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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 534 of 2009
Cuttack, this the 22nd day of June, 2011

Bhimsen Maharana Applicant
-v-
Union of India & Others 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.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.534 of 2009
Cuttack, this the 22nd day of June, 2011

CORAM:

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

Bhimsen Maharana, aged about 54 years, Son of Late Kshetrabasi Maharana, OFS, Class I at present Divisional Forest Officer, At/Po/Dist. Deogarh.

.....Applicant
By legal practitioner: M/s.R.N.Nayak, N.K.Sahoo, G.N.Rout,
R.K.Patnaik, Counsel. Counsel.

-Versus-

1. Union of India represented through the Director, Ministry of Environment and Forest, Paryavaran Bhawan, Lodi Road, New Delhi-110 003.
2. Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110 069.
3. Government of Orissa represented through the Chief Secretary at Orissa Secretariat, Bhubaneswar-751 001.
4. Secretary, Forest and Environment Department at Orissa Secretariat, Bhubaneswar-751 001.

....Respondents

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

ORDER

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

The contention of the Applicant, in brief, is that the Selection Committee met on 31-12-2008 for preparation of year-wise select lists of the years 2004

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2005, 2006, 2007 and 2008 for promotion of SFS Officers of State of Orissa to the Indian Forest Service (Orissa Cadre) in violation of the Recruitment Rules and the guidelines framed there under, ignored his case and included the name of his juniors. There are standing guidelines and instructions about holding of DPC for promotion which regulate the procedure for promotion of All India Officers in general and these guidelines are applicable for promotion to IFS cadre also. As per clause 4 of the said guidelines, the DPC should assess the suitability of the employees for promotion on the basis of their service records and CRs for five preceding years irrespective of qualifying service prescribed in Service/Recruitment Rules. Though preceding five years CRs is relevant for promotion, there have been no adverse remarks in his CRs for last fourteen years preceding to 2008. Despite the good service record, he was not promoted to IFS due to withholding of his

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Integrity Certificate by the Government of Orissa and the
reason of such withholding of Integrity Certificate is
the adverse remarks in the CRs of the applicant for
the period 14.10.991 to 31.3.1992 and 1992-93.

According to him no power has been vested with the State Government to withhold the Integrity Certificate for adverse remarks in the CRs of an employee. The adverse remarks pertaining to the period from 14.10.1991 to 31.3.1992 and 1992-93 has no bearing for considering the case of the applicant for the vacancy year 2004 to 2008, as in terms of the relevant rules five years CRs can only be taken into consideration for assessing the suitability of the Applicant. However, the withholding of Integrity Certificate has been treated as negative factor by the Selection Committee for promotion of the Applicant to the IFS which is not sustainable in the eyes of law. Further contention of the Applicant is that he was visited with the minor penalty of withholding of three

annual increments without cumulative effect for an incident of the year 1993 i.e. fifteen years before the Selection Committee met to consider the case of the Applicant which was also taken into consideration by the SCM to find him unsuitable. In the minutes of the DPC copy of which was obtained by the Applicant under RTI Act, 2005 it was mentioned that the Selection Committee shall classify the eligible officers as 'outstanding', 'very good' 'good' and 'unfit as the case may be on an overall relative assessment of their service records. But there was no such assessment and classification of the eligible officers made by the Selection Committee while finding him unsuitable and including the names of the juniors of the applicant. Hence there was violation of the provision 5(3-A) and 4(f) of the promotion Regulation. The column of Annexure to minutes "Overall relative assessment" have been kept blank. Thus promotion to IFS is done in arbitrary and pick and choose manner which is not

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sustainable in the eyes of law. Hence, in this Original Application filed under section 19 of the A.T. Act, 1985 his prayer is to set aside the Notification **No. 19813 dated 30-07-2009** and Notification No.17013 dated 30.04.2009 promoting the juniors of the Applicant to the Indian Forest Service (Orissa Cadre).

2. Despite notice being served and adequate opportunity granted, Respondents 1, 4 and 5 to 15 have neither appeared nor filed any counter. However, Respondent Nos.2 & 3 has filed their counter separately.

In the counter filed by the Respondent No.2 [Secretary, UPSC, Dholpur House, Sahajahan Road, New Delhi] it has been stated that Selection Committee Meeting (in short 'SCM') was convened on 31.12.2008 to consider the SFS Officers for promotion to the IFS (Orissa Cadre) against 15 vacancies of the years **2004: 07, 2005:05, 2006:01, 2007:01 and 2008:01**. The SCM considered the case of the Applicant along with other eligible SFS

Officers of the State of Orissa. For the year 2004 he was **at Sl.No.13, for the year 2005, at Sl.No.7** and **at Sl.No.6 for the year 2007 and 2008.** As he was out of the zone of consideration his case could not be considered while considering the names of SFS Officers for the year 2006. The Government of Orissa while forwarding the proposal had intimated that the Integrity Certificate of the Applicant was withheld due to adverse remarks in respect of his integrity record in CCR/PAR **for the period from 14.10.1991 to 31.3.1992 so also for the period 1992-1993.** It was also intimated that a penalty of withholding of three increments without cumulative effect had been imposed and the **currency of the penalty was from 1.11.1999 to 31.10.2002.**

Further contention of the Respondent No.2 is that the overall assessment in respect of each eligible officers is made by examining the service records of each individual SFS officers with reference to the

performance such as ability to work, deliberating on the quality of the officers recording made by the Reporting, Reviewing and Accepting Authority in the ACRs with a view to ensure that the overall grading in the ACRs is not inconsistent with the grading/remarks under the various parameters or attributes. The SCM also takes into account orders regarding appreciation of meritorious work done by the concerned officers during the period for which they are assessed. Similarly the SCM also keeps in view the orders awarding penalties or any adverse remarks communicated to the officer which even after due consideration of his representation have not been completely expunged. The procedure adopted by the Selection Committee is uniformly and consistently applied to all States/cadres. This has also the sanction of law enunciated by the Hon'ble Apex Court in the case of

Anil Katiyar v Union of India and others, 1997 (1)

SLR 153.

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Next contention of the Respondent No.2 is that in terms of the internal guidelines of the Commission an officer may be categorized as 'Unfit', if his reports are lacking any positive merit or whose performance is not generally satisfactory or if there are entries in some of the latest ACRs which adversely reflect on his suitability for promotion or if there are orders of penalty which in the opinion of the SCM would render the officer unsuitable for promotion.

The Respondent No.2 has denied the assertion of the Applicant that general guideline for holding DPC applicable to other Central Civil Services has also applicability ^{as far} ~~in far~~ as promotion to IFS is concerned. It has been contended that promotion of SFS Officers to the IFS are made in accordance with the provisions of IFS (Appointment by Promotion) Regulations, 1966 which are statutory in nature. The DPC guidelines issued by the Government of India are applicable in respect of

promotions in Central Services within the same services. In addition, promotions of SFS officers to the IFS are distinct from promotion within a State Service. In the former an officer is inducted into an All India Service ending his lien with the State Service. In the latter the officer is merely elevated to a higher position in the same service. The promotions in the former case are governed by the IFS Promotion Regulations, which are different and distinct from the DPC guidelines that govern promotion in the latter case.

By placing reliance on the decision of the Hon'ble Apex Court in the case of **Mir Ghulam Hussain and others v Union of India and others**, 1973 SCC(L&S) 303 it was contended by the Respondent No. 2 that the contention of the Applicant that as there was no adverse remarks against him for preceding 14 years when the SCM was held; therefore, he should have been promoted is misconceived as promotion is not made on the basis of

absence of complaint but on the basis of positive merit. Absence of adverse remarks is not the criteria for assessing the quality of an officer. Provision 5(4) of the promotion regulations clearly provides for provisional inclusion of officers in the select list if they are otherwise found suitable.

In view of the above and on overall relative assessment of the service record, the SCM which met on 31.12.2008 graded the Applicant 'unfit' for all the years he was considered for promotion to IFS. Further by placing reliance on the decision of the Hon'ble Apex Court in the cases of **Nutan Arvind v UOI and others**, (1996)2 SCC 488; **UPSC v H.L.Dev and others**, AIR 1988 SC 1069, **Dalpat Abasaheb Solunke v B.S.Mahajan**, AIR 1990 SC 434 and **Smt. Anil Katiyar v UOI and others**, 1997 (1) SLR 153, it was the contention of the Respondent No.2 that the Tribunal being not the appellate authority in the acts and



proceedings of the DPC cannot sit in judgment over the selection made by the DPC and has accordingly prayed to dismiss this OA being devoid of any merit.

3. The Respondent No. 3 in addition to the stand taken by the Respondent No.2 has stated in the counter that while furnishing the integrity certificate of the eligible SFS Officers to the UPSC, the integrity certificate of the applicant had been withheld on account of adverse remarks recorded in his CCR/PAR for the period from 14.10.1991 to 31.3.1992 and for the period 1992-1993. This was done in accordance with the Ministry of Home Affairs Letter No. 14/23/65-AIS.III dated 8.6.1965 read with MHA Letter No. 14/23/65-AIS.III dated 28.7.1965 and as such, such action of the State Government cannot be found faulted in any manner and the allegations made by the Applicant is baseless, irrelevant and after thought. Accordingly, Respondent No.3 has also prayed for dismissal of this OA.

4. Despite service of copies of the counter and reasonable opportunity, no rejoinder was filed by the Applicant either to the counter filed by Respondent No.2 or Respondent No.3.

5. Heard learned counsel for both sides and perused the materials placed on record including the copy of the minutes produced by the Learned SSC appearing for Respondent No.2. After the closure of the hearing, in spite of opportunity to file written note of argument/memo of citations, if any, nothing of the kind has been filed by any of the parties.

6. On going through the rival submissions of the parties, materials placed on record and the minutes of the meeting, we find no substance on any of the points raised by the Applicant. As it reveals from the record that by taking into consideration all aspects of the matter the SCM graded the applicant as '**unfit**' and integrity certificate could not be issued to the applicant in view of

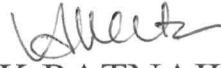
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the adverse remarks on the integrity of the applicant in accordance with the instructions of the Government of India. In any case, the question of integrity certificate would have been relevant had the applicant been declared 'fit' and included in the select panel. Law is well settled that ordinarily Courts/Tribunal should not interfere with the decision of the selection committee unless *mala fide* or any other circumventing circumstances are pointed out by the party aggrieved. It has been held by the Apex Court in the case of Union of India and another v A.K.Narula, (2008) 1 SCC (L&S) 656 that when the process of assessment is vitiated either on the ground of bias, *mala fides* or arbitrariness the selection calls for interference. If DPC has proceeded in a fair, impartial and reasonable manner courts/Tribunal should not interfere in the decision. Discretion has also been given to DPC to make its own assessment. Since according to the Respondents on the basis of assessment

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of selection committee the applicant being assessed 'unfit' was excluded from select panel, interference in the matter is impermissible especially in absence of any such pleadings of *mala fide* or bias on the part of the Members of the Selection Committee.

7. In view of the above, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member (Judicial)


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