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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 490 of 2009
Cuttack, this the ~~08th~~ day of April, 2011

Subash Ch. Sahu

.... Applicant

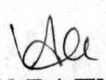
-v-


Spl.Secy,GADeptt.Govt.of Orissa& Ors

.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


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

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CUTTACK BENCH, CUTTACK

O.A No. 490 of 2009

Cuttack, this the 08th day of April, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Subhash Chandra Sahu, IFS, Deputy C.F (NODAL), Office of
Principal Chief Conservator of Forests, Orissa, Bhubaneswar,
Dist. Khurda.

..Applicant

By legal practitioner: M/s.K.M.Patra, R.C.Swain,
T.K.Pati, T.Swain, T.K.Beura,
Counsel.

-Versus-

1. Special Secretary, General Administrative Department,
Government of Orissa, Bhubaneswar, Dist.Khurda.
2. Commissioner-cum-Secretary to Government of Orissa,
Forest & Environment Department, Bhubaneswar, Dist.
Khurda.
3. Government of India, Ministry of Environment & Forest,
Paryavaran Bhawan, CGO Complex, Lodhi Road, New
Delhi-110 003.

....Respondents

By legal practitioner: Mr.A.K.Bose, GA
Mr.U.B.Mohapatra, SSC

ORDER

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

The Applicant, a 1995 batch Orissa cadre promotee IFS

Officer has filed this Original Application U/s.19 of the
Administrative Tribunals Act, 1985 seeking direction to the
Respondents to promote him to the post of Junior Administrative

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Grade (non-functional) with effect from 01-01-2004 and to the Selection Grade with effect from 1.1. 2008 i.e. the date when his immediate junior namely, Shri Ainth Sethi, was promoted to the said grades and grant him all consequential service and financial benefits retrospectively.

2. Despite service of notice and due opportunity, no separate counter was filed by the Respondents 2 & 3 although for Respondent No.3, Mr. U.B.Mohapatra, Learned SSC for the Union of India appeared and took time on several occasions to obtain instruction and file counter.

3. Similarly despite specific direction to the Respondent Nos.1&2 to produce files/records of the Selection Committee proceedings in which the cases of all eligible IFS Officers were considered for promotion to JAG and SG but the Applicant was not recommended due to pendency of Disciplinary Proceedings whereas the case of Shri Ainth Sethi was recommended and consequently he was promoted to the grades of JAG and SG, Learned Government Advocate for the State of Orissa instead of producing the aforementioned records, produced Xerox copy of the minutes in which the case was considered and he was promoted to JAG grade; which has been kept on record.

4. The fact that the Applicant was eligible for consideration for promotion to the JAG and SG grades w.e.f. 01-01-2004 and 1.1. 2006 respectively and that Shri Ainth Sethi was junior to the Applicant have not been disputed in the counter filed by the Respondent No.1. However, Respondent No.1, in the counter, has submitted that the Applicant is not entitled to the relief claimed in this OA because in terms of the letter No. 11030/22/87-AIS (II) dated 07.09.1987 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi wherein it has been provided that in cases where an officer is under suspension or against whom some disciplinary proceedings are contemplated or pending on the date of his eligibility for this grade, this grade would be released when the said proceedings conclude and the officer concerned is fully exonerated and as at the relevant point of time, disciplinary proceedings were pending against the applicant he was not allowed for promotion to the JAG. Further it was contended that as per proviso to Rule 3(3) of IFS (Pay) Rules, 1968, an officer of the Junior Administrative Grade shall be eligible for appointment to Selection Grade on completion of 13 years of service. Although the Applicant had completed 13 years of service by the time the case of Shri Sethi was considered as per the

guidelines issued by the Government of India dated 18.11.2002 and was promoted vide Notification No. 8265 dated 15.4.2009, the applicant could not be promoted as he was not in the grade of JAG. It has also been admitted by the Respondent No.1 that the applicant was exonerated in the disciplinary proceedings initiated against him; after which the case of the applicant was examined for promotion to JAG in accordance with the guidelines dated 18.11.2002 (Annexure-I) issued by Government of India, MOEF and dated 25.06.1998 (Annexure-II) of the Government of India. As per the instruction of the DoP&T dated 25.6.1998 promotion/appointment to the Junior Administrative Grade of the Service in case of members of the All India services would be allowed subject to fulfillment of other conditions and only where the remarks in their service records are not 'adverse' and they have earned at least the grading 'average'. As there was adverse remarks in the CCR/ACR of the Applicant for the assessment year 2002-03[01-04-2002 to 22-09-2002] by applying the laid down principle the applicant was not recommended for promotion from the date his junior was appointed to JAG grade. However keeping in view the guidelines dated 18.11.2002 of the Government of India Ministry of MOEF, the applicant was appointed to JAG w.e.f. 1.1. 2006(i.e. after earning two more ACRs following the one

containing adverse remarks) vide GA Deptt. Notification dated 15.3.2010. On appointment to JAG, steps are being taken to consider his case for appointment to SG in terms of the laid down principle circulated in letter 18.11.2002.

5. In the rejoinder the Applicant disputed the pendency of the disciplinary proceedings at the time when he became eligible to be appointed to JAG grade. Further it has been stated that he became eligible to be appointed to JAG w.e.f. 01-01-2004 (when his junior was promoted to the said grade). As such even after his exoneration in the disciplinary proceedings his case ought to have been considered as per the instruction of the DoP&T dated 18.11.2002 instead of the instruction dated 25th June, 1998.

6. Reiteration of the grounds taken in the respective pleadings having been heard, perused the materials placed on record. We have also perused the Xerox copy of the minutes produced by the Respondent No.1.

7. The Respondents admitted in their counter that the case of applicant, after his exoneration from charges was considered as per the instruction of the Government of India Ministry of MOEF dated 18.11.2002 and he was appointed to JAG grade JAG w.e.f. 1.1.2006 on the recommendation of the Screening Committee/PDC after earning two more ACRs

following the one containing adverse remarks vide Notification dated 15.3.2010.

8. We have considered the rival submission of the parties and perused the materials placed on record. It is seen that the instruction dated 25th June, 1998 in Annexure-II issued by the DoP&T providing the manner of determination of eligibility for appointment to JAG. This instruction was issued by the DoP&T in modification of earlier instruction on the above subject. It provides that appointment to JAG grade would be allowed subject to fulfillment of other conditions and only where the remarks in their service records are not 'adverse' and they have earned at least the grading "average". It also provides that in cases where the JAG is so withheld, the position would be reviewed annually for the purpose of release of this grade to such officers. It reveals from record that after this instruction another instruction appears to have been issued by the DoP&T on 22nd December, 2000 on the subject. Based on such instruction, the Government of India, Ministry of MOEF issued instruction to all concerned in Annexure-I dated 18th November, 2002 wherein it has been provided that 'an officer is eligible for appointment in the Junior Administrative Grade on completing 9 years of service. This grade is non-functional and shall be admissible without any screening, as a

matter of course, to all the officers of the Senior Time Scale from 1st January of the relevant years, except in cases where any disciplinary/criminal proceedings are pending against the officer'.

9. According to the Applicant by the issuance of the instruction dated 18.11.2002 the force of the earlier instruction dated 25th June, 1998 spent its stint and as admitted by the Respondents when his case was considered for appointment to JAG in terms of the guidelines dated 18.11.2002 the adverse remarks ought not to have stood on the way for appointment to the grade of JAG w.e.f 1.1. 2004 and consequently to SG w.e.f. 1.1. 2008 i.e. the date when he became eligible to be appointed/ date from which his juniors were appointed. Further contention of the Applicant's counsel is that the charge sheet was issued to the applicant vide memorandum dated 28.7.2005 whereas as admitted by the Respondents the applicant was eligible to receive the appointment to JAG grade w.e.f. 1.1. 2004 and, as such, the Respondents should not have denied the applicant his legitimate right/claim on the garb of initiation of disciplinary proceedings.

10. We partly agree with the contention of the Applicant's counsel that the date of issue of the charge sheet is deemed date of initiation of disciplinary proceedings. But nothing is forthcoming with regard to the date of sitting of the DPC for

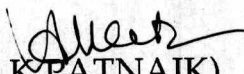
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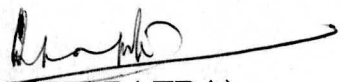
considering the appointment to JAG of the applicant as well as his junior. Similarly it is the contention of the Respondents in their counter that keeping in view the exoneration of the Applicant in the disciplinary proceedings, in terms of para 25 of the Promotion guide lines dated 18.11.2002(Annexure-I to the counter), the applicant was appointed to the JAG w.e.f. 1.1.2006 and steps are being taken for consideration of his case for appointment to SG in IFS as per the guidelines dated 18.11.2002. None of the parties have filed the instruction of the DoP&T dated 22nd November, 2000 based on which the guidelines under Annexure-I, appears to have been issued by the Government of India, Ministry of MOEF. We also do not find existence of any para 25 based on which, according to the Respondents, the Applicant was appointed to JAG. The Respondents have also not thrown any light on the contention of the Applicant that after issuance of Annexure-I, the instruction under Annexure-II has no force but admitted that the appointment of the applicant to JAG was in accordance with the guidelines under Annexure-I. However, as admitted in the bar, applicant, meanwhile retired from service on reaching the age of superannuation. But nothing has been stated about the progress of the steps taken for appointing the applicant to SG in terms of the guidelines under Annexure-I.

11. Be that as it may, we are handicapped to take any firm view in the matter especially because of non-production the Selection Committee proceedings of the Applicant vis-à-vis other as directed by this Tribunal in its order dated 20th January, 2011. Hence, we feel ends of justice would be met if we direct the Respondents to take a decision on the existence and validity of the instruction under Annexure-II after issuance of Annexure-I. The Respondents also need to examine what the paragraph 25 of the guidelines under Annexure-I provides. If it provides that ACR has nothing to do for considering the appointment to JAG, then the Respondents need to reconsider the case of the Applicant for appointment to JAG w.e.f. 1.1.2004 and thereafter to SG w.e.f. 1.1.2008. In any event, the decision taken on re-examination as directed above, need to be communicated to the Applicant in a well reasoned order, within a period of 60(sixty) days from the date of receipt of copy of this order. Ordered accordingly.

12. However, pending final decision in the light of the direction made above, the Respondents should take all possible steps to appoint the applicant to SG grade from the date, according to the Respondents, was due to him, if not already done, within a period of 30 (thirty) days from the date of receipt of copy of this order.

13. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K. FATNAIK)
Member(Judl)


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

