforesaid prayer.

7. The Government of India/Respondent No.1 has filed its counter in which it has been stated that the Selection Committee met on 01-11-2010 for selection of SCS Officers for promotion to IAS cadre of Orissa had inter alia included the name of the Applicant at Sl.No.2 in the select list of 2007 provisionally subject to clearance in disciplinary proceedings pending against him. The select list was approved by the Union Public Service Commission on 04.02.2011 and the same was notified by Department of Personnel & Training on 24.2.2011. Also the officers who were unconditionally included in the said select list and

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were in service were appointed to IAS by this Department after receipt of statutory declaration from them. The Applicant whose date of birth is 22.1.1953 had retired from the SCS on 31.1.2011 after attaining the age of 58 years ie.. the age of superannuation in the State Civil Service. Also he was provisionally included in the said select list. In the circumstances he could not be appointed to IAS on 24.2.2011. Subsequently, disciplinary proceedings pending against him was dropped and he was exonerated by the Government of Orissa order dated 15.2.2011. The State Government vide letter dated 7.3.2011 requested the UPSC to declare the inclusion of the name of the applicant at Sl.No.2 of select list of 2007 as unconditional and final in terms of proviso to Regulation 7(4) of IAS (Appointment by Promotion) Regulations, 1955. Thereafter, the UPSC vide their letter dated 2.6.2011 informed that the Commission had declared inclusion of the name of Applicant at Sl.No.2 of select list of 2007 as unconditional and final. But in terms of Regulation 9(1) IAS (Appointment by Promotion) Regulation only a member of the service could be appointed to IAS. As the applicant had ceased to be a member of SCS w.e.f. 31.1.2011 the decision of the Respondent No.1 cannot be faulted.

*[Handwritten signature]*

8. From the above the only question that arises for decision in this OA is whether the applicant, after ceasing to be a Member of the SCS due to attaining the age of 58 years, though exonerated from the disciplinary proceedings is entitled to be appointed to the IAS as he figured in the Select Panel of 2007.

9. Fact of the matter is that Selection Committee met on 01-11-2010 in which the name of the applicant was included. The Applicant retired from service on 31.1.2011. The select list was approved by the Union Public Service Commission on 04.02.2011 has been stated in the counter **whereas gazette notification under Annexure-A/1 the date of approval of the list has been mentioned as '5<sup>th</sup> January, 2011'**. The Applicant was exonerated from the charges on 15.02.2011. The select list was notified on 24.2.2011. This means, had there not been any disciplinary proceedings against the applicant, he would have been appointed to the IAS if 5<sup>th</sup> January, 2011 is taken as the date of approval of the panel. Hence the delay caused in the above process cannot be attributable to the Applicant so as to deprive him of his legitimate right to be appointed to IAS from the date when his juniors were appointed to IAS. Thus the prime issue in this Original Application whether due to the retirement he would be deprived of becoming the IAS when retirement age of the All



India Service Officers is 60 years. This issue came up for consideration before this Tribunal in the above OAs. The Tribunal after examining the relevant provision of the rules and the circumstances leading to delay in convening the meeting, publication of the result etc., came to the conclusion in favour of the applicants therein. The order of this Tribunal dated 13<sup>th</sup> August, 2010 in OA No.443 of 2008 (Lingaraj Khadenga v Union of India and others) is most appropriate and relevant to this case as Shri Khadenga had also retired from SCS on attaining 58 years of age like the Applicant. The operative part of the order in the case of Lingaraj Khadenga (surpass) is quoted herein below:

“3. By producing copy of the order dated 27<sup>th</sup> 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 20<sup>th</sup> 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 20<sup>th</sup> April, 2010 in declaring Shri Mishra shall be deemed to have been appointed to IAS w.e.f. 22<sup>nd</sup> 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 13<sup>th</sup>

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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 28<sup>th</sup> 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 22<sup>nd</sup> 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 20<sup>th</sup> 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."

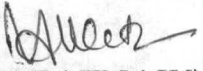
10. We find no substantive ground to differ from the view already taken in the above case. Hence, the letter of rejection in Annexure-A/6 is hereby quashed. The Respondents are directed to consider/reconsider the case of the applicant for appointment/promotion to IAS retrospectively i.e. the date on which his junior was promoted to IAS keeping in mind the orders


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of this Tribunal dated 27<sup>th</sup> July, 2009 in OA No.269 of 2009 (Surendra Prasad Mishra V Union of India and others), dated 13<sup>th</sup> August, 2010 in OA No. 443 of 2008 (Lingaraj Khadenga V Union of India and others), order dated 19.07.2011 in OA No. 127 of 2011 (Bhabani Sankar Panda V Union of India and others), vis-à-vis the recommendation by the Government of Orissa under Annexure-A/5 dated 7<sup>th</sup> March, 2011 and communicate the decision in a well reasoned order to the Applicant within a period of 45 days from the date of receipt of copy of this order.

11. 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.)