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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


O.A.No. 601 of 2009

Cuttack, this the 23rd day of September, 2010

Prafulla Kumar Mishra Applicant
Versus
Union of India & Ors. Respondents

1. Whether it be referred to the reporters or not? *yes*.
2. Whether it be circulated to all the Benches of the Tribunal? *yes*.


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.601 of 2009

Cuttack, this the 23rd day of September, 2010

C O R A M

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)

AND

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

Prafulla Kumar Mishra, aged about 54 years, son of Bhagaban Mishra, OFS I, at present Divisional Forest Officer, Kendu Leaf Division, At/Po. Khariar, Dist. Nuapada. Applicant

By legal practitioner: M/s.R.N.Nayak, N.K.Sahu, R.K.Pattnaik Counsel

-Versus-

1. Union of India represented through the Director, Ministry of Environment and Forests, At-Paryavaran Bhavan, Lodi Road, New Delhi-110 003.
2. The Secretary Union Public Service Commission, At-Dholpur House, Sahajahan Road, New Delhi-110 069.
3. Government of Orissa represented through the Chief Secretary, At-Orissa Secretariat, Bhubaneswar-751 001.
4. The Secretary, Forest and Environment Department at Orissa Secretariat, Bhubaneswar-751 001.
5. K.C.Dalai, Divisional Forest Officer, Kendu Leaf, At/Po/Dist. Bolangir.
6. Bipin Bihari Behera, Divisional Forest Officer, Ghumusar North Division, At/Po.Bhanjanagar, Dist. Ganjam.
7. Duryodhan Behera, DFO Kendu Leaf Division, At/Po. Rairakhol, Dist. Sambalpur.
8. Ramakanta Mishra, Divisional Forest Officer, At/Po/Dist. Deogarh.
9. Nalinikanta Rout, DFO Kendu Leaf Division, At/Po/Dist. Angul.
10. Ajaya Kumar Jena, Divisional Forest Officer, At/Po.Berhampur, Dist. Ganjam.
11. Abhiram Naik, DFO Vigilance, At-Vigilance Directorate Mangalabag, Cuttack-753 001.
12. Jitasatru Mohanty, Divisional Forest Officer, At/Po.Parlakhemundi, Dist. Gajapati.
13. Sharat Kumar Mohanty, Divisional Forest Officer, At/Po/Dist. Keonjhar.
14. Anant Kishore Prusty, Wild Life Conservator Officer, O/O.Chief Wild Life Warden, Nlakantha Nagar, Nayapalli, Bhubaneswar-751 012.
15. Biranchi Narayan Thakur, Divisional Forest Officer, At/Po/Dist. Sundargarh.

.... Respondents

By legal practitioner: Mr.L.Jena, ASC (For Res.1)

Mr.A.K.Bose, GA

Mr.D.K.Behera,ASC

Mr.B.Dash (For Res.No.2)

O R D E R

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

Briefly stated the facts of the case are that in accordance with the provisions of Indian Forest Service (Appointment by Promotion) Regulations, 1966, to prepare select list of the SFS Officer to the IFS of Orissa

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cadre meeting of Selection Committee was convened on **31.12.2008**. The Selection Committee considered the cases of all eligible officers, including the Applicant, as against the vacancies of the years **2004-07, 2005-05, 2006-01, 2007-01 and 2008-01**. The case of the Applicant, Shri P.K.Mishra, who is a State cadre Forest Officer of the State of Orissa, was duly considered by the Selection Committee at Sl.No.10 for the year 2004, Sl.No.6 for the year 2005 and Sl.No.5 for the year 2007 and 2008. His case was not considered for the year 2006 as he was out of the zone of consideration. With his place and position in the list and taking into consideration his service record, the applicant was provisionally included in the Select List of 2004 at Sl.No.4, at Sl.No.2A in the Select List of 2005 and at Sl.No.0B in the Select list of 2007 subject to the clearance of disciplinary proceedings and issuance of integrity certificate by the Government of Orissa. As per regulation 7(4) of the IFS (Appointment by Promotion) Regulation, 1966, the validity of the panel is for one year/upto 31st December in the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub regulation (1) of Regulation 5 or upto 60 days from the date of approval of the Select List by the Commission under sub regulation (1) or as the case may be finally approved under Sub regulation (2) whichever is later. The Applicant [Shri P.K.Mishra] was not appointed to the Indian Forest Service by the Government of India as the State Government did not furnish any proposal for unconditional inclusion of his name within the validity period of the Selection list as required under the aforesaid Rules. In the above factual back drop, by filing the present Original Application, the Applicant prays the following relief:

“To admit the case, issue notice to the respondents and after hearing the parties, set aside the Notification No.19813 dated 30.7.2009 (Anexure-5) pertaining to promotion of OFS Officer to IFS cadre issued by the Government of India in

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Ministry of Environment and Forests and to direct the Respondents 1 to 4 to declare the provisional selection of the Applicant as unconditional."

2. The stand of the Applicant in support of the aforesaid prayer is that the Selection Committee Meeting held on 31.12.2008 for preparation of the year wise select list for the years 2004 to 2008 to IFS found him suitable but could not be promoted along with his juniors due to pendency of the disciplinary proceedings against him which was illegal, arbitrary and against all canons of justice, equity and fair play; as Memorandum of charges was communicated to him only on 28.05.2005 which was much after the crucial date of 1st January of the year vacancy (2004 & 2005) against which his case was considered and he was provisionally selected. The initiation of disciplinary proceedings could only be applicable to the selection year 2006 onwards; as it is settled law that date of issue of the charge sheet is the date of initiation of proceedings. The selection of the Applicant was as against the vacancies of the years 2004 & 2005. Hence it could not have been treated as provisional nor could the State Government of Orissa have withheld integrity certificate based on the charge Memo communicated to him on 28.05.2005. Clause 5(4), Explanatoin-1 of Regulation, 1966 envisaged that 'proceedings shall be treated as pending only if a charge sheet had actually been issued to the officer'. Therefore, notwithstanding the charge memo he could have been promoted along with his juniors to the IFS as against the vacancies of 2004 & 2005 as ever since the said disciplinary proceedings have seen the light of the day as on the crucial date of 1st January of the 2004 & 2005. Hence withholding of integrity certificate for an incident which took place much after the consideration of the applicant and his non-promotion on the face of promotion of his gross juniors was arbitrary, illegal and total non-application of mind.



Further case of the Applicant is that there are standing guidelines and instructions on DPC (Promotion) by the Government of India which regulates the procedure for promotion of All India Officers in general and therefore, these guidelines are also applicable for the promotion to IFS cadre. As per clause 4 of the said guidelines, the DPC should have assessed the suitability of the employees for promotion on the basis of their service records and with particular reference to the CRs for five preceding years, irrespective of the qualifying service prescribed in the Service/Recruitment Rules. The applicant has no adverse remarks in his ACRs for his entire service period preceding the year 2008 when the Selection Committee Meeting was held although ACRs of only five years were assessed. In regard to the disciplinary proceedings, it has been stated by the Applicant that in the Disciplinary Proceedings pending against him, the IO appointed by the State Government submitted his findings on 28.6.2008 exonerating him from the charges. However, the State Government (Secretary, Forests, and Government of Orissa) appointed a second enquiry officer which was challenged before the State Administrative Tribunal by the applicant in OA No. 1662 of 2009 which directed the State Government on 8.10.2009 to decide the disciplinary proceedings within 2 months of receipt of the said order. But no order has yet been passed thereon pursuant to the order of this Tribunal.

3. In the counter filed by the Respondent No.3 it has been contended by him that as per the provision of 5(1) of AIS (Appointment by Promotion) Regulations, 1966, the Committee shall ordinarily meet every year and prepare a list of such members of the SFS as are held by them to be suitable for promotion to the service. The Selection Committee Meeting for the year 2002 and 2003 was held on 24.11.2006. The Notification for promotion of SFS Officer was issued on 31.02.2007 by the Government of

India, Ministry of Environment and Forests. After that steps were taken to convene the SCM for the year 2004 to 2007. As the wanting CCRs and other relevant documents of the eligible SFS Officers could not be collected in time, so the complete proposal was not submitted to UPSC for convening the SCM to consider the cases of eligible SFS Officers for promotion to IFS cadre of Orissa. The Selection committee Meeting was, however, held on 31.12.2008 and prepared the year wise select list for the year 2004 to 2008 in terms of Promotion Regulation, 1966. The name of the Applicant was included provisionally in the select list of 2004, 2005 and 2007 as the disciplinary proceedings were pending against him. Since the disciplinary proceeding was not concluded, during the period the select list was in force, the name of the applicant could not be made unconditional. Accordingly, Respondent No.3 contended that the assertion of the applicant that as there was no DP initiated against him in 2004 his selection should not have been made provisional for the year 2004 is not tenable in the eyes of law. On the above line, Respondent NO.3 has prayed for dismissal of this OA.

4. In the counter filed by the Respondent No.2 it has been contended that in terms of the promotion regulations, all the eligible officers within the zone of consideration are to be considered by the Committee irrespective of their having disciplinary or criminal case pending against them or their integrity certificate being withheld by the State Government. The right of consideration of such officers cannot be denied if they are otherwise eligible for consideration. The Promotion Regulations provide that in case such officers are found suitable for inclusion in the list of selection officers on the basis of the grading awarded by the Committee, their inclusion is to be made provisional subject to clearance in the proceedings which were pending against them. Therefore, the inclusion of the applicant in the Select Lists of

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2004, 2005, and 2007 was made provisional strictly in accordance with the provisions of the Promotion Regulations and no infirmity in this regard has been committed by the Selection Committee. Since by the time notification was made, disciplinary proceeding was still pending against the applicant and in actuality the service record of the applicant was under cloud for which no integrity certificate was issued by the Government of Orissa and received by the Respondent No.2 within one year, the select list having spent its force, the applicant is not entitled to the relief claimed in this OA.

5. The Applicant filed a rejoinder, more or less reiterating his stand in the Original Application.

6. Mr. Nayak, Learned Counsel for the Applicant, Mr. Bose, Ld.

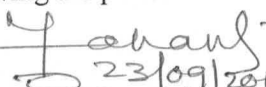
Government Advocate for the State of Orissa, ^{Mr. B. Dash, Ld.} ~~Mr. Mohapatra, Ld. Senior St.~~


Counsel appearing for the UPSC & Mr. L. Jena, Ld. ASC for Respondent No.1

have led emphasis on the points taken in their respective pleadings, which we recorded above and having heard them at length, perused the materials placed on record including the provision of Indian Forest Service (Appointment by Promotion) Regulations, 1966. The Government of India/UPSC issued Notification under Annexure-4 dated 30th April, 2009 notifying the names of eligible SFS Officers subject to clearance of disciplinary proceedings pending against him. In the said list the name of the Applicant was placed at Sl.No.4 as against the vacancies of the year 2004, Sl.No.2A against the vacancies of 2005 and at Sl.No.0B against the vacancy of the year 2007. The vacancy position of the years 2004-07, 2005-05, 2006-01, 2006-01 and 2008-01 is not disputed. The admitted fact of the matter is that as on the date the Selection Committee met, the service record of the applicant was under cloud. In the Notification it was made clear that inclusion of the name in the select list is provisional subject to clearance of disciplinary proceedings, if any, pending against the

officers whose name found place in the said select list. The order of the State Administrative Tribunal directing completion of the proceedings is dated 08.10.2009. Even then it has not been completed. The Applicant has not produced any evidence to show that he has ever taken any step for not holding the Selection Committee in the year 2004 or thereafter in accordance with the Rules. He has also approached this Tribunal after eight months of the Notification under Annexure-3 and five months of Notification under Annexure-5 without availing the opportunity of making representations before the competent authority to meet the requirement of the provisions of the A.T. Act, 1985. Despite adequate opportunity, Learned Counsel for the Applicant has produced no rules, instructions or authority that pendency of disciplinary proceedings by the time the Selection Committee met and considered his case should not stand on the way of his promotion to the IFS. Meanwhile as per the provisions of the Regulations, 1966 the life of the panel has also expired and on the other hand the disciplinary proceedings initiated against the applicant has not been concluded as admitted by the Applicant.

7. For the reasons stated above, we are not inclined to interfere in the matter. Hence, this OA being devoid of any merit stands dismissed by leaving the parties to bear their own costs.


(M.R. Mohanty)
Vice-Chairman(J)


(C.R. Mohapatra)
Member(Admn.)